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# *The* **NORTH CAROLINA REGISTER**

**IN THIS ISSUE .....**

**EXECUTIVE ORDERS**

**FINAL DECISION LETTERS**

**PROPOSED RULES**

Administration  
Community Colleges  
Governor  
Human Resources  
Licensing Boards  
NRCD

**FINAL RULES**

Correction  
Human Resources  
Revenue  
Secretary of State  
Transportation

**LIST OF RULES AFFECTED**

**ISSUE DATE: FEBRUARY 15, 1988**

**Volume 2 • Issue 11 • Pages 819-950**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any amendment which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



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## ISSUE CONTENTS

<b>I. EXECUTIVE ORDERS</b>	
Executive Orders 63-66.....	819

<b>II. FINAL DECISION LETTERS</b>	
Voting Rights Act.....	822

<b>III. PROPOSED RULES</b>	
<b>Administration</b>	
N.C. Low-Level Radioactive Waste Management Authority .....	825
<b>Community Colleges</b>	
Community Colleges .....	911
<b>Office of the Governor</b>	
State Budget and Management .....	828
<b>Human Resources</b>	
Facility Services.....	841
Medical Services.....	876
Mental Health, Mental Retardation and Substance Abuse .....	874
<b>Licensing Boards</b>	
General Contractors.....	906
Mortuary Science .....	910
<b>NRCD</b>	
Environmental Management .....	876

<b>IV. FINAL RULES</b>	
<b>Correction</b>	
Division of Prisons.....	924
<b>Human Resources</b>	
N.C. Drug Commission .....	924
<b>Revenue</b>	
Sales and Use Tax.....	924
Intangible Tax .....	930
<b>Secretary of State</b>	
Securities Division.....	931
<b>Transportation</b>	
Division of Highways.....	936
Division of Motor Vehicles.....	937

<b>V. LIST OF RULES AFFECTED</b>	
January 1, 1988 .....	939
February 1, 1988 .....	942

<b>VI. CUMULATIVE INDEX .....</b>	<b>947</b>
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**NORTH CAROLINA REGISTER**  
*Publication Deadlines and Schedules*  
(March 1988 - March 1989)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing and Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
03/15/88	02/24/88	03/02/88	04/14/88	07/01/88
04/04/88	03/11/88	03/18/88	05/04/88	08/01/88
04/15/88	03/25/88	04/01/88	05/15/88	08/01/88
05/02/88	04/11/88	04/18/88	06/01/88	09/01/88
05/16/88	04/27/88	05/03/88	06/15/88	09/01/88
06/01/88	05/10/88	05/17/88	07/01/88	10/01/88
06/15/88	05/26/88	06/02/88	07/15/88	10/01/88
07/01/88	06/10/88	06/17/88	07/31/88	11/01/88
07/15/88	06/24/88	07/01/88	08/14/88	11/01/88
08/01/88	07/11/88	07/18/88	08/31/88	12/01/88
08/15/88	07/26/88	08/02/88	09/14/88	12/01/88
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09/15/88	08/26/88	09/02/88	10/15/88	01/01/89
10/03/88	09/12/88	09/19/88	11/02/88	02/01/89
10/14/88	09/26/88	10/03/88	11/13/88	02/01/89
11/01/88	10/11/88	10/18/88	12/01/88	03/01/89
11/15/88	10/26/88	11/02/88	12/15/88	03/01/89
12/01/88	11/07/88	11/15/88	12/31/88	04/01/89
12/15/88	11/23/88	12/02/88	01/14/89	04/01/89
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**EXECUTIVE ORDER NUMBER 63**

**STATE ASBESTOS STUDY COMMISSION**

It has come to my attention that the presence of asbestos in certain forms in buildings may be hurtful to the building's occupants and that there may be asbestos present in these forms in some of the State's buildings.

It has also come to my attention that before undertaking to learn whether and to what extent hurtful asbestos is present in the more than ten thousand buildings owned by the State, it is desirable for a study to be made of the costs and related benefits to be had from such an assay being made.

With the foregoing in mind it is ORDERED:

1. There is hereby created a State Asbestos Study Commission composed of seven persons, two of whom shall be designated by the Governor and one each by the Lieutenant Governor, the Speaker of the House of Representatives, the Secretary of the Department of Administration, the Secretary of the Department of Human Resources and the Superintendent of Public Instruction. The Chairman of the Commission shall be designated by the Governor from among its members.

2. The purpose of the Commission shall be (i) to study the cost of and related benefits to be had from assaying the State's buildings to learn whether and to what extent asbestos in hurtful forms may be present in the buildings and (ii) to make recommendations as to how the State should respond to what is learned from the study. The Commission shall prepare a written report of its study and submit the same to the Governor along with its recommendations.

3. The Commission shall begin its work immediately and make its report to the Governor not later than April 30, 1988.

4. All State Departments and agencies shall cooperate fully and promptly with the Commission in its work to the end that its work may be completed within the allotted time.

5. The Division of Policy and Planning shall assign one or more members of its staff to assist the Commission in its work, as reasonably may be requested by the Commission.

6. Members of the Commission who are not employees of the State shall be reimbursed for their reasonable travel and subsistence expenses as allowed by N.C.G.S. §138-5. Reimbursement for such expenses shall be paid from appropriations to the Department of Administration. The reasonable expenses of the Commission in addition to those allowed by N.C.G.S. §138-5 shall also be paid from appropriations to the Department of Administration.

Done at Raleigh, North Carolina, this 29th day of January, 1988.

**EXECUTIVE ORDER NUMBER 64**

**EXTENSION OF GOVERNOR'S COUNCIL ON  
ALCOHOL AND DRUG ABUSE AMONG  
CHILDREN AND YOUTH**

The Governor's Council on Alcohol and Drug Abuse Among Children and Youth was established by Executive Order Number 23 on January 29, 1986.

Pursuant to N.C.G.S. 147-16.2 this Commission is to expire on January 29, 1988.

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

The Governor's Council on Alcohol and Drug Abuse Among Children and Youth established through Executive Order Number 23 on January 29, 1986 is hereby extended through January 29, 1991.

Done in Raleigh, North Carolina this the 29th day, of January, 1988.

**EXECUTIVE ORDER NUMBER 65**

**NORTH CAROLINA STATE DEFENSE MILITIA**

WHEREAS, the North Carolina National Guard has the mission of responding to the call of the Governor in time of emergency to execute the law and secure the safety of persons and property, suppress riots or insurrections, repel invasions or provide disaster relief; and

WHEREAS, the potential exists for the National Guard to be absent from the State in time of need because of a national mobilization or other federal requirements; and

WHEREAS, the North Carolina National Guard, at the direction of the United States Congress, is assuming a more critical role in this nation's defense, as a crucial partner in the armed forces and could be mobilized on very short notice; and

WHEREAS, the North Carolina General Statutes confer upon the Governor the responsibility and authority to enlist and direct the assistance of a State Defense Militia to provide for the common defense and protection of the lives and property of the people of this State, during the absence from the State of the National Guard;

NOW, THEREFORE, IT IS ORDERED:

Section 1.

Pursuant to Article 5 of Chapter 127A of the General Statutes, I hereby establish and organize the North Carolina State Defense Militia. The purpose of this Militia is to assume the State functions of the North Carolina National Guard, in its absence.

Section 2.

The North Carolina State Defense Militia is established within the Department of Crime Control and Public Safety. The Militia shall be responsible to and subject to the direction and supervision of the Adjutant General of the North Carolina National Guard. I hereby delegate to the Secretary of Crime Control and Public Safety the authority to prescribe rules and regulations concerning the North Carolina State Defense Militia in accordance with N.C.G.S. 127A-80(c).

Section 3.

The Commander of the State Defense Militia shall be appointed by the Secretary of the Department of Crime Control and Public Safety to the rank of General Officer of the North Carolina State Defense Militia and shall serve at the pleasure of the Secretary. All officers and soldiers shall be appointed in accordance with the rules and regulations established under Section 2 above and shall serve at the pleasure of the Secretary of Crime Control and Public Safety.

Section 4.

This order is effective immediately, and shall remain in effect until rescinded by further executive order or other law. The provisions of N.C.G.S. 147-16.2 shall not apply to this Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 29th day of January, 1988.

EXECUTIVE ORDER NUMBER 66

STATE EMPLOYEES COMBINED CAMPAIGN

WHEREAS, there is a need to promote and encourage State employees to contribute to non partisan charitable organizations; and

WHEREAS, there is a need to allow State employees the opportunity to contribute to non partisan charitable organizations in an orderly and uniform manner; and

WHEREAS, there is a need to establish uniform policies and procedures to assure participating organizations are of a non partisan charitable status; and

WHEREAS, it is the policy of the State to support the State Employees Combined Campaign as codified in N.C.G.S. 143-3.3 allowing State payroll deductions for combined campaign contributions.

NOW, THEREFORE, IT IS HEREBY ORDERED:

Section 1.

There is established the State Employees Combined Campaign, hereinafter referred to as the Combined Campaign, within the Department of Administration. The Governor at the beginning of each calendar year shall appoint a State Combined Campaign Director. The Director or the Director's designee shall serve as Chairman of the Combined Campaign. The Chairman shall administer, pursuant to rules promulgated by the State Employees Advisory Committee, the Combined Campaign for that year.

Section 2.

There is established the State Employees Advisory Committee hereinafter referred to as Committee. The Committee shall be composed of ten (10) members from state government appointed by the Director of the Combined Campaign. The terms of membership shall be staggered so that the terms of approximately one-third of the members shall expire in a single calendar year. After the first three years, each appointment shall be for a term of three years. The Director of the Combined Campaign or the Director's designee shall serve as Chairman of the Committee.

Section 3.

A vacancy occurring on the Committee during a term of appointment is filled in the same manner as the original appointment and for the balance of the unexpired term.

Section 4.

The Advisory Committee shall meet as necessary and any time at the call of the Chairman to conduct the business of each year's Combined Campaign.

Section 5.

The Committee shall have the following duties:

1. Recommend overall policy for the Combined Campaign to the Governor, the Campaign Director and necessary state agencies;
2. Adopt rules and procedures as necessary for the proper administration of the Combined Campaign by majority vote;
3. Establish criteria for acceptance which organizations must meet to be accepted as participants by majority vote;
4. Serve as a central application point for all charitable organizations applying to participate in the Combined Campaign;

5. Review and evaluate organization's applications to assure compliance with acceptance criteria.

Section 6.

The Department of Administration shall provide the administrative support for the Advisory Committee.

Section 7.

All State agencies and personnel are directed to cooperate fully with State Employees Combined Campaign in order to insure a successful annual campaign. This cooperation shall include full implementation of all approved combined campaign activities.

Section 8.

All prior Executive Orders or portions of prior Executive Orders inconsistent herewith are hereby repealed.

Section 9.

This Order shall become effective immediately. It shall remain in effect until January 1990 unless amended by further Executive Order.

Done January 29, 1988.

VOTING RIGHTS ACT FINAL DECISION LETTERS

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*[G.S. 120-30.911, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

WBR:RJW:RAK:gmh  
DJ 166-012-3  
S5571-5572  
S7257-7259

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

Michael Crowell, Esq.  
Tharrington, Smith and Hargrove  
P.O. Box 1151  
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to North Carolina Session Laws Chapter 549 (1987), Sections 1.1 through 6, which provide for the change in method of election from at large to single-member districts, a districting plan, an implementation schedule, a temporary eighth seat, and vacancy provisions for the board of education in Martin County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on November 3, 1987.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

## VOTING RIGHTS ACT FINAL DECISION LETTERS

---

Office of the Assistant Attorney General

U.S. Department of Justice  
Civil Rights Division  
Washington, D.C. 20530

Michael Crowell, Esq.  
Tharrington, Smith and Hargrove  
P. O. Box 1151  
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to Chapter 432 of the 1987 North Carolina Session Laws which changes the method of electing the Board of Commissioners from at large with residency districts to six single-member districts and three at-large positions; the districting plan; the increase in the number of commissioners from six to nine; and the implementation schedule for Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 29, 1987. On October 19 and 26, 1987, we received information in response to our September 28, 1987, request for additional information and on November 9, 1987, we received information further supplementing your submission. Although we noted your request for expedited consideration, we have been unable to respond until this time.

To obtain preclearance under Section 5, a submitting authority must demonstrate that the voting changes are nondiscriminatory in both purpose and effect. See Georgia v. United States, 411 U.S. 526 (1973), and the Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

As to the effect of the proposed method of election, our analysis shows that it would offer a greater opportunity for black political participation than the existing plan does. Thus, the Board of Commissioners has met its burden of showing that the proposed plan would not have a retrogressive effect. Beer v. United States, 425 U.S. 130, 141 (1976).

In addressing the issue of purpose, however, we note in particular the course of dealings that led to the increase by three in the size of the Board and the at-large method of election chosen for filling those positions. Pertinent to our review was consideration of the strong opposition of the black community to the election method selected and the Board's rejection of possible compromises. For example, one such alternative, proposed by the Board in May 26, 1987, and passed by the state House of Representatives on May 27, appeared largely to meet the Board's stated nonracial reasons for wanting to include three at-large seats. Nevertheless, without notice to the public the Board met in a private session on June 1, 1987, and voted to abandon the compromise bill ostensibly because the black community did not accept the compromise. However, this does not appear to be supported by information, such as that contained in contemporaneous newspaper articles that the Board submitted, indicating that, as of June 1, black organizations either had indicated their support for the compromise or had indicated they were considering supporting it. Yet, the Board's abrupt withdrawal from the compromise bill ruled out further negotiations on the matter and, instead, the Board unilaterally returned to a plan which seems calculated to minimize minority voting strength.

In view of these circumstances, we are unable to conclude that the Board has met its burden of showing nondiscriminatory purpose in the adoption of this feature in its proposed election plan. Therefore, on behalf of the Attorney General, I must object to the proposed method of election.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make Chapter 432 legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Pitt County plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

**TITLE 1 - DEPARTMENT OF  
ADMINISTRATION**

*Notice is hereby given in accordance with G.S. 150B-12 that the Low-Level Radioactive Waste Management Authority intends to adopt regulations cited as 1 NCAC 37 .0101 - .01*

*The proposed effective date of this action is August 1, 1988.*

*The public hearings will be conducted at the following locations:*

- 1) Charlotte, NC:  
March 21, 1988 at 7:00 p.m.  
Environmental Protection  
Commission Auditorium  
1200 Blythe Boulevard*
- 2) Wilmington, NC:  
March 21, 1988 at 7:00 p.m.  
Courtroom 317  
New Hanover County Judicial Building  
Fourth and Princess Streets*
- 3) Asheville, NC:  
March 22, 1988 at 7:00 p.m.  
Room 302  
Owen Conference Center  
U.N.C. Asheville  
1 University Heights*
- 4) Winston-Salem, NC:  
March 22, 1988 at 7:00 p.m.  
Room G  
Convention Center  
301 West Fifth Street*
- 5) Raleigh, NC:  
March 23, 1988 at 7:00 p.m.  
Hearing Room, Archdale Building  
State Government Complex  
512 North Salisbury Street*

*Comment Procedures: Any interested person may present written comments for consideration by the Authority. The hearing record will remain open for receipt of comments from February 15, 1988 through March 30, 1988. Comments should be addressed to:*

*Victoria L. Voight  
Low-Level Radioactive Waste  
Management Authority  
Room 209, Commerce Building*

*19 West Hargett Street  
Raleigh, NC 27601*

*Any person may present oral comments at the hearing. Requests to speak should be presented in writing to Ms. Voight at the above address no later than March 13, 1988. Additional comments may be allowed by the Authority by sign up at the public hearing as time allows. All presentations will be limited to 5 minutes. A fiscal note covering these rules has been prepared by the Authority and may be obtained by written request addressed to Ms. Voight at the address above. A draft justification document has been prepared by the Authority in accordance with G.S. 104G-9(b) and may be obtained by written request addressed to Ms. Voight at the address above.*

**CHAPTER 37 - N.C. LOW-LEVEL  
RADIOACTIVE WASTE MANAGEMENT  
AUTHORITY**

**SECTION .0100 - GENERAL INFORMATION**

**.0101 PURPOSE**

The purpose of the Low-Level Radioactive Waste Management Authority is to site, design, finance, build, lease or operate, oversee, monitor, and close a facility or facilities for the permanent disposal of low-level radioactive waste in accordance with G.S. 104G and 42 USC 2021 et seq.

*Statutory Authority G.S. 104G-6; 150B-11.*

**.0102 DEFINITIONS**

(a) The definitions contained in G.S. 104G-2 and 10 NCAC 37 .3302 apply to Rules contained in this Chapter.

(b) As used in this Chapter "facility" means a low-level radioactive waste disposal facility as defined in G.S. 104G-2(7).

(c) As used in Section .0200 the term "proximity" means a location that could involve an impact, either positive or negative, or beneficial or detrimental.

*Statutory Authority G.S. 104G-6; 150B-11.*

**.0103 MAILING LIST**

The Authority maintains mailing lists for its rulemaking and public meeting activities. Individuals wishing to be notified of these activities should send a letter to:

**Low-Level Radioactive Waste  
Management Authority  
Mailing List**

Suite 209 Commerce Building  
19 W. Hargett Street  
Raleigh, NC 27601

stating the particular activity or activities for which notice is requested and the name, address and phone number of requester. A fee may be charged to cover the actual cost of providing this notice.

*Statutory Authority G.S. 104G-6; 143-318.12; 150B-11.*

#### SECTION .0200 - SITE SELECTION CRITERIA

##### .0201 INTRODUCTION

The Rules contained in this Section set forth the criteria which the Authority will consider in selecting a site for the location of a low-level radioactive waste disposal facility. In selecting this site the Authority must comply with the siting criteria set forth in 10 NCAC 3G .3328 and G.S. 104G. The Rules contained in this Section set forth additional criteria to be considered by the Authority in evaluating and selecting a site for the facility in accordance with G.S. 104G. The written justification for the criteria contained in these Rules is available from the Authority at the mailing address set out in 1 NCAC 37 .0103.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

##### .0202 HYDROLOGICAL AND GEOLOGICAL FACTORS

In evaluating and selecting a site for the low-level radioactive waste disposal facility, the Authority shall consider hydrological and geological factors including:

- (1) those factors set out in G.S. 104G-9(b)(1);
- (2) drainage in and around the site;
- (3) potential for soil erosion;
- (4) stream density;
- (5) topography; and
- (6) rainfall patterns.

*Statutory Authority G.S. 104G-6(a); 104G-9; 150B-11.*

##### .0203 ENVIRONMENTAL AND PUBLIC HEALTH FACTORS

In selecting a site for a low-level radioactive waste disposal facility the Authority shall consider environmental and public health factors including:

- (1) those factors set out in G.S. 104G-9(b)(2);
- (2) potential for future growth and development in close proximity to the site;
- (3) detriment to drinking water wells;
- (4) detriment to springs;
- (5) detriment to sole source aquifers; and
- (6) detriment to public drinking water supplies.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

#### .0204 NATURAL AND CULTURAL RESOURCES

In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider natural and cultural resources including:

- (1) those factors set forth in G.S. 104G-9(b)(3);
- (2) proximity to natural resources such as water, oil, coal, or other resources;
- (3) proximity to breeding grounds, nurturing areas or special habitats for rare, threatened, or endangered species of animals or plants;
- (4) proximity to scenic areas;
- (5) proximity to national, state, local, or commercial parks or recreational facilities; and
- (6) proximity to areas that are meaningful to people because of historic, cultural, religious, ethnic, or racial heritage such as national, state, or local monuments, Indian burial grounds, national, state, or local historic sites, churches, and cemeteries.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

##### .0205 LOCAL LAND USES

In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider local land uses including:

- (1) proximity of activities which involve pumping large amounts of water, quarry blasting, or use of conflicting sources of radioactivity;
- (2) use of state or federally owned sites; and
- (3) use of large land holdings by utilities or other industries.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

##### .0206 TRANSPORTATION

In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider transportation factors including:

- (1) those factors set forth in G.S. 104G-9(b)(5); and
- (2) proximity to major highways.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

#### **.0207 AESTHETIC FACTORS**

In selecting a site for a low-level radioactive waste disposal facility, the Authority shall consider asthetic factors including those factors set forth in G.S. 104G-9(b)(6).

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

### **SECTION .0300 - SITE SELECTION PROCEDURE**

#### **.0301 GENERAL**

The site selection procedure is outlined in G.S. 104G-9. Additional procedures relating to the site selection process are contained in the Rules in this Section.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

#### **.0302 IDENTIFICATION OF SUITABLE AREAS**

(a) The Authority shall identify areas that may be suitable in accordance with G.S. 104G-9(c) and the procedures contained in this Rule.

(b) The identification shall be made based upon technical siting criteria including geological formation, water flow patterns, land use, and location of population centers and shall use readily available data.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

#### **.0303 PUBLIC MEETINGS**

(a) The Authority shall conduct public information meetings in the manner specified below.

(b) The Authority shall conduct at least one public meeting in each region in which a suitable area has been identified.

(c) Notice of the meetings shall be published in a newspaper of general circulation in the area and shall be sent to the chairman of the county commissioners, the county public health director, the chairman of the council of any municipality located within the areas the

county manager, the mayor of any municipality within the area and anyone requesting a copy of the notice in accordance with the procedure set out in 1 NCAC 37 .0103. Notice of the public meeting shall be published at least 15 days in advance of the meeting. The notice shall include: the date, time and place of the meeting; topics to be addressed at the meeting; and the manner in which public comment will be accepted.

(d) The purpose of the meeting is to explain the reasons for the identification of the area as suitable, to explain the next step in the site selection process and to receive and consider public comment concerning the suitability of the area for selection as a site for the facility in accordance with the criteria set forth in 1 NCAC 37 .0200.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

#### **.0304 SELECTION OF SITES**

(a) The Authority shall select 2 or 3 suitable sites in accordance with G.S. 104G-9(c) and the procedures contained in this Rule.

(b) In making these selections, the Authority shall evaluate the areas identified in 1 NCAC 37 .0302 using the criteria set out in 1 NCAC 37 .0200, with special attention to social, economic, and environmental factors.

(c) Information considered during the selection process shall include public comment, review of federal, state, and local records, and studies conducted by the Authority or others.

(d) Public comment shall include information received at public meetings, information provided by community advisory groups, information provided by local government representatives, or information provided by other individuals or groups.

(e) The Authority shall conduct at least one public meeting in each area where a suitable site has been selected.

(f) In making these selections, the Authority shall actively seek suitable communities interested in hosting the facility and shall provide information to the communities concerning:

- (1) the opportunities for involvement in the site selection process through the site designation review committees, the preferred site local advisory committees, and through the local government advisory process;
- (2) the means available to minimize risk to health, safety, and the environment; and
- (3) the economic incentives available to the host including reimbursement for lost

land values, income available from the trust fund, and authorized taxes or fees.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

### **.0305 SITE DESIGNATION REVIEW COMMITTEE**

(a) The Authority shall select two or three sites that are suitable for the location of a facility in accordance with 1 NCAC 37 .0304. Notice of this selection shall be provided to the county manager, chairman of the county commissioners and public health director of any county in which a site has been selected; the city manager and the chairman of the municipal council of any municipality in which a site has been identified; and any person who has requested notice in accordance with 1 NCAC 37 .0103.

(b) The Authority shall request that the county commissioners appoint a site designation review committee in accordance with G.S. 104G-19.

(c) The Authority shall present to the site designation review committee all data relating to the selection of the site in their county, shall provide the committee with data concerning the economic incentives related to the location of a facility within the county, and shall receive and consider comments from the committee as may be transmitted by the county board of commissioners concerning the suitability of the site for the location of a facility in accordance with the criteria set forth in 1 NCAC 37 .0200.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

### **.0306 PREFERRED SITE**

(a) The Authority shall select a preferred site in accordance with G.S. 104G-20 and the procedures contained in this Rule.

(b) The site shall be selected in accordance with the criteria set out in 1 NCAC 37 .0200.

(c) Information considered during the selection process shall include information provided by the site designation review committees and may include additional information which the Authority deems appropriate.

(d) In making this selection, the Authority shall actively seek a suitable community, from among the 2 or 3 sites selected, interested in hosting the facility and shall provide information concerning:

- (1) the opportunities for involvement in the decision-making process regarding the

construction and operation of the facility;

- (2) information regarding the facility operator and the proposed technology; and
- (3) economic incentives available to the host including reimbursement for lost land values, lost revenues, income available from the trust fund, and authorized taxes or fees.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

### **.0307 PREFERRED SITE LOCAL ADVISORY COMMITTEE**

(a) Upon selection of a preferred site, the Authority shall notify the county commissioners in the county in which the site is located and request the establishment of a preferred site local advisory committee in accordance with G.S. 104G-20.

(b) The Authority shall provide the preferred site local advisory committee with all information requested concerning the facility including license and permit applications, compensation available to the local government, and environmental and socioeconomic impact of the proposed facility.

(c) The Authority shall consider all information provided by the preferred site local advisory committee in its negotiations with any local government in accordance with G.S. 104G-21.

*Statutory Authority G.S. 104G-6(a)(2); 104G-9; 150B-11.*

## **TITLE 9 - OFFICE OF THE GOVERNOR AND LIEUTENANT GOVERNOR**

*Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Budget and Management intends to adopt regulations cited as 9 NCAC 3L .0101 - .0102, .0201 - .0205, .0301 - .0304, .0401 - .0403, .0501 - .0505, .0601 - .0606, .0701 - .0704, .0801 - .0803, .0901 - .0904, .1001 - .1002, .1101 - .1102, .1201.*

*The proposed effective date of this action is August 1, 1988.*

*The public hearing will be conducted at 2:00 p.m. on March 22, 1988 at Archdale Building, 512 North Salisbury Street, Raleigh, NC 27611, Hearing Room - Ground Floor.*

*Comment Procedures: Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 5 minutes and one type-written copy of any such statement should be submitted to the panel conducting the hearing. Any additional comments on the proposed rules should be forwarded to Aleta Mills, Office of State Budget and Management, 116 West Jones Street, Raleigh, NC 27603-8005. The Record of Hearing will be open for receipt of written comments until 5:00 p.m. March 31, 1988. A fiscal note has been prepared and is available upon request from Aleta Mills at the above address.*

### CHAPTER 3 - STATE BUDGET AND MANAGEMENT

#### SUBCHAPTER 3L - STATE CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM

##### SECTION .0100 - GENERAL PROVISIONS

##### .0101 PURPOSE

Loans and grants for wastewater treatment systems, wastewater collection systems and water supply systems from the various accounts in the North Carolina Clean Water Revolving Loan and Grant Fund established by G.S. 159G, except the Water Pollution Control Revolving Fund established by G.S. 159G-5(C), shall be made in accordance with this Subchapter.

*Statutory Authority G.S. 159G-15.*

##### .0102 DEFINITIONS

In addition to the definitions in G.S. 159G-3, the following definitions will apply to this Subchapter:

- (1) "Act" means the North Carolina Clean Water Revolving Loan and Grant Act of 1987, G.S. 159G.
- (2) "Award" means the offer by the receiving agency to enter into a loan or grant commitment for a specified amount.
- (3) "Award of contract" means the award by the loan or grant recipient to a contractor of a contract to construct the project as bid.
- (4) "Bid" means the amount of money for which a contractor offers to construct the project.
- (5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.

- (6) "Commitment" means a binding agreement to pay loan or grant funds in a lump sum or in installments to an eligible applicant at some future time.
- (7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.
- (8) "Division of Environmental Management" means the Division of Environmental Management of the North Carolina Department of Natural Resources and Community Development.
- (9) "Effective date of receipt" means September 30 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between April 1 and September 30, and means March 31 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between October 1 and March 31; except that for applications to the Emergency Wastewater or Water Supply Revolving Loan Account it means the date designated by the receiving agency for each priority review period established under Rule .0801(b) of this Subchapter.
- (10) "Fiscal year" means the state fiscal year, beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year, the year named is the calendar year in which the fiscal year ends. For example, "Fiscal Year 1988" refers to the fiscal year beginning July 1, 1987 and ending June 30, 1988.
- (11) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.
- (12) "Orders" means any restrictive measure, related to the operation of its wastewater treatment facilities, issued to an applicant for a loan or grant from the wastewater accounts under this Subchapter. Such measures may be included in, but are not restricted to, Special Orders, Special Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.
- (13) "Project" means the works described in the application for a loan or grant under this Subchapter.
- (14) "Loan" means "revolving loan" as defined in G.S. 159G-3(15).

- (15) "Priority period" means priority review period as established in Section .0800 of this Subchapter.
- (16) "Public necessity" means that a need exists to construct a new wastewater treatment works, wastewater collection system or water supply system, or to improve or expand existing facilities, in order to:
- (a) promote the public health, safety and welfare;
  - (b) provide adequate services to a substantial portion of the residents within the service area or projected service area of a unit of government who are presently without such services; or
  - (c) alleviate a critical public health hazard or critical water pollution problem.
- (17) "Real property" means land and structures affixed to the land having the nature of real property or interests in land including easements or other rights-of-way purchased or acquired for water supply and wastewater facilities and works to be constructed as a part of the project for which a loan or grant is made under this Subchapter.
- (18) "Regional water supply system" means a public water supply system of a municipality, county, sanitary district, or other political subdivision of the state or combination thereof which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties.

*Statutory Authority G.S. 159G-3; 159G-15.*

#### SECTION .0200 - ELIGIBILITY REQUIREMENTS

##### .0201 ELIGIBLE PROJECT COSTS

- (a) Project costs eligible for a loan or grant under this Subchapter are limited to:
- (1) the actual costs of the works described in the project application;
  - (2) interest costs during construction; and
  - (3) contingency costs, not to exceed ten percent of the estimated eligible construction costs for which a loan or grant award is made under this Subchapter.

Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.

(b) Eligible costs do not include recurring annual expenditures for administration, repairs, or operation and maintenance of any wastewater treatment works, wastewater collection system or water supply system projects. Items not covered or allowed in the definition of "construction costs" in G.S. 159G-3(4) are also excluded.

*Statutory Authority G.S. 159G-3(4); 159G-15.*

##### .0202 GRANTS FROM THE HIGH-UNIT COST ACCOUNTS

(a) Eligibility of an application for a grant from the High-Unit Cost Wastewater Account or the High-Unit Cost Water Supply Account, and the amount eligible for such a grant, will be determined by the receiving agency in accordance with G.S. 159G-6(b)(2) or 159G-6(c)(2), subject to the limitations in G.S. 159G-6(a)(2).

(b) For the purposes of Rule .0202(a) of this Subchapter, median household income in the county in which the project is located will be as determined jointly each year by the U.S. Bureau of Census and the U.S. Department of Housing and Urban Development.

(c) Grants from the High-Unit Cost Wastewater and Water Supply Accounts will be made only to approved projects that receive a commitment for the balance of project costs from any other source, including loans under this Subchapter and other loans from governmental or private sources.

*Statutory Authority G.S. 159G-6(a)(2); 159G-6(b)(2); 159G-6(c)(2); 159G-15.*

##### .0203 GRANTS FROM THE GENERAL REVOLVING LOAN AND GRANT ACCOUNTS

Eligibility of an application for a grant from the General Wastewater Revolving Loan and Grant Account established in G.S. 159G-6(b)(1) or the General Water Supply Revolving Loan and Grant Account established in G.S. 159G-6(c)(1), and the amount eligible for such a grant, will be determined by using the same criteria provided in the Act and this Subchapter for grants from the High-Unit Cost Wastewater and Water Supply Accounts.

*Statutory Authority G.S. 159G-2; 159G-6(a)(2); 159G-6(b)(1); 159G-6(c)(1); 159G-15.*

**.0204 LOANS FROM THE EMERGENCY  
REVOLVING LOAN ACCOUNTS**

(a) Projects required for repair or replacement of existing wastewater treatment or collection facilities where failure of such facilities creates or will create conditions jeopardizing the classified uses of the receiving waters, or resulting in a present or imminent serious public health hazard as certified by the Environmental Management Commission, are eligible for loans from the Emergency Wastewater Revolving Loan Account.

(b) Projects required to remedy a serious public health hazard related to the water supply system that is present or imminent in a community as certified by the Division of Health Services are eligible for loans from the Emergency Water Supply Revolving Loan Account.

(c) Project cost overruns on wastewater treatment, wastewater collection or water supply projects are not eligible for loans from the Emergency Wastewater Revolving Loan Account or the Emergency Water Supply Revolving Loan Account, unless the original project loan commitment was from one of those accounts.

*Statutory Authority G.S. 159G-6(b)(3); 159G-6(c)(3); 159G-15.*

**.0205 DETERMINATION OF ELIGIBILITY**

(a) Each application for loans or grants under this Subchapter will be reviewed by the receiving agency to determine whether it meets the eligibility requirements of the Act and this Subchapter.

(b) Each applicant will be notified by the receiving agency of its eligibility for consideration for a loan or grant award.

(c) Applications from ineligible applicants will be returned to the applicant.

*Statutory Authority G.S. 159G-9; 159G-15.*

**SECTION .0300 - APPLICATIONS**

**.0301 APPLICATION FILING DEADLINES**

(a) In Fiscal Year 1988, applications to be considered for a loan or grant award under this Subchapter from funds appropriated for Fiscal Year 1988 shall be postmarked or delivered to the principal offices of the receiving agency in Raleigh, North Carolina on or before March 31, 1988, which shall be the filing deadline for that priority review period.

(b) In Fiscal Year 1989 and in every fiscal year thereafter, applications to be considered

for a loan or grant award under this Subchapter from funds available in the first semi-annual priority review period of a fiscal year shall have an effective date of receipt of September 30 of that year, which shall be the filing deadline for that priority review period. Applications to be considered for a loan or grant award under this Subchapter from funds available in the second semi-annual priority review period of a fiscal year shall have an effective date of receipt of March 31 of that year, which shall be the filing deadline for that priority review period.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0302 GENERAL PROVISIONS**

(a) Applications for loans or grants under this Subchapter shall be submitted on the appropriate forms and accompanied by all documentation, assurances and other information called for in the instructions for completing and filing applications. Information concerning any grant or loan funds from any other source that the applicant has applied for or received for the project shall be disclosed on the application.

(b) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the receiving agency.

(c) An applicant may amend an application having an effective date of receipt of the filing deadline for a priority review period to include additional data or information in support of its original application at any time prior to the date the receiving agency sets the priority rating for that priority review period.

(d) Any application that does not contain information sufficient to permit the receiving agency to review and approve the project by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(e) An application shall be filed with the receiving agency before the award of contract on a project, except that applicants having awarded a contract on a project on or after August 12, 1987 may file an application at any time on or before March 31, 1988. The award of contract on a project prior to consideration of the application for a loan or grant award will neither exclude the application from consideration nor guarantee the award of a loan or grant for the project.

(f) An application may be withdrawn from consideration upon request of the applicant

but if resubmitted shall be considered as a new application.

(g) Applications to the General Wastewater Revolving Loan and Grant Account shall first be considered for funding from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c). If the application does not receive full funding from that Fund, it shall be considered for funding from the General Wastewater Revolving Loan and Grant Account.

*Statutory Authority G.S. 159G-8; 159G-9; 159G-10(a); 159G-15.*

#### **.0303 FILING OF REQUIRED SUPPLEMENTAL INFORMATION**

(a) All applicants shall file a notification of application for a loan or grant under this Subchapter with the State Clearinghouse of the Department of Administration. Clearinghouse comments received on notification of intent to apply for federal grant or loan assistance may be used to satisfy this provision of these Rules.

(b) Every application shall be accompanied by an environmental assessment document as required by G.S. 159G-8(b), and any additional environmental impact documentation that may be required, by the date the receiving agency sets the priority rating for a priority review period.

(c) Any application that has not received approval by the receiving agency of the preliminary engineering report for the proposed project by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(d) Any application that is not accompanied by an adopted resolution as required by G.S. 159G-9(3) stating that the unit of government has complied or will substantially comply with all applicable federal, state and local laws or rules shall not be included in the priority rating for that priority review period. Such resolution shall be certified or attested to as a true and correct copy as adopted.

(e) If a public hearing is held on an application, the application shall not be included in the priority rating unless the hearing process is concluded by the date the receiving agency sets the priority rating for the priority review period.

*Statutory Authority G.S. 159G-8; 159G-9; 159G-10(a); 159G-15.*

#### **.0304 APPLICATIONS FOR EMERGENCY**

#### **LOANS**

(a) Applications for loans from the Emergency Wastewater Revolving Loan Account shall be submitted to the Division of Environmental Management. The application will be processed and considered for approval by the Environmental Management Commission during the appropriate priority review period as established under Rule .0801(b) of this Subchapter.

(b) Applications for loans from the Emergency Water Supply Revolving Loan Account shall be submitted to the Division of Health Services. The application will be processed and considered for approval by the Division of Health Services during the appropriate priority review period as established under Rule .0801(b) of this Subchapter.

(c) Applications for emergency loans shall conform with this Subchapter, except that Rules .0301 and .0303(a) shall not apply.

*Statutory Authority G.S. 159G-6(b)(3); 159G-6(c)(3); 159G-15.*

#### **SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS**

##### **.0401 GENERAL CRITERIA**

(a) During the review periods set forth in Section .0800 of this Subchapter all eligible applications shall be assigned a priority for loan or grant funds. Priorities shall be assigned by the Environmental Management Commission for applications for project loans or grants for wastewater treatment works and wastewater collection systems and by the Division of Health Services for applications for project loans or grants for water supply systems.

(b) In determining the priority to be assigned each eligible application, the Environmental Management Commission and the Division of Health Services will give consideration to the following priority factors:

- (1) Primary consideration shall be given to the public necessity of the project in promoting the public health, safety, and welfare and in providing or having the potential of providing the greatest benefit to the greatest number of persons.
- (2) Consideration shall also be given to the eligibility of the proposed project for federal funding; the compatibility of the proposed project with the state's general program of water supply and water pollution control, and any applicable regional planning program; the population to be served; the fiscal responsi-

bility of the applicant; and the need of the applicant for funding assistance.

- (3) Additional consideration shall be given to eligible units of government which demonstrate practices for the conservation of water.

(c) The categorical elements and items to be considered in assigning priorities to each application for which loan or grant funds are sought, and the points to be awarded to each categorical element and item are set forth in Sections .0500, .0600 and .0700 of this Subchapter. Unless otherwise specifically indicated, if an item for an element of a particular category applies specifically to the application under consideration, the application will be awarded the number of points assigned to that item for the categorical element; and if no item applies, no points will be awarded the application for that particular element.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0402 CRITERIA FOR WATER CONSERVATION**

Applicant may receive a maximum of 15 bonus points for meeting the following criteria as applicable:

- (1) Applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) 5 points
- (2) Applicant demonstrates it has a continuing water loss program in its water supply system program. (Water Supply Projects Only) 5 points
- (3) Applicant has a continuing program of water conservation education and information. 5 points
- (4) Applicant has adopted and is effectively enforcing the state plumbing code within the applicant's jurisdiction. 5 points

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0403 CRITERIA FOR GRANT INCREASES**

After award of a state grant under this Subchapter, increases may be made for approved projects provided:

- (1) A new application containing adequate information including revised cost data is submitted.
- (2) That, based on its effective date of receipt, the new application is rated for priority along with all other eligible applications during the same priority period.
- (3) The new application's priority rating is adequate to support the award of the additional funding.

*Statutory Authority G.S. 159G-10; 159G-15.*

**SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORKS PROJECTS**

**.0501 WATER POLLUTION CONTROL NEEDS**  
Maximum Value--55 Points:

The value of this Rule will be the sum of the points assigned under Items (a), (b), (c) and (d) of 9 NCAC 3J .0502.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0502 APPLICABLE CONDITIONS**

(a) Proposed project will comply with established water quality standards and priority points will be assigned on the basis of the classification assigned to the receiving waters as follows:

- (1) Class "SA" (Shellfish Waters) 30 points
- (2) Class "WS-II" or "WS-III" (Water Supply Source) 28 points
- (3) Class "B" or "SB" (Bathing Waters) 26 points
- (4) Class "C" or "SC" (Fishing) 24 points

(b) Construction of proposed project has been initiated or must be initiated within 12 months to comply with an order issued or with a compliance schedule approved by the Environmental Management Commission, or by Judicial Order.

10 points

(c) Proposed projects will upgrade or replace an existing primary wastewater treatment facility.

10 points

(d) Proposed project will provide wastewater treatment processes for the removal of nutrients or other materials not normally removed by conventional treatment processes.

5 points

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0503 FINANCIAL NEED OF APPLICANT**

Maximum Value--15 Points:

The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{f \times 100 (\text{Total Bonded Indebtedness plus Total Estimated Project Cost})}{\text{Total Appraised Property Valuation}}$$

"Total Appraised Property Valuation"

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.

"f x 100" is used in the formula to provide point values for this categorical element.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0504 FISCAL RESPONSIBILITY OF THE APPLICANT**

Maximum Value--10 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) of this Rule plus the value assigned to Items (3) and (4) of this Rule:

- (1) Applicant has adopted an acceptable sewer use ordinance which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

6 points

- (2) Applicant is in the process of adopting an acceptable sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

2 points

- (3) Applicant has established by resolution of its governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.)

2 points

- (4) The applicant has followed proper accounting and fiscal reporting procedures as evidenced by the applicant's most recent report of audit and the applicant is in substantial compliance with provisions of the general fiscal control laws of the state.

2 points

The Environmental Management Commission may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0505 STATUS OF PROJECT**

Maximum Value--10 points:

The value of this Rule will be the sum of the values assigned to Items (1) to (5) of this Rule.

- (1) financing of the applicant's share of the project arranged by having held and passed a bond referendum, arranged for the sale of revenue bonds or cash available;

5 points

- (2) final detailed construction plans and specifications submitted;

2 points

- (3) the proposed plant site approved in writing by the Division of Environmental Management;

1 point

- (4) plant site secured or option taken; an opinion of title counsel should be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the entire site (excluding easements and rights-of-way), free and clear of any pre-existing deeds of trust, liens or other encumbrances which would affect the value or usefulness of the site for the purpose intended;

1 point

- (5) all necessary rights-of-way and/or easements acquired; an opinion by title counsel similar to that concerning the site should be submitted in substantiation of the acquisition.

1 point

*Statutory Authority G.S. 159G-10; 159G-15.*

**SECTION .0600 - PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS**

**.0601 PUBLIC NEED**

Select One; Maximum Value--25 points:

- (1) Project is intended to improve or expand an existing system for which adequate wastewater treatment facilities are:

- |                         |           |
|-------------------------|-----------|
| (a) presently provided, | 25 points |
| (b) under construction, | 20 points |
| (c) proposed.           | 15 points |

- (2) Project is intended to provide a basic system for a unit of government which is not presently served by an approved system and adequate wastewater treatment will be provided by:

- |                          |           |
|--------------------------|-----------|
| (a) other public system, | 20 points |
| (b) applicant.           | 15 points |

*Statutory Authority G.S. 159G-10; 159G-15*

**.0602 PUBLIC HEALTH NEED**

Select One; Maximum Value--20 points:

- (1) Project will eliminate a critical public health hazard.

20 points

- (2) Project will eliminate an emerging public health hazard.

15 points

- (3) Project will eliminate a demonstrated or potential water pollution problem.

10 points

A public health hazard will be considered "critical" when it affects a significant number of persons within a substantial area.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0603 FINANCIAL NEED OF THE APPLICANT**

Maximum Value--15 points:

The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{f \times 100 (\text{Total Bonded Indebtedness plus Total Estimated Project Cost})}{\text{Total Appraised Property Valuation}}$$

Total Appraised Property Valuation

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25.

"f x 100" is used in the formula to provide point values for this categorical element.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0604 FISCAL RESPONSIBILITY OF THE APPLICANT**

Maximum Value--10 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) plus the value assigned to Item (3) and (4) of this Rule:

- (1) Applicant has adopted an acceptable sewer use ordinance which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall

pay substantially its proportional part of the total cost of the operation, and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

6 points

- (2) Applicant is in the process of adopting an acceptable sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay substantially its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project.

2 points

- (3) Applicant has established by resolution of the governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.)

2 points

- (4) The applicant has followed proper accounting and fiscal reporting procedures, as evidenced by the applicant's most recent report of audit, and the applicant is in substantial compliance with provisions of the general fiscal control laws of the state.

2 points

The Division of Environmental Management may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

*Statutory Authority G.S. 159G-10; 159G-15.*

#### .0605 FINANCING OF THE PROJECT

Maximum Value--5 points:

- (1) Applicant has received a commitment for funding from a federal agency.

5 points

*Statutory Authority G.S. 159G-10; 159G-15.*

#### .0606 STATUS OF PROJECT

Maximum Value--15 points:

The value of this Rule will be the sum of the value assigned to Items (1), (2) and (3) of this Rule:

- (1) preliminary engineering report approved in writing by the Division of Environmental Management;

3 points

- (2) final detailed construction plans and specifications submitted;

8 points

- (3) all necessary sites, rights-of-way and or easements acquired; an opinion by title counsel should be submitted stating that all necessary sites, rights-of-way and or easements have been acquired by the applicant.

4 points

*Statutory Authority G.S. 159G-10; 159G-15.*

#### SECTION .0700 - PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

##### .0701 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

Maximum Value--55 points:

- (1) System and Service Area Needs: (Maximum Points--20)

- (a) The project is intended solely to increase the source of raw water to meet existing service area needs or to alleviate water shortage problems.

12 points

- (b) The project is intended to improve an existing system with no increase in the area to be served.

12 points

- (c) The project is intended to increase the existing area to be served without improvement of the existing system.

14 points

- (d) The project is intended to increase the existing area to be served and includes needed improvements to the existing system.

16 points

- (e) The project is intended to significantly increase the existing

area to be served, includes needed improvements to the existing system and is so designed as to permit interconnection at an appropriate time with an expanding metropolitan, area-wide or regional system.

20 points

- (f) The project is intended to provide for construction of a basic system for a unit of government which is not presently served by an approved public water supply system.

20 points

- (2) Public Health Need (Maximum Points--15). If one item of this categorical element applies, the value of 10 points will be awarded. If both items apply, a maximum of 15 points will be awarded:

- (a) The project is intended to alleviate an urgent or immediately anticipated water shortage problem which has significant public health implications.

10 points

- (b) The project is necessary to eliminate a potential public health hazard.

10 points

Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the Division of Health Services may award a higher priority value to an eligible application if the proposed project is required to eliminate a demonstrated or critical hazard to the public health.

- (3) Capacity for Future Growth (Select One)

(Maximum Points--20):

- (a) The project is intended to provide for the immediate needs.

6 points

- (b) The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 5-10 years.

10 points

- (c) The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 11-15 years.

12 points

- (d) The project is intended to provide for the reasonable foreseeable growth needs of the area during the next 16-20 years.

14 points

- (e) The project is a proposed regional system or a major component of a regional system which is intended to provide for the reasonable foreseeable growth needs of the area to be served during the next 20 or more years.

20 points

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0702 COMPATIBILITY WITH STATE:  
REGIONAL AND LOCAL PLANNING**

Maximum Value--10 points:

The value of this categorical element is the sum of the points awarded to either Item (1), (2), or (3) plus the points assigned to Item (4) of this Rule:

- (1) In the absence of applicable local, area-wide or regional planning, the project has been endorsed officially by the appropriate planning agencies or by the appropriate elected officials of the county or counties in which the project is located or proposed to be located.

5 points

- (2) The project is compatible with applicable local, area-wide or regional planning in the county or counties in which the project is located or proposed to be located.

6 points

- (3) The project is compatible with applicable local, area-wide or regional planning in the county or counties in which the project is located or proposed to be located and has been officially endorsed by the appropriate planning agencies.

8 points

- (4) The project is compatible with the state's general program of water supply planning for the county or counties in which the project is located or proposed to be located or is in compliance with a regional water supply system plan approved by the Division of Health Services.

2 points

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0703 FINANCIAL CONSIDERATIONS**

Maximum Value--35 Points:

(1) Financing of the Project (Select One)

(Maximum Points--10):

- (a) Applicant has received a commitment for funding from a federal agency.

5 points

- (b) Applicant has funds available or bonds have been authorized to provide the applicant's share of the project costs but a commitment for funding has not been received from a federal agency.

5 points

- (c) Applicant has received a commitment for funding from a federal agency and has funds available or bonds have been authorized to provide the applicant's share of project costs.

10 points

- (d) Applicant has funds available or bonds have been authorized to cover project costs over and above the state grant or loan funds requested.

10 points

(2) Fiscal Responsibility of the Applicant (Maximum Points--10). The value of this categorical element shall be the sum of the points awarded Items (a) to (e) of this Paragraph:

- (a) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state.

2 points

- (b) The applicant has an effective tax collection program.

2 points

- (c) The additional debt service requirements resulting from the project will not increase the existing tax rate excessively.

2 points

- (d) Estimated revenues will provide funds for proper future operation, maintenance and administration, reasonable expansion of the project and estimated annual principal and interest requirements for the project debt plus annual principal and interest requirements on the outstanding debt incurred for existing facilities.

2 points

- (e) The applicant has established or has submitted a resolution of its governing body directing the establishment of a capital reserve fund into which all surplus revenues from charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with the application.)

2 points

In determining the points to be awarded this categorical element, the Division of Health Services may seek the comments of the Secretary of the Local Government Commission. Applicants not authorized to levy taxes shall be eligible to receive two points for Item (b) and two points for Item (c) of this Paragraph.

(3) Financial Need of the Applicant (Maximum Points--15). The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{f \times 100 (\text{Total Bonded Indebtedness plus Total Estimated Project Cost})}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as of-

ficially recorded in the county or counties in which the service area of the proposed project is to be located.

"f" shall be a factor of 1.5 for project applications from units of government located in counties or areas designated by the Economic Development Administration as a "qualified area" under the Public Works and Economic Development Act of 1965 as amended. For all other applications, the factor shall be 1.25. "f x 100" is used in the formula to provide point values for this categorical element.

*Statutory Authority G.S. 159G-10; 159G-15.*

#### **.0704 ENVIRONMENTAL ASSESSMENT**

No points will be awarded to this categorical element. However, both the beneficial and adverse effects of the project on the environment will be considered in the award of points on related applicable elements and items in Rules .0701 and .0702 of this Section.

*Statutory Authority G.S. 159G-10; 159G-15.*

### **SECTION .0800 - PRIORITY REVIEW PERIODS: ASSIGNMENT OF PRIORITIES**

#### **.0801 PRIORITY REVIEW PERIODS**

(a) The first semi-annual priority review period of a fiscal year for applications to the General Wastewater and Water Supply Revolving Loan and Grant Accounts and the High-Unit Cost Wastewater and Water Supply Accounts shall be from July 1 through December 31 of that year. The second semi-annual priority review period of a fiscal year for applications to those accounts shall be from January 1 through June 30 of each fiscal year.

(b) Priority review periods for loans from the Emergency Wastewater and Water Supply Revolving Loan Accounts shall be established by the receiving agency as it deems appropriate with respect to the timely remedy of present or imminent serious public health hazards.

*Statutory Authority G.S. 159G-10; 159G-15.*

#### **.0802 ASSIGNMENT OF PRIORITIES**

(a) All applications that have been reviewed and approved by the receiving agency by the date the receiving agency sets the priority rating for a priority review period will be assigned a priority rating according to the applicable criteria set forth in Sections .0400, .0500, .0600, and .0700 of this Subchapter. A separate priority rating will be established for each wastewater and water supply account in each priority review period.

(b) The receiving agency may exercise its discretionary authority in the matter of establishing a priority rating for any project application in cases where:

- (1) two or more applications receive the same number of priority points,
- (2) where extreme public necessity exists, or
- (3) in other unusual circumstances.

*Statutory Authority G.S. 159G-2; 159G-8(c); 159G-10; 159G-15.*

#### **.0803 ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS**

(a) Applications to the General Wastewater Revolving Loan Account or the High-Unit Cost Wastewater Account will be assigned a category as follows, during review of the applications:

- (1) All applications for projects that are under orders or projects whose receiving waters have been designated Nutrient Sensitive Waters by the Environmental Management Commission, and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 1.
- (2) All applications for projects that have submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 2.
- (3) All other applications shall be placed in Category 3.

(b) All applications in Category 1 for a specific wastewater account will be funded before applications in Category 2 in the same account. All applications in Category 2 for a specific wastewater account will be funded before applications in Category 3 in the same account.

*Statutory Authority G.S. 159G-2; 159G-15.*

### **SECTION .0900 - LOAN AND GRANT AWARD AND COMMITMENT; DISBURSEMENT OF LOANS AND GRANTS**

#### **.0901 DETERMINATION OF LOAN AND GRANT AWARDS**

(a) All funds appropriated to each account under this Subchapter for a fiscal year and all other funds accruing to each account in the first priority review period of the fiscal year from loan principal repayments, interest payments, interest earned on funds in the account, excess funds not awarded in the previous priority review period, and any other source, will be available in the first priority review period of the fiscal year.

(b) Funds accruing to each account from loan principal repayments, interest payments, interest earned on funds in the account, excess funds not awarded in the previous priority review period, and any other source, will be available in the second priority review period of the fiscal year.

(c) If the receiving agency designates more than two priority review periods in a fiscal year for the Emergency Wastewater or Waste Supply Revolving Loan Account, any funds accruing to the account in those periods from any source will be available in those periods.

(d) Of the funds available at the beginning of a priority review period in the General Wastewater and Water Supply Revolving Loan and Grant Accounts and the Emergency Wastewater and Water Supply Revolving Loan Accounts, ten percent of each account will be set aside for potential adjustments under Rule .0903 of this Subchapter to loans made from each account. Any funds set aside for this purpose from an account that are not used to adjust loans during a priority review period will return to the account in the next priority review period.

(e) No more than ten percent of the funds available in a priority review period in the General Wastewater Revolving Loan and Grant Account, and no more than three percent of the funds available in a priority period in the Water Supply Revolving Loan and Grant Account, will be awarded as grants in that period.

(f) The funds available in each account in a given priority review period will be awarded in the descending order of priority rating and Category as determined under Sections .0400, .0500, .0600, .0700, and .0800 of this Subchapter.

(g) Commitment of the loan or grant will be made upon the acceptance of the award by the applicant.

(h) If an application is not awarded a loan or grant in a priority review period because of its priority rating, the receiving agency will inform the applicant and will consider the application as a new application during the next priority review period. If the application again is not awarded a loan or grant because of its priority rating, the receiving agency will inform the applicant and return the application.

*Statutory Authority G.S. 159G-10; 159G-15.*

**.0902 CERTIFICATION OF ELIGIBILITY:  
NOTIFICATION OF COMMITMENT**

(a) The receiving agency shall forward to the Office of State Budget and Management a certificate of eligibility and notification of commitment for each application for which a loan or grant commitment has been made.

(b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria and that all other requirements of the Act have been met.

(c) The notification of commitment shall indicate the amount and the fiscal year of the loan or grant commitment.

*Statutory Authority G.S. 159G-12; 159G-15.*

**.0903 CRITERIA FOR LOAN ADJUSTMENTS**

(a) Upon receipt of bids, a loan commitment may be adjusted as follows:

(1) The loan commitment may be decreased, provided the project cost as bid is less than the estimated project cost, and the receiving agency approves the loan commitment decrease.

(2) Loan commitments may be increased, provided: the project cost as bid is greater than the estimated project cost; the project as bid is in accordance with the project for which the loan commitment was made; the receiving agency has reviewed the bids and determined that substantial cost savings would not be available through project revisions without jeopardizing the integrity of the project; and adequate funds are available in the account from which the loan was awarded. Increases greater than ten percent of the loan commitment shall be approved by the receiving agency, the Local Government Commission, and the Office of State Budget and Management.

*Statutory Authority G.S. 159G-12; 159G-15.*

**.0904 DISBURSEMENT OF LOANS AND  
GRANTS**

(a) Disbursement of the total amount of loans less than fifty thousand dollars (\$50,000) will be made upon award of contract. The loan recipient will notify the receiving agency of the award of contract. The receiving agency will authorize the loan disbursement upon receipt and review of such notice.

(b) Disbursement of loans of fifty thousand dollars (\$50,000) or greater will be made in installments of 25 percent of the total loan amount. The first 25 percent installment will be made upon award of contract; the second 25 percent installment will be made upon 20 percent completion of the project; the third 25 percent installment will be made upon 45 percent completion of the project; and the fourth 25 percent installment will be made upon 70 percent completion of the project. The applicant will

notify the receiving agency of the award of contract for disbursement of the first installment, and will provide documentation of percentage project completion for disbursement of the remaining installments. Upon receipt and review of such notice or documentation, the receiving agency will authorize the disbursements.

(c) Grant disbursements will be made according to the same schedules and criteria as established for loans under this Rule.

(d) The receiving agency will notify the Office of State Budget and Management to make loan or grant disbursements. A check in the amount of the disbursement authorized by the receiving agency will be forwarded to the loan or grant recipient by the Office of State Budget and Management. The receiving agency will be notified by the Office of State Budget and Management as disbursements are made.

*Statutory Authority G.S. 159G-12; 159G-15.*

#### SECTION .1000 - LOAN REPAYMENTS

##### .1001 INTEREST RATES

The interest rate to be charged on loans under this Subchapter will be set in each priority review period at the lesser of four percent per annum or one half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index in accordance with G.S. 159G-4(c). The interest rate will be the same for all loans awarded from any account, including the Emergency Wastewater or Water Supply Account, during the priority review periods established in Rule .0801(a).

*Statutory Authority G.S. 159G-4(c); 159G-15.*

##### .1002 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

(a) The debt instrument setting the terms and conditions of repayment of loans under this Subchapter will be established after the receipt of bids and after any adjustments are made under Rule .0903 of this Subchapter.

(b) The maximum maturity on any loan under this Subchapter shall not exceed 20 years.

(c) Interest on the debt instrument will begin to accrue on the date the final disbursement is made to the loan or grant recipient by the Office of State Budget and Management.

(d) All principal payments will be made annually on or before May 1. The first principal payment is due not earlier than six months after the date of completion of the project.

(e) All interest payments will be made semiannually on or before May 1 and November 1 of each year. The first interest payment is due not

earlier than six months after the date of completion of the project.

(f) All principal and interest payments shall be made payable to the appropriate account as specified in the debt instrument.

*Statutory Authority G.S. 159G-13; 159G-15; 159G-18.*

#### SECTION .1100 - INSPECTION AND AUDIT OF PROJECTS

##### .1101 INSPECTION

Inspection of a project to which a loan or grant has been committed under this Subchapter may be made to determine the percentage of completion of the project for installment disbursements and other disbursements, and for compliance with all applicable laws and rules.

*Statutory Authority G.S. 159G-14; 159G-15.*

##### .1102 AUDIT OF PROJECTS

All projects to which a loan or grant has been committed under this Subchapter will be audited in accordance with G.S. 159-34.

*Statutory Authority G.S. 159G-15.*

#### SECTION .1200 - SEVERABILITY

##### .1201 SEVERABILITY

If any provision of these Rules or its application to any unit of government, person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these Rules that can be given effect without the invalid provision or application, and to this end the provisions of these Rules are declared to be severable.

*Statutory Authority G.S. 159G-15.*

#### TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Facility Services, Medical Care Commission intends to adopt regulation cited as 10 NCAC 3C .0307.*

*The proposed effective date of this action is June 1, 1988.*

*The public hearing will be conducted at 9:30 a.m. on March 18, 1988 at Hearing Room, Council Building, 701 Barbour Drive, Raleigh, NC 27603.*

*Comment Procedures: Address comments to: Glenn B. Lassiter, Jr., Legal Assistant to the Director, Division of Facility Services, 701 Barbour Drive, Raleigh, NC 27603. Record will remain open from February 15, 1988 through March 17, 1988.*

### CHAPTER 3 - FACILITY SERVICES

#### SUBCHAPTER 3C - LICENSING OF HOSPITALS

#### SECTION .0300 - ADMINISTRATION

##### .0307 RISK MANAGEMENT

(a) Each hospital shall develop and fully support a Risk Management program for the prevention or reduction of injuries to patients, staff, and visitors as well as reduction of property damage or loss. The program shall include a system for the identification, collection, and analysis of incidents or factors which cause or threaten personal injury or property losses.

(b) Each hospital shall assign to a specific staff member responsibility for development and administration of the program.

(c) Each hospital shall have a written policy statement evidencing a current commitment to the Risk Management program. In addition, the hospital shall develop written procedures and policies applicable to a Risk Management system which are reviewed annually and updated as necessary.

(d) Each hospital shall develop operational linkages between the Risk Management program and other functions relating to quality of patient care, safety, and professional staff performance.

(e) Relevant educational programs for hospital employees, professional staff, and the governing body should be presented at least annually.

(f) A written report of the activities of the Risk Management program shall be provided, at least annually, to the governing body.

*Statutory Authority G.S. 131E-96(a).*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Facility Services intends to adopt regulations cited as 10 NCAC 3J .5101, .5201 - .5202, .5301, .5401 - .5402, .5501 - .5504, .5601 - .5607, .5701 - .5703, .5801 - .5805, .5901 - .5902, .6001 - .6007, .6101 - .6106, .6201 - .6202, .6301 - .6302, .6401.*

*The proposed effective date of this action is June 1, 1988.*

*The public hearing will be conducted at 9:00 a.m. on March 16, 1988 at Hearing Room, Council Building, 701 Barbour Drive, Raleigh, NC 27603.*

*Comment Procedures: Address comments to: Glenn B. Lassiter, Jr., Legal Assistant to the Director, Division of Facility Services, 701 Barbour Drive, Raleigh, NC 27603*

*Record open from February 15, 1988 through March 16, 1988.*

### CHAPTER 3 - FACILITY SERVICES

#### SUBCHAPTER 3J - THE OPERATION OF LOCAL CONFINEMENT FACILITIES

#### SECTION .5100 - DEFINITIONS

##### .5101 DEFINITIONS

The following definitions shall be applicable to 10 NCAC 3J .5100 - .6500:

- (1) "Branch" means the Jail and Detention Branch within the Division of Facility Services.
- (2) "Department" means the Department of Human Resources of the State of North Carolina.
- (3) "Division" means the Division of Facility Services within the Department of Human Resources.
- (4) "Minimum Secure Facility" means a local confinement facility, or a portion thereof, designed to hold inmates in a dormitory or barracks type setting when such inmates do not pose a threat to the custody, security, or welfare of others as determined by a classification system. A satellite jail/work release facility is an example of minimum secure facility.

*Statutory Authority G.S. 153A-230.4.*

#### SECTION .5200 - FUNDING

##### .5201 STATE ASSISTANCE IN FUNDING OF A SATELLITE JAIL/WORK RELEASE UNIT

A county satellite jail/work release fund shall be created within the Office of State Budget and Management. This fund is created to provide state grants to counties or groups of counties for construction of satellite jail work release units.

*Statutory Authority G.S. 153A-230.2.*

**.5202 ELIGIBILITY**

A county or group of counties may apply for grant funds to construct a satellite jail/work release unit from the Office of State Budget and Management. The application shall be in a form established by the Office of State Budget.

*Statutory Authority G.S. 153A-230.2.*

**SECTION .5300 - STANDARDS**

**.5301 DEVELOPMENT OF MINIMUM STANDARDS**

The Secretary of Human Resources is responsible for development of minimum standards for the operation of county satellite jail/work release units. The department shall have monitoring and inspection responsibility for these units.

*Statutory Authority G.S. 153A-230.4.*

**SECTION .5400 - DESIGN DEVELOPMENT AND APPROVAL FOR SATELLITE JAIL/WORK RELEASE UNITS**

**.5401 ARCHITECT OR ENGINEER**

A licensed architect or registered engineer authorized to practice in this state shall be employed in planning a new satellite jail/work release unit or in renovation of an existing building into a satellite jail/work release unit.

*Statutory Authority G.S. 153A-230.4.*

**.5402 PLAN DEVELOPMENT**

(a) Before beginning construction, the local confinement authority shall submit copies of drawings and specifications to the Division of Facility Services, for review and approval in the following sequence:

- (1) Three sets of schematic drawings and outline specifications;
- (2) Three sets of preliminary working drawings or design development drawings and outline specifications;
- (3) Three sets of completed final working drawings and specifications.

(b) Each stage of submittal will be reviewed by the Division of Facility Services for compliance with the North Carolina Building Code and for compliance with the N.C. Minimum Standards for the operation of a satellite jail/work release unit found in 10 NCAC 3J .5100 - .6500.

(c) Upon receipt of the three sets of drawings and specifications at each stage of development, the division shall send one set to the Department

of Insurance and one set to the Division of Health Services for their review and approval.

*Statutory Authority G.S. 153A-230.4.*

**SECTION .5500 - OPERATION PROGRAM**

**.5501 REQUIREMENT FOR OPERATION PROGRAM**

Within 12 months of the effective date of these standards, the local operating authority, generally the Sheriff, having jurisdiction over a satellite jail/work release unit shall develop or have developed an operations program or plan which shall describe in writing, how the satellite jail/work release unit will be operated. This plan shall be called a Standard Operating Procedure Manual for the unit.

*Statutory Authority G.S. 153A-230.4.*

**.5502 CONTENTS OF AN OPERATIONS PROGRAM**

The operation program shall cover the following subjects at a minimum:

- (1) transportation of inmates to and from the unit;
- (2) staffing;
- (3) inmate movement and observation;
- (4) food service;
- (5) alarm systems;
- (6) evacuation and fire plans;
- (7) inmate classification system;
- (8) medical care plan;
- (9) personnel employment policies and training;
- (10) sanitation;
- (11) recreation areas and plan;
- (12) grievance procedures;
- (13) visitation plan or policy;
- (14) religious plan or policy;
- (15) administration and management of unit (organizational structure goes here);
- (16) other program services available to the unit (community service programs).

*Statutory Authority G.S. 153A-230.4.*

**.5503 APPROVAL OF THE PROGRAM**

Prior to the implementation of the operational program, the local confinement authority, generally the Sheriff, shall submit the program to the division for review and approval. Following notification by the division for review and approval, a copy of the program, signed by the local confinement authority shall be sent to the division for its files.

*Statutory Authority G.S. 153A-230.4.*

**.5504 REVIEW OF THE PROGRAM**

The approved program shall be reviewed, no less than once per year, by the local confinement authority. If changes are found necessary by this review, they shall be made.

*Statutory Authority G.S. 153A-230.4.*

**SECTION .5600 - MINIMUM SECURE UNITS**

**.5601 MINIMUM SECURE UNITS**

Minimum Secure Units, (satellite jail work release units), may be located within a maximum secure unit or in a separate facility near or remote from a maximum secure unit. Minimum secure units designed and constructed under these Rules shall include the elements listed in this Section which shall be included in the approved operations program submitted to the Division of Facility Services.

*Statutory Authority G.S. 153A-230.4.*

**.5602 CONFINEMENT UNIT**

Each minimum secure satellite jail/work release unit shall include:

- (1) No more than 24 inmates per sleeping area;
- (2) No less than 50 square feet per inmate devoted to sleeping area only, when of the barracks or ward type design;
- (3) One shower per ten inmates, one water closet per six inmates, one sink per six inmates and one water fountain per ten inmates. Showers and toilet facilities shall be designed to provide maximum privacy (line of sight) while not interfering with the capability of the jail staff to complete supervision rounds;
- (4) A telephone hookup or other arrangements provided within the area;
- (5) A dayroom/activity room for each unit separated from the sleeping area and of a size to provide a minimum of 105 square feet or no less than 35 square feet per inmate, whichever is greater;
- (6) A dayroom/activity room designed to allow a variety of activities to take place and have:
  - (a) sufficient seating and tables for each inmate in each confinement unit;
  - (b) natural light;
  - (c) artificial lighting at 30 footcandles in reading areas which may be reduced during sleeping hours;
  - (d) access to toilet, sink with hot and cold water, and drinking fountain;
  - (e) visual control by staff to observe entire area from point of entrance;

- (f) direct voice contact with continuously staffed post and/or central control center.
- (7) Single occupancy sleeping areas when called for in the design. Each single occupancy area shall have:
  - (a) a minimum of 60 square feet of floor space;
  - (b) a minimum floor dimension of seven feet;
  - (c) fixtures and furnishings;
  - (d) a toilet, sink, and drinking fountain;
  - (e) a bed frame;
  - (f) artificial lighting of 30 footcandles which can be reduced during sleeping hours;
  - (g) natural light provided by window with exterior exposure;
  - (h) direct voice contact with staff post and/or central control center.

*Statutory Authority G.S. 153A-230.4.*

**.5603 PROGRAMMING AREAS**

Each minimum secure satellite jail/work release unit, when located in a separate facility from a maximum confinement unit shall have:

- (1) A general visitation area with:
  - (a) a public entrance to the facility;
  - (b) an entry located to permit direct observation and control by staff;
  - (c) storage facilities for visitors' coats and packages;
  - (d) a sufficient number of stations to accommodate visitation needs;
  - (e) seating for both inmates and visitors.
- (2) A confidential attorney visitation area that:
  - (a) is separate and distinct from the general visitation area;
  - (b) permits passage of papers and documents;
  - (c) provides seating with table/desk for writing for visitors and inmates;
  - (d) provides artificial lighting of 30 footcandles;
  - (e) permits contact visiting;
  - (f) provides for visual monitoring, but not hearing by staff;
  - (g) provides for visitors to contact staff if needed.
- (3) If the facility is not a "work release" only facility, a medical area designed:
  - (a) to prohibit access by unauthorized personnel;
  - (b) to have locked storage for equipment, supplies, medications, and records;
  - (c) for equipment approved by the jail physician including a sink, toilet, shower, examining table, nurses and physicians work station(s), telephone, and direct contact with the central control area.

- (4) A food service that meets the sanitation requirements of the Commission for Health Services 10 NCAC 10A, Section .0100, with adequate storage and food preparation areas.
- (5) A laundry service (either contracted for or on premises).
- (6) In a facility which is not a "work release" only facility, recreational facilities with:
  - (a) an area designed for vigorous physical activities, such as volleyball, basketball, etc. Scheduled use of this area shall be such as to permit a minimum of five hours of recreation per week;
  - (b) equipment storage area;
  - (c) staff observation post for all area;
  - (d) access to areas controlled by staff.
- (7) A commissary through contract services or built on premises.

*Statutory Authority G.S. 153A-230.4.*

#### **.5604 ADMINISTRATION AREA**

Each satellite jail/work release unit shall have an administrative area which shall provide:

- (1) adequate space for administrative offices accessible to the public;
- (2) clerical support areas;
- (3) record storage areas;
- (4) space for information resources, report writing, and training materials;
- (5) conference or training area;
- (6) space for unit administrator and support staff personnel.

*Statutory Authority G.S. 153A-230.4.*

#### **.5605 CONSTRUCTION MATERIALS FOR SATELLITE JAIL/WORK RELEASE UNITS**

Traditional building materials may be used where safety will not be jeopardized, taking into consideration the type and/or level of security described in the operations program developed by the local authorities.

*Statutory Authority G.S. 153A-230.4.*

#### **.5606 MECHANICAL SYSTEMS**

Mechanical systems shall:

- (1) Provide heating, ventilation, and air conditioning to meet the requirements of the N.C. Building Code;
- (2) Have master controls for electrical, plumbing, heating, and air conditioning, which are inaccessible to inmates;
- (3) Have master cutoff controls for electrical and water supplies to each confinement area (either single cells or dormitory type areas);

- (4) Have capability of maintaining temperatures in the confinement areas within 68 degrees Fahrenheit minimum in the heating season and a maximum of 85 degrees Fahrenheit during the non heating season.

*Statutory Authority G.S. 153A-230.4.*

#### **.5607 GENERAL REQUIREMENTS**

In addition to the above, the minimum secure unit shall be designed to:

- (1) allow access for emergency equipment (e.g., fire hoses, stretchers) provided at appropriate entrances;
- (2) have auxiliary power and emergency lighting available;
- (3) have vehicle parking for both public and facility staff and be so designed to prevent unauthorized persons from entering the security perimeter.

*Statutory Authority G.S. 153A-230.4.*

### **SECTION .5700 - CLASSIFICATION**

#### **.5701 FEMALE INMATES**

The local authority (sheriff) shall provide a work release program for both men and women. Female inmates must be housed separately from male inmates. Common use areas (recreation, food service, multi-purpose) can be used jointly by male and female inmates.

*Statutory Authority G.S. 153A-230.4.*

#### **.5702 STAFFING**

Female staff must be on duty to provide supervision for female inmates.

*Statutory Authority G.S. 153A-230.4.*

#### **.5703 CLASSIFICATION SYSTEM**

(a) Each satellite jail/work release unit shall develop a written classification system which shall cover the following categories of inmates:

- (1) Females;
- (2) Work release;
- (3) Weekend sentences;
- (4) Nonworking inmates;
- (5) Medically segregated inmates;
- (6) Administratively segregated inmates;
- (7) Youthful offender sentences.

(b) A classification committee shall be formed to recommend to the court, sheriff, or other judicial officials, the classification or security measures for each inmate.

*Statutory Authority G.S. 153A-230.4.*

SECTION .5800 - SAFETY AND SECURITY

**.5801 SECURITY**

Although satellite jail work release units are classified as minimum secure facilities, safety and security shall be of primary concern. Fire protection and adequate means of evacuation must be assured.

*Statutory Authority G.S. 153A-230.4.*

**.5802 KEYS AND EXITS**

(a) Each facility shall provide alternative exits, readily available in case of fire or other emergencies and in compliance with N.C. Building Codes.

(b) There shall be a minimum of two complete sets of facility and emergency exit keys.

(c) One of the sets shall be stored in a safe, secure place, but accessible at all times to supervisory staff for use in case of an emergency.

(d) Emergency exit keys shall be maintained on a separate key ring.

*Statutory Authority G.S. 153A-230.4.*

**.5803 FIRE EXTINGUISHERS AND FIRE SAFETY TRAINING**

(a) There shall be a sufficient number of fire extinguishers, approved by Underwriter Laboratories, properly installed on each floor as outlined in National Fire Protection Association pamphlet number ten.

(b) The type of extinguisher shall be appropriate for the area where mounted.

(c) Fire extinguishers shall be inspected and recharged at least yearly, by a qualified person and so marked or tagged by date.

(d) Arrangements shall be made with the local fire department to inspect the satellite jail work release unit at least once a year. This inspection shall be documented and kept on record at the unit.

(e) Fire safety training, including equipment use, shall be conducted at least once a year. This training shall be documented and kept on file at the unit.

*Statutory Authority G.S. 153A-230.4.*

**.5804 FIRE PLAN**

Each facility shall have a written fire plan on file at the unit. This plan shall include a plan of evacuation and control of inmates in the event of fire or other emergencies. The plan shall be readily accessible for review at the unit. Evacuation plan shall be posted on each floor. The plan shall include a requirement for staff training. This training shall be conducted with all staff, at

least quarterly and this training shall be documented and kept on file at the unit.

*Statutory Authority G.S. 153A-230.4.*

**.5805 MATTRESSES**

(a) Mattresses and bedding shall comply with Commission for Health Services, 10 NCAC 10C, Sections .0312 - .0326 and G.S. Chapter 130A-273. Bedding shall meet federal flammability standards.

(b) Finished dimensions of mattresses provided inmates shall be not less than four inches thick and shall be of the same length and breadth as the jail bunks.

(c) Mattresses shall have no metallic, plastic or other rigid framing component in the finished unit.

(d) Mattress ticking shall be a durable water repellent and flame retardant polyvinyl chloride sheeting which may include reinforcing fiber in the flexible sheeting, or ticking shall be a product of equal strength and equal chemical safety properties. The ticking shall be sewn to envelope configuration enclosing the core material securely without metal or other fasteners.

(e) Core material shall be all cotton batting impregnated with ten percent boric acid solids by weight, or equal fire resistant core material with combustible characteristics which produce no more human hazard than the treated cotton batting in areas of high temperatures and heat fluxes, untenable gas levels and visibility obscuration by smoke when subjected to burning tests of full-size mattresses or bench-scale tests which subject mattress specimens to an average imposed heat flux of at least 2.5 w/cm<sup>2</sup>.

(f) Suppliers of mattresses shall provide permanent identification with year of production on the product as evidence of meeting these requirements.

(g) Mattresses must be kept in good repair.

*Statutory Authority G.S. 153A-230.4.*

SECTION .5900 - STAFFING

**.5901 PERSONNEL**

(a) Sufficient supervisory personnel must be on duty in order to provide sight and sound observation at all times.

(b) In multi-level units supervisory personnel must be on each level inmates are housed.

(c) Supervisory personnel shall be awake at all times during their work shift.

(d) Female supervisory staff must be on duty at all times female inmates are housed.

*Statutory Authority G.S. 153A-230.4.*

**.5902 RECORDS**

(a) A job description shall be in writing for each category of jail staff listing education, experience, and other qualifications required. Also, a description of job duties and responsibilities for each category shall be required.

(b) An individual personnel file shall be maintained on each employee. This file shall include previous employment history, education, and experience.

*Statutory Authority G.S. 153A-230.4.*

**SECTION .6000 - SANITATION AND PERSONAL HYGIENE**

**.6001 BEDDING**

(a) Clean and adequate bedding, mattresses, sheets and blankets will be supplied to inmates. Bedding shall be exchanged a minimum of twice weekly.

(b) Furniture, bunks, and mattresses shall be kept clean and in good repair. Clean bed linen and easily cleanable or washable mattress covers shall be provided for each occupant and shall be changed as often as necessary. Clean linen shall be stored and handled through use of suitable bags or closed hampers in order to reduce the spread of contamination. Suitable room shall be provided for the separate storage of clean linens from soiled linen.

*Statutory Authority G.S. 153A-230.4.*

**.6002 SHAVING**

Inmates shall provide their own shaving equipment.

*Statutory Authority G.S. 153A-230.4.*

**.6003 TOWELS AND SOAP**

Inmates shall be provided necessary towels and soap for bathing purposes.

*Statutory Authority G.S. 153A-230.4.*

**.6004 SHOWERS**

Inmates shall be provided access to showers on a daily basis. Shower areas must be smooth and easily cleanable and shall be kept clean. The hot water supply shall be adequate for the population serviced.

*Statutory Authority G.S. 153A-230.4.*

**.6005 SANITATION**

The Commission for Health Services has adopted rules, as required by G.S. 153A-226, governing the sanitation of local confinement facilities, including the kitchens and the places where food may be prepared for prisoners. A copy of the rules may be obtained from the Sanitation Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27601-2091.

*Statutory Authority G.S. 153A-230.4.*

**.6006 WATER SUPPLY**

The water supply shall be from an approved source, shall be adequate and shall be safe, sanitary quality. Reference: Commission for Health Services 10 NCAC 10A Governing the Protection of Private Water Supplies, Section .1700 and Commission for Health Services 10 NCAC 10D Governing Public Water Supplies, Sections .0600 - .2600.

*Statutory Authority G.S. 153A-230.4.*

**.6007 LIQUID WASTES**

All sewage and liquid wastes shall be disposed of in a public sewer system or by other sanitary disposal method approved by the local health director. Reference: Commission for Health Services 10 NCAC 10A, for Sanitary Sewage Collection, Treatment and Disposal, Section .1900.

*Statutory Authority G.S. 153A-230.4.*

**SECTION .6100 - FOOD**

**.6101 DIET**

(a) Meals shall meet the nutritional needs of the inmates according to the recommended daily allowances of the National Research Council, National Academy of Sciences. A copy of the North Carolina Dietetic Association Diet Manual shall be available in the satellite jail for use in food service. These diet requirements shall apply to food service in all satellite jail/work release units whether food is served in-house or is catered by contractual agreement.

(b) Therapeutic diets shall be available as ordered by a proper medical professional.

*Statutory Authority G.S. 153A-230.4.*

**.6102 FOOD PREPARATION AND SERVICE**

(a) Sufficient space and equipment shall be provided for safe, sanitary food preparation and/or service including units which have catered food service.

(b) The kitchen and storage areas shall be clean, orderly, and protected from contamination.

(c) Foods shall be attractively served, seasoned, and at proper temperature.

(d) Appropriate eating utensils and condiments shall be provided.

(e) If food is transported, all items shall be covered to prevent contamination and maintained at proper temperatures.

*Statutory Authority G.S. 153A-230.4.*

#### **.6103 FOOD RECORDS**

(a) Menu's shall be planned in writing with portions specified.

(b) If substitutions are necessary, written records of these substitutions shall also be kept.

(c) Records of dated menus and substitutions shall be kept for one year.

(d) Menus shall be dated and posted one week in advance. The use of seasonal, three week cycle menus is recommended.

(e) Dated invoices or bills shall be kept by the month. All invoices shall specify the food item and amount purchased.

*Statutory Authority G.S. 153A-230.4.*

#### **.6104 SANITATION**

(a) All food shall be stored, prepared, and served in accordance with sanitary rules and regulations adopted by the Commission of Health Services pursuant to provisions of G.S. 153A-226.

(b) Whoever prepares/distributes food shall meet all local health department requirements, wear clean outer garments, maintain a high degree of personal cleanliness, and conform to good hygiene practices. Reference: Commission for Health Services 10 NCAC 10A, Section .0123.

(c) If any person assigned to food preparation and/or food service has other duties, such as laundry assignment, these duties shall not interfere with time or sanitation requirements to provide adequate food service described in these Regulations.

*Statutory Authority G.S. 153A-230.4.*

#### **.6105 FOOD FROM OUTSIDE ESTABLISHMENTS**

(a) In those units where it is necessary to purchase meals from outside food handling establishments, contracts shall be written which ensure compliance with all of the above cited standards.

(b) The outside agency shall provide food records under Rule .6103(a) - Food Records.

(c) If the outside agency cannot provide equipment for sanitary meal transportation (i.e., insulated food carts or trays) the satellite jail shall provide permanent equipment (insulated containers), which maintains proper temperature. The equipment used and procedures for transporting meals shall be approved by the local health director.

(d) Each food handling establishment shall be approved by the local health director. Meals shall be served in single service eating and drinking utensils.

*Statutory Authority G.S. 153A-230.4.*

#### **.6106 STAFFING**

The satellite jail/work release unit shall provide sufficient personnel to meet these minimum standards. Inmates may be used to supplement the food service staff but shall not be used as the sole source of manpower for food preparation and service.

*Statutory Authority G.S. 153A-230.4.*

### **SECTION .6200 - MEDICAL CARE**

#### **.6201 MEDICAL PLAN**

A written medical plan must be developed and available in the working area of each satellite jail/work release unit. This written medical plan must include the following:

- (1) A basic description of the health services available to inmates within the unit from outside sources, and under contract;
- (2) Policies and procedures in the following areas of medical care shall be provided:
  - (a) Care of inmates with acute illnesses;
  - (b) Administration and control of medications;
  - (c) Emergency services;
  - (d) Care of chemically dependent inmates;
  - (e) Care of pregnant inmates;
  - (f) Emergency dental care;
  - (g) Health record and confidentiality of information;
  - (h) Screening of inmates upon admission;
  - (i) Staff development and training;
  - (j) Provision of Social Services;
  - (k) Care of inmates with communicable diseases.

*Statutory Authority G.S. 153A-230.4.*

#### **.6202 REPORT OF INMATE'S DEATH**

(a) Within five days of the death of an inmate, the facility shall complete and file the form "Report of Prisoner's Death," send an original copy

to the local or district health director and send a second copy to: Jail and Detention Branch, Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina 27603.

(b) The form shall include prisoner's name and birth date, race, and sex; the name and address of the facility; the place, date, and time of death; cause of death (natural suicide) and method of suicide (sheet/towel); name of coroner; whether a physician was in attendance; and any other information which the division may require.

*Statutory Authority G.S. 153A-230.4.*

## SECTION .6300 - TRAINING OF PERSONNEL

### .6301 EMPLOYEE REQUIREMENTS

Local government officials responsible for the administration and supervision of jails shall employ only persons with good moral character who appear capable of being trained in principles of proper care and welfare of inmates confined in their care and keeping.

*Statutory Authority G.S. 153A-230.4.*

### .6302 TRAINING

All jail employees must comply with training requirements of G.S. 17E and a record of satisfactory completion of required courses must be maintained in individual personnel files.

*Statutory Authority G.S. 153A-230.4.*

## SECTION .6400 - REPORTS

### .6401 MONTHLY REPORTS OF COUNTY SATELLITE JAIL/WORK RELEASE UNITS

Local confinement authorities shall complete a monthly report on Form DHHR-JDS-1 and send it no later than the tenth day of the following month to: Jail and Detention Branch, Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina 27603.

*Statutory Authority G.S. 153A-230.4.*

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission intends to adopt regulations cited as 10 NCAC 3U .0205, .0403, .0506 - .0511, .0710 - .0714, .2006 - .2012, .2401 - .2407, .2501 - .2510, .2601 - .2612; amend regulations cited as 10 NCAC 3U .0101 - .0102, .0202, .0204, .0302 - .0303, .0401, .0505,*

*.0703 - .0704, .0707 - .0709, .0901, .1001, .1004, .1601 - .1602, .1604, .1606, .1612 - .1613, .1701, .1902 - .1904, .2101, .2203, .2205; and repeal regulations cited as 10 NCAC 3U .0402, .0501 - .0504, .0706, .1603, .1605, .1607 - .1611, .1614.*

*The proposed effective date of this action is July 1, 1988.*

*The public hearing will be conducted at 1:00 - 9:00 p.m. on March 17, 1988 at Hearing Room, Room 201, Council Building, 701 Barbour Drive, Raleigh, N.C. 27603.*

*Comment Procedures: Any interested person may present his/her views and comments either in writing to or at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling Davis Bowen, Child Day Care Section, 701 Barbour Drive, Raleigh, N.C. 27603, (919) 733-4801.*

## CHAPTER 3 - FACILITY SERVICES

### SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

## SECTION .0100 - PURPOSE AND DEFINITIONS

### .0101 PURPOSE

The rules in this Subchapter prescribe the procedures and ~~standards~~ requirements for ~~licensure~~ the regulation of child day care centers and ~~registration~~ of child day care homes.

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

### .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 the Child Day Care Section, Division of Facility Services, Department of Human Resources, located at 701 Barbour Drive, Raleigh, North Carolina 27603.

(2) "After School Care" means day care provided to school-aged children as defined in Paragraph (21) of this Rule which does not exceed four hours on a school day. After school care may exceed four hours on a non-school day during the school calendar year.

(2) "Appellant" means the person or persons who request a contested case hearing.

- (4)(3) "A" license means the license issued to day care operators who meet the minimum ~~standard as codified in Sections .0500 - .1500 and .1800 of this Subchapter.~~ requirements for the legal operation of a child day care facility pursuant to G.S. 110-91 and applicable Rules in this Subchapter.
- (5)(4) "AA" license means the license issued to day care operators who meet the higher voluntary standards promulgated by the Child Day Care Commission as codified in Section .1600 of this Subchapter.
- (6)(5) "Child Care Program" means a provider of child day care services and may consist of a single center or home or a group of centers and or homes operated by one owner ~~or supervised by a common sponsor.~~
- (7)(6) "Commission" means the Child Day Care Commission.
- (8)(7) "Day care center" means any day care facility as defined in G.S. 110-86(3) which is authorized to provide day care to 13 or more children when any child present is preschool-age according to the definition of preschool-aged child in this Rule.
- (9)(8) "Day Care Home" means any child day care plan home as defined in G.S. 110-86(4) which provides day care on a regular basis of at least once per week for more than four hours, but less than 24 hours per day. Child care arrangements excluded from the definition of day care facility in G.S. 110-86(3) are excluded as day care homes.
- (10)(9) "Department" means the Department of Human Resources.
- (11)(10) "Division" means the Division of Facility Services within the Department of Human Resources.
- (12)(11) "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.
- (12) "Large child day care center" or "large center" means any day care center which is authorized to provide care to 80 or more children.
- (13) "Large child day care home" or "large home" means any day care facility as defined in G.S. 110-86(3) which is authorized to provide care to a maximum of 12 children when any child present is preschool-aged or, when all children present are school-aged, to a maximum of 15 children.
- (14)(14) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a day care center.
- (15)(15) "Licensing Manual" means the document published by the Child Day Care Section which contains the procedures and standards required by North Carolina law, the commission, and the department for licensure of child day care centers. The licensing manual may be obtained from the section at the address given in Paragraph (1) of this Rule.
- (16) "Medium child day care center" or "medium center" means any day care center which is authorized to provide day care to no more than 79 children.
- (17)(17) "Operator's after-school own school-aged children" means, for the purposes of implementing G.S. 110-86(3), the operator's own children who are school-aged according to the definition of a school-aged child.
- (18)(18) "Operator" means the person or entity held responsible by law as the owner of a child day care business. The terms "operator", "sponsor" or "licensee" are used interchangeably.
- (19)(26) "~~Temporary~~ Part-time care arrangement" means a child care arrangement required to be licensed pursuant to G.S. 110-86 and G.S. 110-98 which provides care on less than a full-time basis. Examples of ~~temporary~~ part-time care arrangements are certain drop-in, before/after school, and seasonal programs.
- (20)(17)(20) "Passageway" means a hall or corridor.
- (21)(18)(21) "Preschool-aged child" means any child between birth and live years of age who does not fit the definition of school-aged child ~~in Paragraph (21).~~ in this Rule.
- (22)(19)(22) "Provisional License" means the type of license issued to a center which does not conform in every respect with the standards for an "A" license.
- (23)(20)(23) "Registrant" means the person or entity that is granted permission by the State of North Carolina to operate a day care home.
- (24)(24)(24) "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.
- (25)(22)(25) "Section" means the Child Day Care Section, Division of Facility Services, Department of Human Resources. The section is located at the address given in Paragraph (1) of this Rule.
- (26)(26) "Small day care center" or "small center" means any day care center which provides day care for a maximum of 29 children.

- (27) "Small day care home" or "small home" means the child care arrangements defined in G.S. 110-86(4) which are subject to the registration requirements set forth in Section .1700 of this Subchapter.
- (23)(28) "Special Provisional License" means the type of license which may be issued a day care operator pursuant to the conditions of G.S. 110-88 (6a) when child abuse or neglect has occurred in the center.
- (24) "Supervisor" means, for the purposes of implementing G.S. 110-91 (7), the person on site at the center who has overall responsibility for planning and administering the child care program. The terms "supervisor" and "director" are used interchangeably.
- (25)(29) "Teacher" means the caregiver who has responsibility for planning and implementing the daily program of activities for each group of children.
- (30) "Temporary license" means the license which may be issued when a licensed center changes location or changes ownership.
- (27)(31) "Volunteer" means a person who works in a day care center or day care home and is not monetarily compensated by the center or home.

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

#### SECTION .0200 - GENERAL PROVISIONS RELATED TO LICENSING

##### .0202 CENTERS SUBJECT TO LICENSURE

Any child care arrangement where six or more preschool-age children under 13 years of age (not including the operator's own after-school children as defined in this Subchapter) receive care, on a regular basis of at least once per week, for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same or different children attend regularly, must be licensed. These arrangements include, but are not limited to:

- (1) day care centers, including those which operate for twenty-four hours per day;
- (2) nursery schools;
- (3) temporary part-time care arrangements, including those which provide care on a seasonal, drop-in, part-time, or after-school basis as defined in Rule .0102(26) Rule .0102 of this Subchapter;
- (4) preschool programs housed in a public school building;
- (4) large day care homes;
- (5) summer day camps.

Statutory Authority G.S. 110-86(3); 143B-168.3.

##### .0204 CHANGES REQUIRING ISSUANCE OF A NEW LICENSE

(a) When the operator, as defined in Rule .0102 (16) Rule .0102, of a licensed day care center changes, the new operator must apply for a new license as prescribed in Section .0300 of this Subchapter, prior to assuming ownership of the center. A child day care license cannot be bought, sold, or transferred by one operator to another.

Statutory Authority G.S. 110-88(8); 110-93; 143B-168.3.

##### .0205 PARENTAL ACCESS

The custodial parent, guardian or full-time custodian of a child enrolled in any child day care facility or 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 facility or home during its operating hours for the purposes of contacting the child or evaluating the facility or home and the care provided by the facility or home. The parent, guardian or custodian shall notify the on-site administrator of his/her presence immediately upon entering the premises.

Statutory Authority G.S. 110-85; 143B-168.3.

#### SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

##### .0302 APPLICATION FOR A LICENSE

(d) The applicant, or the person responsible for the day-to-day operation of the center, must 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 Sections .0500 and .0600 of this Subchapter applicable requirements for activities, equipment, and staff/child ratios for the size facility and type of license requested. The applicant shall make the following written information available to the section's representative for review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) daily schedule(s),
- (2) activity plans,
- (3) emergency care plan,
- (4) discipline policy.
- (5) staff development plan.

(h) If the license is denied, the operator may not reapply for a license for that facility for at least 90 days from the date the letter of denial is issued or, if administrative or judicial review is

requested by the applicant, from the date the final agency decision or judicial determination is rendered, whichever is later.

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

#### .0303 RENEWAL OF A LICENSE

(c) When the section's representative documents noncompliance on the announced renewal visit, based on the severity and extent of noncompliance, the representative may return to the center at a later date, but prior to the license expiration date, to determine if compliance has been achieved; advise the licensee to submit written verification that the noncompliance has been corrected; recommend issuance of a provisional license in accordance with Section .0400 of this Subchapter; or recommend denial of the application for renewal. Final disposition of the recommendation to deny is the decision of the section chief. The stipulations of Rule .0302(h) shall apply.

*Statutory Authority G.S. 110-88(5); 110-93; 143B-168.3; 150B-3.*

### SECTION .0400 - ISSUANCE OF PROVISIONAL AND TEMPORARY LICENSES

#### .0401 PROVISIONAL LICENSES

(a) A provisional license may be issued in accordance with the provisions of G.S. 110-88(6) for any period of time not to exceed twelve consecutive months for any of the following reasons:

- (1) To allow a specific time period for correcting a violation of the building, fire, or sanitation standards, requirements, provided that the appropriate inspector documents that the violation is not hazardous to the health or safety of the children, but nevertheless necessitates a provisional classification until corrected.
- (2) To allow a specific time period for the center to comply fully with all licensing standards, requirements other than building, fire, or sanitation, and to demonstrate that compliance will be maintained, provided that conditions at the center are not hazardous to the health or safety of the children or staff.
- ~~(3) To allow a specific time period for a new owner, operator, or sponsor to apply for a new license pursuant to Rule .0206 of this Subchapter, when ownership of a center changes to someone other than the previous licensee as specified in Rule .0204.~~

~~(4)(3) To allow time for the applicant or licensee to obtain a declaratory ruling pursuant to Section .2000 of this Subchapter.~~

(b) The provisional license may be issued upon the section's determination that the applicant or licensee is making a reasonable effort to conform to such standards, requirements, ~~and the section shall submit written findings of such effort at the next regularly scheduled meeting of the commission which shall review the section's actions and concur or deny.~~

(c) The provisional license and the document describing the reasons for its issuance shall be posted in a prominent place in the center.

(d) A licensee may obtain an administrative hearing on the issuance of a provisional license in accordance with Section .2000 of this Subchapter.

*Statutory Authority G.S. 110-88(6); 143B-168.3.*

#### .0402 SPECIAL PROVISIONAL LICENSE (REPEALED)

*Statutory Authority G.S. 110-88(6.a); 110-102.1; 110-103; 110-103.1; 110-104; 143B-168.3; 150B-3(c).*

#### .0403 TEMPORARY LICENSES

(a) A temporary license may be issued in accordance with the provisions of G.S. 110-88(10) to the operator of a previously licensed facility when a change in ownership or location occurs, provided the operator applied for a license, pursuant to Section .0300, and Rule .0204(a) and or (b) of this Subchapter, prior to the change in status.

(b) The temporary license shall be posted in a prominent place in the center.

(c) The temporary license shall expire after 90 days, or upon the issuance of a license or provisional license to the operator, whichever is earlier.

(d) An operator may obtain an administrative hearing on the denial of a temporary license in accordance with Section .2000 of this Subchapter.

*Statutory Authority G.S. 110-88(10); 143B-168.3.*

### SECTION .0500 - AGE APPROPRIATE ACTIVITIES FOR CENTERS

#### .0501 STAFF/CHILD RATIO (REPEALED)

#### .0502 CAREGIVING ACTIVITIES FOR INFANTS AND TODDLERS (REPEALED)

#### .0503 CAREGIVING ACTIVITIES FOR PRESCHOOL-AGED CHILDREN

(REPEALED)

**.0504 CAREGIVING ACTIVITIES FOR SCHOOL-AGED CHILDREN (REPEALED)**

*Statutory Authority G.S. 110-91; 110-91(2), (12); 143B-168.1; 143B-168.3.*

**.0505 DEVELOPMENTAL DAY CENTERS**

Child day care centers which meet the criteria for developmental day centers, as defined in 10 NCAC 18M .0701 (contained in APSM 35-1, Standards for Area Programs and Their Contract Agencies, published by the Division of Mental Health, Mental Retardation and Substance Abuse Services), shall be determined in compliance with the provisions of ~~Rules .0502 through .0504~~ Rules .0507 through .0511 of this Section by complying with the requirements for activities for developmental day centers set forth in 10 NCAC 18M .0707, .0708 and .0713.

*Statutory Authority G.S. 110-91(2), (12); 143B-168.3.*

**.0506 WRITTEN SCHEDULE: CENTERS**

(a) Each small day care center shall have a schedule posted for easy reference by parents and by caregivers.

(b) Medium and large centers shall have a schedule posted for each group of children.

(c) The schedule shall show blocks of time usually assigned to types of activities and shall indicate a balance between periods of active play and periods of quiet play or rest.

(d) The activities and allotted times reflected in the schedule shall be appropriate for the ages of the children in the group.

(e) When children two years old or older are in care, the schedule shall also reflect daily opportunities for both free-choice and teacher-directed activities.

*Statutory Authority G.S. 110-91(2), (12); 143B-168.3.*

**.0507 ACTIVITY PLAN: SMALL CENTERS**

(a) Pursuant to G.S. 110-91(12), each small day care center shall have a written plan of age appropriate activities which is made available to parents. The plan may be posted in the center or included in the parent handbook or other operational policy literature given to parents when the child is enrolled.

(b) The written plan shall describe the type of program offered by the center and shall include a general description of the activities made available to the children.

*Statutory Authority G.S. 110-91(12); 143B-168.3.*

**.0508 ACTIVITY PLAN: MEDIUM AND LARGE CENTERS**

(a) A written plan of age-appropriate activities designed to stimulate the social, emotional, intellectual and physical development of children shall be developed for each group of children in care.

(b) The activity plan shall always be current and accessible for easy reference by parents and caregivers.

(c) The activity plan shall include at least one daily activity for each developmental goal specified in Paragraph (a) of this Rule. Activities which allow children to choose to participate with the whole group, part of the group, or independently shall be identified. The plan shall reflect that the children have at least four different activities in which they may choose to participate on a daily basis.

*Statutory Authority G.S. 110-91(12); 143B-168.3.*

**.0509 ACTIVITIES: GENERAL REQUIREMENTS FOR CENTERS**

(a) Each center providing care to children aged two years and older shall have equipment and materials available on a daily basis. The equipment and materials shall be appropriate for the ages of the children in care.

(b) The materials shall be sufficient in quantity to provide a variety of play experiences which stimulate the children's social, emotional, intellectual and physical development and the materials shall be easily accessible to the children.

(c) Teacher-made and home-made equipment and materials may be used if they are safe and functional.

(d) Age appropriate equipment and materials shall be provided for a variety of outdoor activities which allow for vigorous play and large muscle development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The facility shall provide space and time for vigorous indoor activities when children cannot play outdoors.

*Statutory Authority G.S. 110-91(2), (12); 143B-168.3.*

**.0510 PRESCHOOL-AGED CHILDREN: ACTIVITY AREAS FOR CENTERS**

(a) Each small, medium and large day care center shall have equipment and materials available in activity areas on a daily basis.

(b) An activity area is an identifiable space where related equipment and materials are kept in an orderly fashion which is accessible to the children.

(c) Each activity area shall contain enough materials to allow three related activities to occur at the same time. The materials and equipment shall be in sufficient quantity to allow at least three children to use the area regardless of whether the children choose the same or different activities.

(d) Each center shall make at least four of the activity areas listed in Paragraph (e) of this Rule available to children daily as follows:

(1) Medium and large centers shall have at least four activity areas available in the space occupied by each group of children.

(2) Small day care centers shall have at least four activity areas available daily. In small centers, separate groups of children may share use of the same activity areas.

(e) Whenever one of these activity areas is available for use by children, it shall contain the items specified in this Rule as follows:

(1) Art and other creative play materials:

(A) Each art activity area shall contain crayons and plain paper, paste or glue, and paint and paint brushes.

(B) In addition, each art activity area shall have three of the following items available to the children: scissors, construction paper, easel, clay or playdough, or collage materials.

(2) Children's books:

(A) Each book activity area shall have at least two age-appropriate books available for each child in the group (as defined in Rule .0102 of this Subchapter) to which the activity area is accessible. Books in other activity areas accessible to the same group of children may be counted in the minimum number of required books; or

(B) The center shall have one book available to each child enrolled in the center.

(3) Blocks and block building accessories:

(A) Each block activity area shall contain a minimum of 90 blocks consisting of unit blocks or table blocks, or a combination of the two, in at least three different shapes and sizes.

(B) In addition, the block area shall contain at least two different types of block-building accessories, such as vehicles, animals, human figures, or fences.

(4) Manipulative materials:

(A) Each manipulative activity area shall contain a variety of manipulative materi-

als designed to promote development of small muscle coordination.

(B) Each manipulative activity area shall have at least one item or set of items for each two children in the group (as defined in Rule .0102 of this Subchapter) to which the activity area is accessible. There shall be a minimum of ten items or sets of items in each activity area.

(5) Housekeeping and dramatic play materials:

(A) Each housekeeping activity area shall have a sturdy child-sized play stove, table and chairs, and dolls.

(B) In addition, the activity area shall contain at least three of the following items: sturdy play sink, play refrigerator, realistic accessories to include pots and pans, utensils, dishes, doll bed, full-length mirror, doll clothes and linens, or dress-up clothes.

(f) In addition to the activity areas which are available each day, each center shall have materials and equipment in sufficient quantity, as described in Paragraph (c) of this Rule, to ensure that activities are made available at least once per month in each of the five program areas listed in Paragraph (e).

(g) Each center shall provide materials and opportunities for music and rhythm activities, science and nature activities, and sand and water play for each group of children at least once per month.

*Statutory Authority G.S. 110-91(6), (12); 143B-168.3.*

#### **.0511 ACTIVITIES FOR INFANTS AND TODDLERS**

(a) Each center providing care to infants and toddlers shall have three different age appropriate toys for each child under the age of two years.

(b) The center shall provide time and space for sleeping, eating, toileting, diaper changing, and playing according to each child's individual need.

(c) The caregivers shall provide opportunities for frequent interaction between the caregiver and each child.

(d) Infants shall have opportunities daily to be outside the crib or playpen in addition to the time spent attending to their physical care. A safe, clean, uncluttered area shall be available to infants to crawl or creep.

(e) Each child shall have the opportunity to be outdoors daily when weather conditions permit.

*Statutory Authority G.S. 110-91(2), (12); 143B-168.3.*

SECTION .0700 - HEALTH AND OTHER  
STANDARDS FOR CENTER STAFF

.0703 GENERAL STATUTORY  
REQUIREMENTS

(a) All staff counted toward meeting the staff/child ratio requirements set forth in G.S. 110-91(7) Rules .0712 and .0713 of this Section shall be at least 18 16 years of age. or a high school graduate. For purposes of this Rule, the General Education Development Certificate shall be considered equivalent to graduation from high school. Persons younger than 18 years, but at least 16 years old, may shall work in centers under the conditions prescribed by G.S. 110-91(8). No one under 18 years of age shall have full responsibility for or be left in charge of a group of children.

(b) Anyone who is at least 13 years of age, but less than 16 years of age, may work in a day care center on a volunteer basis, as long as he/she is supervised by and works with a required staff person who is at least 18 21 years of age, and also meets the health standards for volunteers found in Rule .0702 of this Section. No one less than 16 years old shall be left alone with children nor counted toward meeting the required staff/child ratio.

(c) 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 day care facility shall also apply to volunteers, persons living on the premises in which the facility is located, and other persons who enter the facility with the operator's permission when the children are present. This exclusion does not include parents or other persons who enter the facility only for the purpose of performing parental responsibilities.

Statutory Authority G.S. 110-91(8); 143B-168.3.

.0704 PRESERVICE REQUIREMENTS FOR  
ADMINISTRATORS

(a) The on-site administrator who has overall responsibility for planning and administering the child care program shall meet the following requirements:

- (1) Be at least 21 years of age, and be literate, and
- (2) Have either a high school or general education diploma, and
- (3) Have two years of full-time verifiable child day care or early childhood experience; or an undergraduate, graduate, or Associate Degree, with at least 12 semester hours in

child development, child psychology, early childhood education or directly related field or, a child Development Associate Credential or completion of a community or technical college early childhood program; and

- (4) Have verification of having successfully completed, or be currently enrolled in, 3 credit quarter hours, or 33 clock hours, of training in the area of child care program administration; or, have one year experience performing administrative responsibilities; or, have one year experience performing administrative responsibilities and have another full-time staff person, who meets (1) through (3) of this Paragraph who is responsible for planning and implementing the daily program at the center to comply with Sections .0500 and .0600 of this Subchapter.

(b) The administrator of a child day care program who does not routinely work on site, or who is responsible for more than one center and/or home, shall have verification of having successfully completed, or be currently enrolled in, 3 credit hours, or 33 clock hours, of training in child care program and administration; or, have one year experience performing administrative responsibilities and have at least one full-time staff person on site at each center who meets the requirements of (1) through (3) of this Paragraph (a).

(c) Any person who is at least 21 years old and literate who was employed as an on-site administrator in a day care program on or before September 1, 1986, shall be exempt from the provisions of Paragraphs (a) and (b) of this Rule.

(d) The teacher/caregiver with responsibility for planning and implementing the daily program for each group of children shall be at least 18 years of age, literate, and have at least one of the following:

- (1) A high school or general education diploma and one of the following:
  - (A) One year of verifiable experience working in a child day care center; or
  - (B) Twenty additional hours of training within the first six months of employment; or
  - (C) Successful completion of the Department of Public Instruction's Child Care Services Occupational Home Economics Program.
- (2) A Child Development Associate Credential.
- (3) Graduation from a one or two-year child care program at a community college or technical college.

- (4) An undergraduate or graduate degree with at least the equivalent of four semester hours in child development.
- (5) Five years of verifiable experience working in child day care.
- (e) The aide or person responsible to the teacher-caregiver for assisting with planning and implementing the daily program shall be a high school graduate; or have a general education diploma; or be at least 18 years of age and literate.
- (f) Any person whose job responsibility includes driving a vehicle to transport children shall:
  - (1) Be at least 18 years of age; or a duly licensed school bus driver; and
  - (2) Have no conviction of Driving While Impaired (DWI) or other impaired driving offense within the last three years; and
  - (3) Have a valid driver's license; or
  - (4) If regularly transporting more than twelve persons, have a valid North Carolina Class B license, or comparable license from the state in which he/she resides.
- (g) Non-caregiving staff or any person providing support to the operation of the program shall be at least 16 years of age; and meet the requirements of the local health department for food handlers, if applicable, when duties are related to food preparation or food service.
- (h) Any substitute who has caregiving responsibilities shall, at a minimum, meet the qualifications for an aide stated in Paragraph (e) of this Rule. In addition, any substitute driver shall also possess a valid driver's license.

Statutory Authority G.S. 110-91(8); 143B-168.3.

**.0706 STAFF DEVELOPMENT PLAN  
(REPEALED)**

Statutory Authority G.S. 110-91 (9), (11); 143B-168.3.

**.0707 INSERVICE TRAINING  
REQUIREMENTS**

(a) Each day care center shall provide, or arrange for the provision of, training for staff to assure that each new staff person who has contact with the children will receive a minimum of ten clock hours of ~~on-site~~ orientation within the first six weeks of employment. This orientation shall include training in their job-specific duties and responsibilities; a review of the child day care licensing law and regulations; a review of the individual center's personnel and operational policies, purpose, and goals; an explanation of the role of state and local government agencies, their effect on the center, their availability as a re-

source, and individual staff responsibilities to representatives of State and local government agencies; observation of center operations; maintaining a safe and healthy environment; and training to recognize symptoms of child abuse and neglect.

(b) The center director and any staff who have responsibility for planning and supervising a day care program, as well as staff who work directly with children, shall participate ~~annually in a minimum of 20 clock hours of in~~ inservice training activities annually, according to the individual's assessed needs. Such training shall be either related to child care or to the person's job responsibilities. Staff may choose one of the following options for meeting the inservice requirement:

- (1) The staff person shall complete 20 clock hours of inservice training activities which are related to child care or to the person's job responsibilities; or
- (2) If the staff person has completed six quarter hours or 66 clock hours of early childhood education or child development and is enrolled in an early childhood or child development curriculum program, completion of or enrollment in a course which is required or approved for completion of that curriculum program will fulfill the annual inservice requirement.

(c) For staff working less than 40 hours per week on a regular basis and choosing the option for 20 hours of inservice training, the training requirement may be prorated as follows:

WORKING HOURS PER WEEK	CLOCK HOURS REQUIRED
0-10	5
11-20	10
21-30	15
31-40	20

- (1) New employees shall receive a minimum of ten clock hours of training during the first year of employment in addition to the 20 clock hours of on-site orientation required in (a) of this Rule.
- (2) Staff with 12 consecutive months of employment in the same day care program shall receive a minimum of 20 clock hours of training annually.

Statutory Authority G.S. 110-91(11); 143B-168.3.

**.0708 MEETING INSERVICE REQUIREMENTS**

Staff may meet the ~~staff development standards~~ inservice training requirements by attending child care workshops, conferences, seminars, or courses provided each training activity satisfies the following criteria:

- (1) Prior approval from the section is not required for training offered by an accredited college or university, government agency, or state/national professional organization or its recognized affiliates, provided the content complies with the provisions of Rule .0707(b).
- (2) Prior approval from the section is required on an annual basis for agencies and organizations which have staff who provide, or who arrange for the provision of, training for child care operators and/or staff. To obtain such approval, the agency or organization shall submit its annual training plan to the section.
- (3) Prior approval for each training event must be obtained from the section by any organization, association, or individual not included in Paragraphs (1) and (2) of this Rule.
- (4) No more than five clock hours of the 20 clock hours of training required annually shall be provided on site by center staff. This restriction shall not apply if the center staff providing the training have been approved according to the criteria outlined in either Paragraph (1) or (2) of this Rule.

*Statutory Authority G.S. 110-91(11); 143B-168.3.*

**.0709 DOCUMENTATION OF INSERVICE TRAINING**

Each center shall have a record of training activities in which each staff participates. That record ~~will~~ shall include the subject matter, training provider, date provided, hours, and name of staff who completed the training. This documentation ~~must~~ shall be on file and ~~must be~~ current.

*Statutory Authority G.S. 110-91(9), (11); 143B-168.3.*

**.0710 PRESERVICE REQUIREMENTS FOR TEACHERS AND AIDES**

(a) The teacher/caregiver with responsibility for planning and implementing the daily program for each group of children shall be at least 18 years of age, literate, and have at least one of the following:

- (1) A high school or general education diploma and one of the following:
  - (A) One year of verifiable experience working in a child day care center; or
  - (B) Twenty additional hours of training within the first six months of employment; or

- (C) Successful completion of the Department of Public Instruction's Child Care Services Occupational Home Economics Program.
- (2) A Child Development Associate Credential.
- (3) Graduation from a one or two-year child care program at a community college or technical college.
- (4) An undergraduate or graduate degree with at least the equivalent of four semester hours in child development.
- (5) Five years of verifiable experience working in child day care.
- (b) An aide or person responsible to the teacher/caregiver for assisting with planning and implementing the daily program shall be at least 16 years old and literate.

*Statutory Authority G.S. 110-91(8); 143B-168.3.*

**.0711 PRESERVICE REQUIREMENTS FOR OTHER STAFF**

(a) Any person whose job responsibility includes driving a vehicle to transport children shall:

- (1) Be at least 18 years of age; or a duly licensed school bus driver; and
- (2) Have no conviction of Driving While Impaired (DWI) or other impaired driving offense within the last three years; and
- (3) Have a valid driver's license; or
- (4) If regularly transporting more than twelve persons, have a valid North Carolina Class B license, or comparable license from the state in which he/she resides.

(b) Non-caregiving staff or any person providing support to the operation of the program shall be at least 16 years of age; and meet the requirements of the local health department for food handlers, if applicable, when duties are related to food preparation or food service.

(c) Any teacher substitute shall be at least 18 years old and literate. Any substitute driver shall be at least 18 years old and possess a valid driver's license.

*Statutory Authority G.S. 110-91(8); 143B-168.3.*

**.0712 STAFF/CHILD RATIOS FOR SMALL CENTERS**

(a) The staff/child ratios and group sizes for a small day care center are as follows:

<u>Age of Children</u>	<u>Number of Children</u>
0 to 5 years	7
2 to 5 years	10
3 to 5 years	15
5 years and older	20

<u>Number of Staff</u>	<u>Group Size</u>
1	14
1	20
1	25
1	25

(b) When only one caregiver is required to meet the staff/child ratio, and children under three years of age are in care, that person shall not be responsible for food preparation or other duties which are not direct child care responsibilities.

(c) When only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:

- (1) The center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) There shall be a second adult on the premises who is available to provide emergency relief.

*Statutory Authority G.S. 110-91(7); 143B-168.3.*

#### .0713 STAFF/CHILD RATIOS FOR MEDIUM AND LARGE CENTERS

(a) The staff/child ratios and group sizes for single-age groups of children in medium and large day care centers are as follows:

<u>Age of Children</u>	<u>Number of Children</u>
0 to 2 years	7
2 to 3 years	12
3 to 4 years	15
4 to 5 years	20
5 years and older	25

<u>Number of Staff</u>	<u>Group Size</u>
1	14
1	24
1	25
1	25
1	25

(b) The requirements for multi-age groups of children are:

<u>Age of Children</u>	<u>Number of Children</u>
0 to 2 years	7
2 to 5 years	12
3 to 13 years	15
4 to 13 years	20
5 years and older	25

<u>Number of Staff</u>	<u>Group Size</u>
1	14
1	24
1	25

1	25
1	25

(c) Children younger than two years old may be cared for in groups with older children at the beginning and end of the operating day provided the staff/child ratio for the youngest child in the group is maintained.

(d) A child two years of age and older may be placed with children under one year of age when a physician certifies that the developmental age of the child makes this placement appropriate.

(e) Except as provided in Paragraphs (c) and (d), children under one year of age shall be kept separate from children two years of age and over. Also, children between the ages of 12 months and 24 months shall not be routinely grouped with older children unless all children in the group are less than three years old.

(f) When only one caregiver is required to meet the staff/child ratio, and children under three years of age are in care, that person shall not be responsible for food preparation or other duties which are not direct child care responsibilities.

(g) When only one caregiver is required to meet the staff/child ratio, the operator shall select one of the following options for emergency relief:

- (1) The center shall post the name, address, and telephone number of an adult who has agreed in writing to be available to provide emergency relief and who can respond within a reasonable period of time; or
- (2) There shall be a second adult on the premises who is available to provide emergency relief.

*Statutory Authority G.S. 110-91(7); 143B-168.3.*

#### .0714 OTHER STAFFING REQUIREMENTS

(a) Each day care center shall have an administrator on site on a regular basis. This requirement may be met by having one or more persons on site who meet the requirements for an administrator for the size center being operated according to the following schedule:

- (1) Each small center shall have an administrator on site for at least 20 hours per week.
- (2) Each medium center shall have an administrator on site for at least 25 hours per week.
- (3) Each large center shall have an administrator on site for at least 30 hours per week.

(b) At least one person who meets the requirements for an administrator or teacher as set forth in this Section shall be on site during the center's operating hours except that a person

who is at least 18 years old and literate and who has a minimum of one year's experience working with children in a day care center may be on duty at the beginning or end of the operating day provided that:

- (1) No more than ten children are present.
- (2) The staff person has worked in that center for at least three months.
- (3) The staff person is thoroughly familiar with the center's operating policies and emergency procedures.

(c) At least one person who meets the requirements for a teacher set forth in Rule .0710 of this Section shall be responsible for each group of children as defined in Rule .0102 of this Subchapter except as provided in Paragraph (b) of this Rule.

(d) A teacher aide is a person who is responsible to the teacher and assists with planning and implementing the daily program. An aide shall not have full responsibility for a group of children except as provided in Paragraph (b) of this Rule.

(e) Children shall be adequately supervised at all times. Adequate supervision shall mean visual supervision with the exception of brief periods necessitated by emergencies and day-to-day child care responsibilities.

(f) For groups of children aged two years or older, the staff/child ratio during nap time is considered in compliance if at least one person is either in each room or is visually supervising all the children and if the total number of required staff are on the premises and within calling distance of the rooms occupied by children.

*Statutory Authority G.S. 110-91(7), (8); 143B-168.3.*

#### SECTION .0900 - NUTRITION STANDARDS

##### .0901 GENERAL NUTRITION REQUIREMENTS

(a) Meals and snacks served shall contain the food groups outlined in the Basic Four Food Guide which is based on the recommended nutrient intake judged by the National Research Council to be adequate for maintaining good nutrition. The number and size of servings shall be appropriate for the ages and developmental levels of the children in care, as specified in the appendices to the Licensing Manual, as approved by the commission.

(b) Menus for nutritious meals and snacks shall be planned at least one week in advance, shall be dated and posted where they can be seen easily by parents when food is prepared or provided by the center. Menus shall also be posted in the

food preparation area. A variety of food shall be included in meals and snacks. Any substitution will be of comparable food value and will be recorded on the menu.

~~(e) When children bring their own food for meals and/or snacks to the center, or when food is catered, if the food does not meet the nutritional requirements specified in (a) of this Rule, the center must provide additional food necessary to meet those requirements. This additional food must be offered to any child who needs it in order to satisfy nutritional requirements.~~

~~(d) (c)~~ Drinking water must be freely available to children of all ages and offered at frequent intervals. Approved drinking fountains or individual drinking utensils shall be provided. When a private water supply is used, it must be tested by and meet the requirements of the Division of Health Services, Department of Human Resources.

~~(e) (d)~~ Children's special diets or food allergies shall be posted in the food preparation area and in the child's eating area.

~~(f) (c)~~ The food required by special diets may be provided by the center or may be brought to the center by the parents. If the diet is prescribed by a physician, written instructions will be provided by the child's parent, physician, or a registered dietitian.

~~(g) (f)~~ Food and beverages with little or no nutritional value, such as sweets, fruit drinks, soft drinks, etc., will be available only for special occasions and only in addition to nutritious meals and snacks.

*Statutory Authority G.S. 110-91 (2); 143B-168.3.*

#### SECTION .1000 - TRANSPORTATION STANDARDS

##### .1001 SEAT RESTRAINTS

(a) All day care centers must abide by North Carolina law regulating the use of seat belts and child passenger restraint devices.

(b) All vehicles operated by a day care center staff person or volunteer, or under contract with a center to transport children, must be properly equipped with seat belts or child restraint devices which meet applicable federal standards at the time of their manufacture.

(c) Whenever children are transported, each adult and child shall be restrained by an appropriate individual seat belt or restraint device when the vehicle is in motion. Only one person may occupy each seat belt or restraint device.

(d) Each child under three years of age shall be provided a child passenger restraint device appropriate for his/her size and age. Older chil-

dren shall use a child restraint or seat belt appropriate for his/her size.

(c) These restraint regulations do not apply to ~~commercial vehicles or other vehicles which are~~ not required by state or federal law to be equipped with seat belts, except that children under one year of age shall never be transported outside an appropriate infant restraint device in any vehicle owned or operated under the auspices of the day care center.

Statutory Authority G.S. 110-91(13); 143B-168.3.

#### .1004 STAFF/CHILD RATIOS

(a) When children aged two years and older are being transported, ~~the number of adults in each vehicle shall not be fewer than the number prescribed by staff/child ratio requirements for children in a day care center in G.S. 110-91(7).~~ the staff/child ratios required for compliance with day care center regulations as set forth in Section .0700 of this Subchapter shall apply.

(b) When three or more children under the age of two years are being transported, the staff/child ratio requirements for day care centers set forth in Section .0700 of this Subchapter for children under age two in G.S. 110-91(7) shall be maintained. The driver shall not be counted in the staff/child ratio.

Statutory Authority G.S. 110-91(13); 143B-168.3.

### SECTION .1600 - AA REQUIREMENTS

#### .1601 ADMINISTRATION

(a) The center shall have written specific purposes and goals for the child day care program. The purposes and goals shall be reviewed annually and revised as needed.

(b) Copies of purposes and goals shall be posted in the center.

(c) Copies of purposes and goals shall be available to parents and community leaders. Copies shall be distributed to all staff members and board members, if there is a board.

Each AA center shall have administrative policy and practices which provide for responsible selection and training of staff, on-going communication with and opportunities for participation by parents, sound operational and fiscal management, and objective evaluation of the program, management and staff.

Statutory Authority G.S. 110-88(7); 143B-168.1; 143B-168.3.

#### .1602 OPERATIONAL AND PERSONNEL POLICIES

(a) ~~The center shall have written operational policies, parent involvement, family service, and personnel policies. The operational and personnel policies shall be reviewed annually and revised as needed. Each center shall have written policies which describe the operation of the center and the services which are available to parents and their children. The operational policies shall include at least the following information:~~

- (1) ~~the days and hours the center operates;~~
- (2) ~~age range of children serves;~~
- (3) ~~admission requirements and enrollment procedures;~~
- (4) ~~parent fees and payment plan;~~
- (5) ~~information about services provided by the center, i.e. number of meals served, before/after school care; transportation;~~
- (6) ~~items, if any, to be provided by parents.~~

(b) ~~Copies of operational, personnel, parent involvement and family service policies shall be kept in the administrative files in the center.~~

(c) ~~(b) Operational and parent involvement policies shall be discussed with parents at the time they inquire about the possibility of enrolling their child in the day care center. A copy of the policies will shall be given to the parents when their child is enrolled and they who shall henceforth be notified in writing of all changes. Parents must sign a statement attesting to the fact that they have read the current policies. This statement shall be placed in the child's file on or before his/her first day of attendance at the center.~~

(d) ~~(c) Copies of the operational policies and any subsequent changes to those policies shall be distributed to the staff. who will be notified of changes.~~

(d) ~~Each center in which more than two staff are required to meet the AA staff/child ratios shall have written personnel policy which includes at least the following information:~~

- (1) ~~job descriptions and wage or salary range for each position;~~
- (2) ~~minimum qualifications for each position including reference checks;~~
- (3) ~~health and medical requirements;~~
- (4) ~~requirements and provisions for inservice training;~~
- (5) ~~provisions for leave time and other absence;~~
- (6) ~~procedures for on-going supervision and regular evaluation of work performance; and~~
- (7) ~~resignation and termination procedures.~~

(e) ~~Personnel policies must be discussed with each employee at the time of his/her employ-~~

## PROPOSED RULES

ment. Copies of personnel policies must be given to each employee who will be notified of changes.

(c) Personnel policies shall be discussed with each employee at the time of employment and a copy of the policies shall be available to all staff. Staff shall be notified in writing of any changes in personnel policies.

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

### .1603 ADMINISTRATIVE RECORDS: PERSONNEL RECORDS (REPEALED)

Statutory Authority G.S. 110-88(7); 143B-168.1;  
143B-168.3.

### .1604 PHYSICAL FACILITY AND EQUIPMENT FOR AA CENTERS

(a) There shall be at least 30 square feet inside space per child present at any one time and 100 square feet outside space per child present at any one time. Or, there shall be at least 35 square feet inside space per child present at any one time and 100 square feet outside space per child for at least 50 percent of the total number of children present at any one time.

(b) There must be an area arranged for administrative and private conference activities.

(c) ~~There must be one toilet for every 15 children and one lavatory for every 20 children.~~

Statutory Authority G.S. 110-88(7); 143B-168.1;  
143B-168.3.

### .1605 HEALTH STANDARDS (REPEALED)

Statutory Authority G.S. 110-88(7); 143B-168.1;  
143B-168.3.

### .1606 STAFF/CHILD RATIOS IN AA CENTERS

(a) The center shall comply with the staff/child ratios and group sizes set below. ~~in this Rule. A group of children is defined as a certain number of children within the care of an assigned adult, or adults, as the case may be. There is no tolerance allowed.~~

AGE	STAFF
Birth to 12 months	1
1 to 2 years	1
2 to 3 years	1
3 to 4 years	1
4 to 5 years	1
5 to 6 years	1
6 and older	1
<u>Number of</u> <u>Children</u>	<u>Group</u> <u>Size</u>

6	5	10	6
7	5	10	7
9		18	9
10		20	18
13		25	20
15		25	
20		25	

Staff

4	2
4	2
4	2
2	
2	
2	

(b) ~~In any multi-age group situation, all children under two years of age must be separated from the older children and be under the supervision of an additional staff person.~~

(b) In any multi-age group situation, the staff/child ratio for the youngest child in the group shall be maintained for the entire group.

(c) The provisions of Paragraphs (c) through (g) of Rule .0713 shall apply to AA centers.

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

- .1607 STAFF/CHILD RATIOS FOR 6-16 CHILDREN INCLUSIVE (REPEALED)
- .1608 STAFF DEVELOPMENT (REPEALED)
- .1609 SPACE FOR INFANTS (REPEALED)
- .1610 INFANT CARE HEALTH AND SAFETY (REPEALED)
- .1611 SCHOOL AGE CARE (REPEALED)

Statutory Authority G.S. 110-88(7); 143B-168.1;  
143B-168.3.

### .1612 AA CAREGIVING ACTIVITIES FOR PRESCHOOL-AGED CHILDREN

(a) Each facility center which provides care at the AA level shall comply with the requirements in Rule .0506 for written schedule, in Rule .0508 for written activity plan, plans, and in Rule .0509 for general activity area requirements. ~~found in Rule .0503(a), (b), and (c).~~

(b) ~~The written activity plan will include at least:~~

- (1) Three free-choice activities to promote independence, self-reliance, and self-esteem.
- (2) Two teacher-directed activities to help children learn to listen, recall, follow direction, practice newly acquired skills, and solve problems.
- (3) Three group activities to enhance the development of socialization skills.

- (4) The written plan will include daily age-appropriate activities in language development and communication skills; large and small muscle development; interaction with other children and adults.
- (5) The written activity plan will also include weekly age-appropriate activities in at least six of the following areas:
  - (A) Number concepts;
  - (B) Problem solving;
  - (C) Science-nature;
  - (D) Dramatic play;
  - (E) Block building;
  - (F) Sand and water play;
  - (G) Music;
  - (H) Self-help skills;
  - (I) Creative art;
  - (J) Carpentry/woodworking;
  - (K) Field trips and visitors.
- (6) Each child will have the opportunity to use at least six of the following indoor activity areas each day:
  - (1) Block-construction area;
  - (2) Book language development area;
  - (3) Housekeeping-dress-up area;
  - (4) Manipulative puzzle game area;
  - (5) Creative art area;
  - (6) Science-discovery area;
  - (7) Music area;
  - (8) Sand-water area.
- (7) Each child will have the opportunity to participate in at least eight of the following outdoor activities each day, weather permitting:
  - (1) Climbing and stretching;
  - (2) Crawling;
  - (3) Sliding;
  - (4) Swinging;
  - (5) Balancing;
  - (6) Riding;
  - (7) Running and jumping;
  - (8) Pulling and pushing;
  - (9) Lifting and building;
  - (10) Digging and pouring;
  - (11) Throwing, kicking, and rolling.
- (8) The requirements stated in this Rule will also apply to care for older children who have special development needs.

(b) Each AA center providing care to children aged two years old or older shall comply with the requirements for activity areas for preschool-age children in Rule .0510 except that all five of the activity areas listed in Paragraph (e) of that Rule shall be available each day and the activities listed in Paragraph (g) of that Rule shall be offered for each group of children at least once per week.

(c) The requirements for activities for infants and toddlers set forth in Rule .0511 shall apply

to all AA centers providing care to children under two years of age.

*Statutory Authority G.S. 110-88(7); 143B-168.3.*

#### .1613 PARENT PARTICIPATION

(a) Each center shall have a plan which will encourage parent participation and inform parents about the program and its services. The plan shall be discussed with parents at the time the child is enrolled and shall be posted in the center or a copy shall be given to parents at the time of enrollment.

(b) The plan shall include but not be limited to the following:

- (1) (a) The a procedure for registering a child for day care will involve which involves both parents, or parent substitutes or guardian when possible and which encourages a visit to the center by the child and his/her parent before the child begins attending the center;
- (2) opportunities for caregiving staff to meet with parents on a regular basis to discuss their child's needs and progress and to exchange information about the program;
- (3) activities which provide parents opportunities to participate in the center's program on an individual basis and as a group;
- (4) a procedure for parents who need information or have complaints about the child care program.

(b) A child and his parent or parents will be encouraged to make a pre-enrollment visit to the day care center before the child's first all-day stay.

(c) Parents will be given the opportunity to visit the center frequently for observation of the program and their child.

(d) Parents will be encouraged and given the opportunity as individuals and as groups to participate in a variety of ways in the day care program.

(e) Individual parent conferences between parents and the day care staff shall be arranged as needed for effective planning evaluation of the child's day care experience.

(f) Day-to-day informal communication will be encouraged between the day care staff and parents.

*Statutory Authority G.S. 110-88(7); 143B-168.3.*

#### .1614 FAMILY SERVICE PROGRAM (REPEALED)

*Statutory Authority G.S. 110-88(7); 143B-168.1; 143B-168.3.*

SECTION .1700 - DAY CARE HOME STANDARDS

.1701 GENERAL PROVISIONS RELATED TO REGISTRATION OF HOMES

(a) All child day care homes as defined by Rule .0102(9) Rule .0102(8) of this Subchapter shall register and comply with the standards for registration set forth in this Section.

(e) The provisions of G.S. 110-90.1 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 child day care home shall also apply to volunteers, persons living on the premises in which the home is located, and other persons who enter the home 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.

(e) (f) The rules contained in this Section shall apply to day care homes in existence or seeking registration according to the schedule set forth in SL 1985, c. 757, s. 156(n); SL 1987, c. 788, s. 22.

*Statutory Authority G.S. 110-86(4); 110-88(3); 110-90.1; 110-101; 110-105.1; 110-106.1; 143B-168.3.*

SECTION .1900 - SPECIAL PROCEDURES CONCERNING ABUSE/NEGLECT IN DAY CARE

.1902 UNANNOUNCED VISITS

If the county department of social services section determines the allegation warrants investigation according to G.S. 7A-544, unannounced visits shall be made by a representative of the section to the day care center or home within the time periods and for the purposes set forth in G.S. 110-105(a)(3) or G.S. 110-105.1(a)(4).

*Statutory Authority G.S. 7A-517(5); 110-88(5); 110-105; 110-105.1; 143B-168.3.*

.1903 INVESTIGATION PROCEDURES

(a) The investigation shall include interviews with the registrant, operator, staff, parents, or any other adult who has information regarding the allegation. Reports from law enforcement officers and other professionals, as well as pictures photographs and other investigative tools, may be used as appropriate.

(b) The section's representative shall not may interview the child or children about the allegations of abuse or neglect only in those cases

where the county department of social services does not conduct an investigation.

(c) The section shall share information related to investigations with departments of social services, as appropriate. However, any information subject to confidentiality laws or regulations shall be handled so as to preserve the confidential nature of the material.

(d) At any time during the investigation, the representative of the section may conduct an evaluation for compliance with all licensing requirements.

(e) The section shall make a written report to the licensee/registant and the county department of social services when the investigation is completed. The section may also report to law enforcement officers and other professionals that were involved in the investigation. This report shall explain the section's findings and what further action will be taken, if any.

*Statutory Authority G.S. 7A-543; 110-88(5); 110-105; 110-105.1; 143B-168.3.*

.1904 ADMINISTRATIVE SANCTIONS

(a) The sanctions of Rule .0402 of this Subchapter shall apply when: A special provisional license or registration may be issued for a six-month period when the section determines that abuse or neglect occurred in a child day care center or home. The following provisions shall apply:

(1) the county Department of Social Services substantiates that abuse/neglect occurred in the center/home; and

(2) the operator/registant caused, knew about, or should have known about the abuse/neglect and failed to take appropriate action.

(1) The special provisional license or registration and the reasons for its issuance shall be posted in a prominent place in the center as soon as they are received by the licensee or registrant.

(2) The special provisional license or registration and reasons for issuance shall remain posted for the entire six months covered by the license or registration, and also during the time of any administrative proceedings.

(3) No new children shall be enrolled in the center or home until the section is satisfied that the abusive or neglectful situation no longer exists and gives the operator written permission to accept new children.

(4) A licensee or registant may obtain an administrative hearing on the issuance of a special provisional license or registration

in accordance with the provisions of G.S. 150B-23.

(b) A written warning specifying corrective action to be taken by the operator of the day care center or home shall may be issued when the investigation is concluded and the section determines that abuse or neglect occurred in a center or home and the situation does not warrant issuance of a special provisional license or registration.

(1) the county Department of Social Services substantiates that abuse-neglect occurred in the center-home; and

(2) the operator-registrant did not cause, did not know about, or should not have known about the abuse-neglect.

(c) Any violation of the terms of a special provisional license or registration may result in the assessment of a civil penalty as provided in Section .2200 of this Subchapter.

(d) Failure to implement the corrective action plan required by a written warning pursuant to G.S. 110-88(6.4) G.S. 110-88(6a) may result in the assessment of a civil penalty as provided in Section .2200 of this Subchapter and or the issuance of a special provisional license or registration.

(e) The type of sanction imposed by the section shall be determined by one or more of the following criteria:

(1) severity of the incident;

(2) probability of reoccurrence;

(3) prior incidents of abuse or neglect in the center or home;

(4) history of compliance with child day care requirements;

(5) the section's assessment of the operator's response to the incident.

(f) Nothing in this Rule shall restrict the division from using any other statutory or administrative penalty available pursuant to G.S. 110-102.2 and Section .2000 of this Subchapter, or the provisions in 150B-3(c) to summarily suspend a license or registration if the health, safety or welfare of any child is in jeopardy.

*Statutory Authority G.S. 110-88(5); 110-88(6a); 143B-168.3; 150B-3; 150B-23.*

#### SECTION .2000 - RULEMAKING AND CONTESTED CASE PROCEDURES

##### .2006 ADMINISTRATIVE PENALTIES: GENERAL PROVISIONS

(a) Pursuant to G.S. 110-102.2, the secretary or his/her designee may order one or more administrative penalties against any licensee or registrant who violates any provision of Article 7 of

Chapter 110 of the General Statutes or of this Subchapter.

(b) Nothing in this Section shall restrict the division from using any other statutory or civil penalty available. A civil penalty in accordance with G.S. 110-103.1 and Section .2200 of this Subchapter may be imposed in conjunction with any other administrative activity.

(c) The issuance of an administrative penalty may be appealed pursuant to G.S. 150B-23.

*Statutory Authority G.S. 110-102.2; 110-103.1; 143B-168.3; 150B-23.*

##### .2007 WRITTEN WARNINGS

(a) A written warning and a request for compliance may be issued in regard to any violation to allow the licensee or registrant an opportunity to demonstrate compliance with all requirements.

(b) The written warning and request for compliance shall describe the reasons for its issuance including identification of the specific section(s) of the statutes or rules violated. It shall also describe those actions necessary for the licensee or registrant to be in full compliance with requirements and shall specify a time period for compliance to be achieved.

(c) If the licensee or registrant fails to achieve compliance during the specified time period, the section shall employ more restrictive action to achieve compliance or shall revoke the license or registration.

*Statutory Authority G.S. 110-102.2; 143B-168.3.*

##### .2008 WRITTEN REPRIMANDS

(a) An official written reprimand may be issued to censure any violation which the section determines to have been a brief uncustomary event which is unlikely to recur in the ordinary operation of the center or home.

(b) The reprimand shall describe the reasons for its issuance including identification of the specific section(s) of the statutes or rules violated.

(c) The reprimand shall be posted in a prominent place in the center or home for a period of one month from its date of issue.

*Statutory Authority G.S. 110-102.2; 143B-168.3.*

##### .2009 PROBATIONARY STATUS

(a) A license or registration may be place in probationary status for a period of time not to exceed one year when, in the section's determination, violation of any section(s) of the statutes or rules has been willful, continual, or hazardous to health or safety.

(b) The document ordering probation shall describe the reasons for its issuance including identification of the specific section(s) of the statutes or rules violated and shall specify the period of probation. It shall also specify terms of probation with which the licensee or registrant must comply to retain the license or registration.

(c) The order of probation shall be posted in a prominent place in the center or home during the probationary period. If probation is stayed pending appeal, the probation order shall remain posted in the center or home pending final action.

(d) Failure of the licensee or registrant to comply with the terms of probation shall result in the commencement of proceedings to suspend or revoke the license or registration.

*Statutory Authority G.S. 110-102.2; 143B-168.3.*

#### **.2010 SUSPENSION**

(a) Suspension of a license or registration for a period of time not to exceed 45 days may be ordered when, in the section's determination and with the concurrence of the Division of Facility Services' Negative Action Review Committee, violation of any section(s) of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the licensee or registration has not made reasonable efforts to conform to standards.

(b) The licensee or registrant shall be notified in advance of the section's determination to suspend the license and the reasons for such action. The licensee or registrant may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the license or registration.

(c) The suspension order shall specify the period of suspension and the reasons for its issuance. The licensee or registrant shall surrender the license or registration to the section of the effective date of the suspension order and shall refrain from operating a center or home during the suspension period.

(d) If suspension is stayed pending appeal, the suspension order shall be posted in a prominent place in the center or home pending final action.

(e) Failure to comply with the suspension order shall result in civil action in accordance with G.S. 110-103.1 and/or criminal penalty in accordance with G.S. 110-103. The section may also seek injunctive relief in accordance with G.S. 110-104.

*Statutory Authority G.S. 110-102.2; 143B-168.3; 150B-3.*

#### **.2011 REVOCATION**

(a) Revocation of a license or registration may be ordered when, in the section's determination and with the concurrence of the Division of Facility Services' Negative Action Review Committee, violation of any section(s) of the statutes or rules has been willful, continual, or hazardous to health or safety, and/or the licensee or registrant has not made reasonable efforts to conform to standards or is unable to comply.

(b) The licensee or registrant shall be notified in advance of the section's determination to revoke the license and the reasons for such action. The licensee or registrant may request an agency review of the situation and shall be given an opportunity to show compliance with all requirements for retention of the license or registration.

(c) The revocation order shall specify the reasons for its issuance and the effective date of revocation. The licensee or registrant shall surrender the license or registration on the effective date of the revocation order and shall refrain from operating the center or home thereafter.

(d) If revocation is stayed pending appeal, the revocation order shall be posted in a prominent place in the center or home pending final action.

(e) Failure to comply with the revocation order shall result in civil action in accordance with G.S. 110-103.1 and/or criminal penalty in accordance with G.S. 110-103. The section may also seek injunctive relief in accordance with G.S. 110-104.

(f) The operator may not apply for a new license or registration for that facility or home for at least 90 days from the effective date of the revocation order or, when administrative or judicial review is requested, from the date the final agency decision or judicial determination is rendered, whichever is later.

*Statutory Authority G.S. 110-102.2; 143B-168.3; 150B-3.*

#### **.2012 SUMMARY SUSPENSION**

(a) Summary suspension of a license or registration may be ordered in accordance with G.S. 150B-3(c) when, in the section's determination, emergency action is required to protect the health, safety, or welfare of children in a licensed day care facility or registered day care home.

(b) The suspension order shall specify the reasons for its issuance including identification of the specific section(s) of the statutes and rules violated and the determination of the need for emergency action. The order shall be effective on the date specified in the order. The order shall be effective during proceedings to suspend or revoke the license or registration.

(c) The licensee or registrant shall surrender the license or registration on the effective date of the

order and shall refrain from operating a center or home until final action is determined.

(d) Failure to comply with the summary suspension order shall result in civil action in accordance with G.S. 110-103.1, and/or criminal penalty in accordance with G.S. 110-103. The section may also seek injunctive relief in accordance with G.S. 110-104.

*Statutory Authority G.S. 110-102.2; 143B-168.3; 150B-3.*

## SECTION .2100 - CHURCH DAY CARE CENTER REQUIREMENTS

### .2101 CENTERS OPERATING UNDER G.S. 110-106

(a) ~~Prior to beginning to operate~~ At least 30 days prior to the first day of operation of a new church day care center, the prospective operator must shall send a letter of intent to operate "Letter of Intent to Operate" to the section. That letter shall include the name, address, and telephone number of the operator and the center, if known; the proposed number and age range of children to be served; and the center's scheduled opening date. A representative of the section shall contact the prospective operator no later than seven calendar days after the Letter of Intent is received to advise him/her of the applicable standards requirements and procedures.

(b) Church day care centers shall comply with all day care center ~~standards requirements~~ in this Subchapter except for Rules .0502 - .0504, .0704, and .0706 - .0709, the rules regarding age-appropriate activities in Section .0500 and Rules .0704, .0707 - .0711 and Paragraphs (a) through (d) of Rule .0715 regarding staff qualifications and training requirements. Compliance will shall be documented at least annually using the same forms and in the same manner as for all other centers.

(c) The section shall notify the operator in writing as to whether the center complies or does not comply with the ~~standards~~ requirements.

*Statutory Authority G.S. 110-106; 143B-168.3.*

## SECTION .2200 - CIVIL PENALTIES

### .2203 NOTICE OF ASSESSMENT OF PENALTY

The operator ~~will~~ shall be notified by registered or certified mail or ~~personal service~~ of the amount of and reasons for the assessment of the civil penalty. The notice ~~must~~ shall specify the factors used to determine the amount of the penalty and ~~must specify~~ a time period by which payment must be received by the division.

*Statutory Authority G.S. 110-90(9); 110-103.1; 143B-168.3.*

### .2205 FAILURE TO PAY ASSESSED PENALTY

Failure to pay the assessed penalty or to exercise appeal rights within the established time period may result in civil action in accordance with the provisions of G.S. 110-103.1(c).

*Statutory Authority G.S. 110-90(9); 110-103.1; 143B-168.1; 143B-168.3.*

## SECTION .2400 - DAY CARE FOR SICK CHILDREN

### .2401 SCOPE

Child day care for children who are sick is a child care alternative to assist working parents by providing short term care for their children when they are not well enough to attend their regular child care arrangement. This service may include care for mild to moderate illnesses or injuries, and it may be a primary service or a component of another child care arrangement. All regulations in this Subchapter pertaining to day care centers set forth in Rule .0202 and Rule .0203 (b) shall apply to centers offering care for sick children except as provided in this Section.

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

### .2402 DEFINITIONS

The definitions in Rule .0102 shall apply. Special terms and phrases used in this Section are defined as follows:

- (1) "Center for care of sick children" means a center offering care exclusively for sick children on a short term basis.
- (2) "Unit for care of sick children" means a special section or area of a child day care center in which care is provided for sick children on a short term basis.
- (3) "Sick child" means a child who is determined by a parent or a medical professional to be unable to participate in the routine activities in his/her regular child care arrangement. Routine activities include indoor and outdoor activities provided for children in groups.

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

### .2403 SPECIAL PROVISIONS FOR LICENSURE

(a) A center for care of sick children shall be issued a license restricting services to short term care for children who are sick or injured.

(b) A center which includes a unit for care of sick children as a component shall be issued a regular license with a rider authorizing provision of care for sick children and specifying the capacity of that unit.

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

#### .2404 OPERATING POLICIES

(a) A center for care of sick children must comply with all requirements of Section .0800 of this Subchapter.

(b) A center which includes a unit for care of sick children as a component may admit children who do not regularly attend the center but must comply with all requirements of Section .0800 of this Subchapter.

(c) Unless either a licensed physician or a registered nurse is on the premises to supervise care, children who exhibit any of the following symptoms or conditions shall be excluded from care:

- (1) severe upper respiratory infections undiagnosed by a physician.
- (2) diarrhea, when it is:
  - (A) due to confirmed or suspected shigella or giardiasis infection;
  - (B) accompanied by evidence of dehydration or fluid loss;
  - (C) accompanied by abnormal stools with blood or mucous; or
  - (D) continues beyond three days.
- (3) persistent vomiting.
- (4) undiagnosed rash.
- (5) sore throat accompanied by a fever over 102 Fahrenheit.
- (6) fever over 102 Fahrenheit persisting more than two days without instructions from the child's attending physician.
- (7) untreated parasites.
- (8) children under three months old; and children under six months old unless the center is given a physician's written statement that the child's condition has been diagnosed and the child may be cared for with other sick children.

(d) A center or unit for care of sick children shall have the continuing services of a licensed physician as consultant at all times when the center is in operation. The name, telephone number, and address of the consulting physician shall be posted in a conspicuous place for review by parents.

(e) Prescription medications shall be administered only by persons authorized to do so by North Carolina State law.

(f) A copy of procedures which address the following areas shall be available in a conspicuous place for review by parents and staff.

- (1) control of communicable diseases;
- (2) storage and administration of medications;
- (3) records and reporting;
- (4) requirements for contacting parents when a child's condition becomes worse.

(g) Written instructions regarding medications, feeding, and individual care or restrictions shall be provided on a daily basis by the parent or the child's attending physician or registered nurse.

(h) Brief written reports shall be provided to parents for each child on a daily basis to include information about eating, sleeping and toileting patterns, medications administered, and activity levels.

(i) Meals and snacks shall be provided in accordance with Section .0900 of this Subchapter unless instructions from the parent or the child's attending physician specify otherwise.

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

#### .2405 PHYSICAL FACILITY AND EQUIPMENT

(a) Indoor space requirements in Rule .1401 of this Subchapter shall apply except that additional space shall be required for individual sleeping areas not to be included as primary space. Physical dividers shall be available to separate each individual sleeping area which shall be at least 20 square feet. A center which includes a unit for care of sick children as a component shall ensure that indoor space designated for use by sick children is not used by other children and staff in the center.

(b) Each center providing care to sick children shall provide at least 75 square feet of outdoor play space for 50 percent of its authorized capacity for sick children except that a center serving sick children exclusively may provide 20 square feet of indoor play space per child for the number of children the center is authorized to serve in addition to that required in Paragraph (a) in lieu of outdoor space. A center which includes a unit for care of sick children shall ensure that outside play for children who are sick is scheduled at a time when well children are not using the outdoor space.

(c) A cot constructed of vinyl material easily washed and sanitized or a crib or bed equipped with a firm waterproof mattress at least 4" thick which is easily washed and sanitized shall be provided for each child. The center or unit shall provide linens which shall be laundered and sanitized daily for each child.

(d) Each child shall be assigned the same cot, crib, or bed for the duration of attendance, and the cot, crib, or bed shall be washed and sanitized before being assigned to a new child.

(e) At least one commode and one handwashing sink shall be available for every ten children and shall be located in the room where the children are cared for. In a center providing a unit for care of sick children, the toilet area shall be separated from toilet areas used by other children.

(f) Toys and other play materials shall be washed and sanitized daily or between use by different children.

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

#### .2406 STAFFING REQUIREMENTS

(a) The staff child ratios and maximum group sizes for a center or unit providing care to sick children shall be as follows:

<u>Age of Children</u>	<u>Number of Staff</u>
3 mos. to 3 years	1
3 to 6 years	1
6 years and older	1

  

<u>Number of Children</u>	<u>Group Size</u>
4	8
5	10
6	12

  

<u>Number of Staff</u>
2
2
2

(b) One additional person shall always be on call and immediately available. In a center for care of sick children, the on call person may be the administrator. For a unit in a center, the on call person may be the administrator or a caregiver from the regular program who is not counted toward compliance with minimum staff child ratio requirements.

(c) Staff requirements prescribed in Section .0700 of this Subchapter shall apply except that, in addition, one person shall be on the premises who meets one of the following requirements:

- (1) Be a registered nurse or a licensed practical nurse with one year of experience working with young children; and
- (2) Have successfully completed training in the areas of communicable disease control, have current certification in first aid and cardiopulmonary resuscitation for children, and have two years of experience working with children.

(d) In a center providing care exclusively to sick children, one caregiver or the person supervising the caregivers shall be a registered nurse.

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

#### .2407 ACTIVITIES FOR SICK CHILDREN

(a) Daily activity requirements for a large child day care home set forth in Section .2600 of this Subchapter shall apply and shall be provided according to a flexible plan to meet individual needs.

(b) Eating, toileting, and sleeping or resting 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 without disturbance from other children.

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

### SECTION .2500 - DAY CARE FOR SCHOOL-AGE CHILDREN

#### .2501 SCOPE

The regulations in this Section apply to large day care homes and all child day care centers offering care to six or more school-age children exclusively or as a component of any other program. All regulations in this Subchapter pertaining to full-time, part-time, or seasonal child day care shall apply to programs for school-age children except as provided in this Section.

Statutory Authority G.S. 110-86(3); 110-91; 143B-168.3.

#### .2502 SPECIAL PROVISIONS FOR LICENSURE

(a) A center providing care for school-age children exclusively shall be issued a license restricting care to school-age children as defined in Rule .0102 of this Subchapter and may be licensed as a summer day camp if operated on a seasonal basis between May 15 and September 15.

(b) A center which provides care for preschool children and for more than ten school-age children shall be issued a license with a rider authorizing care for school-age children.

Statutory Authority G.S. 110-88(1); 110-91; 143B-168.3.

#### .2503 BUILDING CODE REQUIREMENTS

(a) Building code requirements adopted by reference in Section .1300 of this Subchapter shall

apply for a center providing care to school-age children when any preschool-age child is also in care.

(b) Any building which is currently approved for school occupancy and which houses a public or private school during the school year shall be considered an approved building to house a center serving school-age children exclusively. The operator shall be responsible for obtaining and submitting copies of all applicable inspection reports.

(c) For the purpose of carrying out the provisions of G.S. 110-91(4) for school-age care arrangements not covered by Paragraphs (a) or (b) of this Rule, the North Carolina Building Code requirements for school-age child care centers and summer day camps are hereby adopted by reference by the Child Day Care Commission. A copy of the North Carolina Building Code is on file at the Child Day Care Section at the address given in Rule .0102 of this Subchapter and shall be available for public inspection during regular business hours.

*Statutory Authority G.S. 110-88(2); 110-91(4); 143B-168.3.*

#### **.2504 SPACE REQUIREMENTS**

(a) All space requirements specified in Section .1400 apply when a center provides care for school-age children and any preschool child is also in care, or when a program which provides care exclusively for school-age children routinely operates indoors in a permanent structure for more than 50 percent of each day.

(b) If a center provides after-school care or drop-in care only, the center may choose to comply with the requirements in Section .1400 of this Subchapter or may choose to provide 35 square feet per child of indoor space in lieu of the outdoor play area as long as no child remains in care for more than a four-hour period per day.

(c) A center licensed as a summer day camp shall have a permanent structure that serves as its home base where parents deliver and pick up their children each day and may choose one of the following space requirements:

- (1) When activities for children are routinely conducted outdoors or off the premises for at least 50 percent of each day, a minimum of ten square feet per child of indoor space, exclusive of kitchens, hallways, restrooms, closets, and storage areas, shall be provided.
- (2) When the camp's home base does not provide ten square feet of primary space indoors, the camp shall provide notarized copies of all letters, agreements, or con-

tracts with other facilities which guarantee that children will be accommodated comfortably indoors in the event of inclement weather.

*Statutory Authority G.S. 110-91(3), (6); 143B-168.3.*

#### **.2505 HEALTH REQUIREMENTS FOR CHILDREN**

(a) All requirements of Section .0800 of this Subchapter apply to school-age child care arrangements with the following exceptions:

- (1) A medical examination report shall not be required for any child enrolled in an accredited public or private school.
- (2) A statement signed by the public or private school principal or his designee attesting to the presence of a complete immunization record in the school files may be substituted for a record of immunizations.
- (3) Rule .0806 does not apply.

(b) All requirements specified in Section .0900 of this Subchapter apply when any preschool child is in care or when food is provided by the center or summer day camp.

(c) If food is prepared at the summer day camp, the regulations regarding sanitary facilities, food preparation and service for summer camps as adopted by the Health Services Commission and codified in 10 NCAC 10A .1000 shall apply.

(d) If food is brought from home by children or catered, the following requirements apply:

- (1) Refrigerated storage space shall be provided for snacks or lunches brought from home.
- (2) Fresh water shall be made available at all times regardless of where activities are provided.

*Statutory Authority G.S. 110-91(1), (2); 143B-168.3.*

#### **.2506 GENERAL SAFETY REQUIREMENTS**

(a) First aid equipment shall always be available regardless of where activities are provided.

(b) All regulations in Rule .1403 regarding swimming pools apply.

(c) Archery equipment, power equipment and other potentially hazardous items shall be stored in a locked area when not in use or with other appropriate safeguards. These items shall be used by children only under the direction and supervision of staff.

(d) All equipment, materials and facilities used by children shall be in good repair, of safe design, and properly installed.

*Statutory Authority G.S. 110-91; 143B-168.3.*

**.2507 OPERATING POLICIES**

(a) Written permission from parents shall be obtained before transporting children on field trips or leaving the premises.

(b) Blanket permissions from parents for field trips or leaving the premises are acceptable only when a schedule of activities to be conducted off the premises is posted in a conspicuous place for review by parents and staff in advance on a weekly basis. The schedule shall include the location, purpose, time and date, person in charge, and telephone number or method for contacting the person in charge.

(c) Cots, beds, or mats with linens shall not be required for school-age children. However, provision shall be made for children who wish to rest or who are sick to rest in a comfortable place.

*Statutory Authority G.S. 110-91; 143B-168.3.*

**.2508 AGE APPROPRIATE ACTIVITIES**

(a) The requirements for age appropriate activities and materials set forth in Rules .0506 - .0510 shall apply to school-age programs which operate for more than three hours per day and which routinely operate a program of care indoors for more than 50 percent of each day in space designated, and which has been approved by the section, for that purpose.

(b) Child day care centers which provide care to school-age children for no more than three hours per day shall provide equipment, materials and opportunities for at least three of the types of activities listed in Rule .0510(d). Activity areas shall be used where feasible.

(c) Each center shall also have materials and equipment to make the following activities available at least once per month: dramatic play, carpentry and construction, music and rhythm, and science and nature activities.

(d) All equipment and materials used by school-age children shall be appropriate for the age and size of the children using the items.

*Statutory Authority G.S. 110-91(6), (12); 143B-168.3.*

**.2509 ACTIVITIES: OFF PREMISES**

(a) The requirements of this Rule apply when activities for children are routinely conducted outdoors or off the premises for at least 50 percent of each day.

(b) The center shall develop a schedule of activities which is posted in the home base or given to the parents.

(c) The schedule shall be current and shall contain the information listed in Rule .2507(b).

(d) Activities shall be planned to accommodate a variety of individual interests and shall provide opportunities for choice.

(e) Each center or day camp shall provide items for each of the following types of activities: art and other creative materials, age appropriate books, manipulative materials, board or card games and other similar items, dramatic play materials, and sport or other active play equipment. The center or camp shall provide these materials in sufficient quantity to allow at least three children to choose the same type of activity.

*Statutory Authority G.S. 110-91(6), (12); 143B-168.3.*

**.2510 STAFF QUALIFICATIONS**

(a) The staff requirements in Section .0700 shall apply to any school-age program which is operated on a full year basis as a unit of a center which also provides care to preschool-age children.

(b) Each day camp or before/after-school program shall have an administrator on site who is at least 21 years old and has at least one year of full-time experience or two summers' experience working with school-age children in a day care or day camp setting.

(c) There shall be at least one staff person who is at least 18 years old and literate for each group of 25 children present; or when 16 and 17 year old persons are counted in the staff/child ratio, there shall be at least two such staff persons with each group of 25 children present.

(d) The special training requirements in Rule .0705 shall apply to all programs for school-age children.

(e) Whenever swimming or other aquatic activities occur on site, these activities shall be supervised by at least two persons who have an American National Red Cross Advanced Life Saving Certificate or its equivalent.

(f) All staff shall participate in at least six hours of documented orientation related to the program's policies, activities and child safety prior to assuming responsibility for supervising a group of children.

(g) The health requirements for staff and volunteers in Rule .0701 - .0702 shall apply.

*Statutory Authority G.S. 110-91(8), (11); 143B-168.3.*

**SECTION .2600 - REQUIREMENTS FOR LARGE DAY CARE HOMES**

**.2601 SCOPE**

The Rules in this Section apply to large child day care homes. A large child day care home or large home shall provide care to no more than 12 children when any preschool-age child is in care, or when all children present are school-age, to no more than 15 children. All children present, including the operator's own children, shall be included in the maximum number of children allowed to be present.

*Statutory Authority G.S. 110-86(3); 143B-168.3.*

**.2602 GENERAL PROVISIONS FOR LICENSURE**

(a) The provisions contained in Section .0200 for licensing child day care centers shall apply to large homes.

(b) The individual legally responsible for the operation of the home shall apply for a license and for annual renewal of the license using forms provided by the section.

(c) The applicant/operator is responsible for arranging for inspections of the home by the local sanitarian, building and fire safety inspectors in accordance with the provisions of Rules .0302(b) and .0303(a).

(d) The applicant operator is responsible for compliance with all other state laws and local ordinances which apply to the operation of a child day care facility.

(e) When the operator of a large home has demonstrated compliance with all applicable requirements, a license shall be issued for a period of time not to exceed twelve consecutive months.

(f) When a large home does not comply in every respect with the licensing requirements, and the section determines that the applicant/operator is making a reasonable effort to comply, the section may issue a provisional or a temporary license in accordance with the provisions of Section .0400.

*Statutory Authority G.S. 110-88; 110-93; 143B-168.3.*

**.2603 LICENSING PROCESS**

(a) A representative of the section shall make one or more announced visits to the home to determine compliance with the requirements prior to issuance of the initial license.

(b) Before the initial license is issued, the applicant must demonstrate compliance in the following manner:

(1) The applicant shall submit a completed, signed application to the section.

(2) The applicant shall make written information available to verify compliance

with the requirements for emergency care plans, discipline policy, daily schedules, and a description of activities.

(3) The applicant shall provide documentation of his/her and any other staff's concurrence with the requirements for staff education and experience, health condition and, if requested, minimum age.

(4) The applicant shall provide information which demonstrates how compliance will be achieved with the requirements for records of children's health conditions, immunizations, and emergency information, daily attendance and records of monthly fire drills.

(5) The applicant shall have available or provide a description of his/her plans to obtain equipment and play materials in sufficient quantity to comply with the requirements for age-appropriate activities.

(6) The applicant shall ensure that approved fire, building and sanitation reports are obtained and provided to the section.

(c) A representative of the section shall measure floor space in the part of the home which is used for day care to assure compliance with the space requirements.

(d) If the large home is found to be in compliance with the applicable requirements of G.S. 110 and this Section, a license shall be issued.

(e) If the large home is not in compliance with the requirements, the section may issue a provisional or a temporary license or may deny the application.

*Statutory Authority G.S. 110-88; 110-92; 143B-168.3.*

**.2604 LICENSE RENEWAL PROCESS**

(a) Each large home operator shall apply for renewal of the license annually according to the procedures described in Rule .0303(a).

(b) The operator shall submit a completed, signed application for renewal and approved inspection reports to the section at least 30 days before the expiration date of the current license.

(c) A representative of the section shall make one or more announced visits to the home to determine compliance with the requirements.

(d) If the section determines that the home continues to comply with all applicable requirements, a new license shall be issued to the home operator.

(e) If the section determines that the home does not comply with all requirements, the section may issue a provisional license or may deny the application for renewal.

*Statutory Authority G.S. 110-88; 110-93; 143B-168.3.*

**.2605 MAINTAINING COMPLIANCE**

(a) Each large home operator is expected to maintain compliance with all the requirements for licensure at all times.

(b) If a representative of the section documents noncompliance with any requirement in a licensed large home, the home operator shall be given written notification of the area of noncompliance and the action needed to correct it. Unless conditions in the home pose an immediate threat to the health or safety of the children, the home operator will be given a reasonable period of time to correct the noncompliance.

(c) If the home operator fails to comply or fails to achieve compliance within the specified time period, the section may initiate appropriate administrative action in accordance with the rules for administrative penalties in Section .2000.

(d) The operator may appeal such action in accordance with the provisions of G.S. 150B-23.

*Statutory Authority G.S. 110-88; 110-98; 143B-168.3.*

**.2606 STAFF REQUIREMENTS**

(a) The operator of a large home shall be the person who is on site and has the primary responsibility for the daily operation of the day care home.

(b) The operator shall be at least 21 years old and literate and shall have completed at least one year of full-time caregiving experience in a child day care home or center.

(c) All other staff required to meet the staff/child ratios specified in Rule .2607 shall be at least 16 years old and literate; and if less than 18 years old, shall work under the direct supervision of the operator or other staff person who is at least 21 years old.

(d) No one who is under the age of 18 years shall be left in charge of the home or shall be solely responsible for the care of children.

(e) All staff shall meet the health standards for staff set forth in Rule .0701 of this Subchapter.

(f) The operator of each large home shall comply with the special training requirements regarding recognition of infectious diseases and first aid training prescribed by Rule .0705 in this Subchapter.

(g) The operator and each staff person required to meet the staff child ratio shall participate in a minimum of 20 hours of inservice training annually. The content of the training shall be directly related to the care of children and shall meet the criteria of Rule .0708.

*Statutory Authority G.S. 110-86(3); 110-91(8), (11); 143B-168.3.*

**.2607 STAFF/CHILD RATIOS AND SUPERVISION**

(a) The staff/child ratios and group sizes for a large child day care home are as follows:

<u>Age of Children</u>	<u>Number of Children</u>
0 to 2 years	5
0 to 13 years	6
2 to 5 years	8
3 to 5 years	12
School-aged	15

<u>Number of Staff</u>	<u>Group Size</u>
1	12
1	12
1	12
1	12
1	15

(b) When more than two children under the age of two years are in care, a second caregiver shall be present whenever the total number of children present exceeds the maximum capacity for a small child day care home.

(c) When only one caregiver is required to meet the staff/child ratio, the operator shall make available to parents the name, address and phone number of an adult who is nearby and available for emergency relief.

(d) Children shall be adequately supervised at all times. All children who are not asleep or resting shall be visually supervised. Children may sleep or rest in another room so long as a caregiver can hear them and respond immediately.

*Statutory Authority G.S. 110-86(3); 110-91(7); 143B-168.3.*

**.2608 AGE APPROPRIATE ACTIVITIES AND EQUIPMENT**

(a) Each large home shall have a written schedule posted for easy reference by parents and caregivers.

(b) The schedule shall show blocks of time usually assigned to types of activities and shall indicate a balance between periods of active play and periods of quiet play or rest. The activities and allotted times reflected in the schedule shall be appropriate for the ages of the children in care.

(c) When children two years old or older are in care, the schedule shall also reflect daily opportunities for both free-choice and caregiver-directed activities.

(d) Each home providing care to children aged two years and older shall have equipment and materials available on a daily basis. The equipment and materials shall be appropriate for the age and size of the children in care.

(c) Home-made equipment and materials may be used if they are safe and functional.

(f) Each large home shall have items for each of the following types of activities: art and other creative play materials; children's books; manipulative toys; and dramatic play materials. The home shall have materials and equipment in sufficient quantity to allow at least three children to choose the same type of activity.

(g) The home shall make equipment and materials available for at least three of the activities designated in Paragraph (f) of this Rule each day. A variety of toys and materials in sufficient quantity to allow at least three related activities to occur at the same time shall be easily accessible to the children.

(h) Age appropriate equipment and materials shall be provided for a variety of outdoor activities which allow for vigorous play and large muscle development. Each child shall have the opportunity for outdoor play each day that weather conditions permit. The home shall provide space and time for vigorous indoor activities when children cannot play outdoors.

(i) The requirements for activities for infants and toddlers as specified in Rule .0511 of this Subchapter shall also apply to large homes which provide care to children under two years of age.

*Statutory Authority G.S. 110-86(3); 110-91(6), (12); 143B-168.3.*

#### **.2609 OTHER CAREGIVING REQUIREMENTS**

(a) Meals and snacks shall be served in accordance with the requirements of Section .0900 of this Subchapter except that Rules .0901(b) and .0902(a) do not apply.

(b) All food shall be prepared and served in a sanitary manner. All food shall be served on an individual sanitary plate or other appropriate container. Snack foods may be placed on an individual napkin or paper towel. No food shall be placed directly on a countertop, table top or other such surface.

(c) Children shall not be fed with the same utensil nor drink from the same cup or glass.

(d) The requirements related to written discipline policies and inappropriate discipline techniques as specified in Rule .1801 shall apply to large homes.

(e) Diapers shall be changed whenever they are soiled or wet.

(f) Children shall be toilet trained according to individual readiness.

(g) Each preschool-age child shall be given time and a place to rest or nap comfortably each day. Each preschool-age child shall have an individual bed, crib, cot or two-inch mat with clean linens.

(h) A comfortable place with clean linens shall be made available to each school-aged child who wants to rest or who is ill.

*Statutory Authority G.S. 110-91(1), (2), (10); 143B-168.3.*

#### **.2610 HEALTH AND EMERGENCY CARE REQUIREMENTS**

(a) The large home shall have on file medical statements and records of immunizations for each child in accordance with the provisions of G.S. 110-91(1).

(b) The home shall have the following information in written form for each child in care, including drop-in, part-time and part-day children. The information shall be on file from the first day the child attends and shall be easily accessible to caregiving staff.

(1) The child's full name, date of birth, allergies, if any, any chronic illness the child may have, any medication the child may be taking; and any special fears or behavior characteristics that could affect the child's care.

(2) The names of individuals to whom the child may be released.

(3) Emergency medical care information to include the name, address and telephone number of the parent or other person to contact in an emergency; the name and telephone number of the child's physician; and name of preferred hospital.

(4) A statement signed by the child's parent or guardian authorizing the home operator to obtain emergency medical attention for the child.

(c) Each large home shall complete a form provided by the section which describes the procedures for obtaining emergency medical care for staff and children. The following information shall be included:

(1) The name, address and telephone number of a physician, other health professional or local health agency which is available to provide medical consultation.

(2) The name and telephone number of the local emergency medical service.

(3) Designation of a means of transportation which is always available in the event of an emergency.

(4) The name, address, and phone number of the person who has agreed to be available to provide emergency relief when the conditions stated in Rule .2607(c) exist.

(d) Each large home shall have a working telephone on the premises which is always accessible to caregiving staff. Telephone numbers for the fire department, law enforcement office, emergency medical service, poison control center and emergency relief person, when required, shall be posted near the telephone.

(e) Administration of medications shall be in accordance with the provisions of Rule .0803.

(f) The home may provide care to children with infectious or contagious diseases only if it complies with the requirements for the care of sick children set forth in Section .2400.

*Statutory Authority G.S. 110-91(1); 143B-168.3.*

#### **.2611 PHYSICAL FACILITY AND SPACE REQUIREMENTS**

(a) Each large home shall comply with the North Carolina Building Code requirements for small group day care facilities caring for 6-15 children pursuant to G.S. 110-91(4) and Rule .1303 of this Subchapter.

(b) Each large home shall be inspected prior to the issuance of the initial license and at least annually thereafter by a local fire safety official for compliance with fire safety measures.

(c) Each large home shall be inspected prior to issuance of the initial license and at least annually thereafter by a sanitarian for compliance with appropriate sanitation requirements as codified in Section .1200.

(d) Large homes shall not be required to have commercial kitchen equipment.

(e) Large homes shall not be required to have separate handwashing facilities for staff or separate flush areas for diapers. However, the diapering area shall be located close to a handwashing lavatory which is not in the kitchen.

(f) The home shall have at least two remotely located exits directly to the outside.

(g) Firearms and other weapons on the premises shall be secured so that they are inaccessible to the children.

(h) Each large home shall have at least 25 square feet of indoor space for each child for which the home is licensed. The indoor space shall be measured by a representative of the section and shall include only those areas of the home which are routinely made available to the children. The indoor space shall not include closets, bathrooms, storage areas, utility rooms, kitchens or space occupied by furniture or

equipment that is not used by the children. The dining area of a kitchen may be counted if it is routinely used for children's activities in addition to eating.

(i) Each large home shall have an outdoor play area which provides at least 75 square feet of play area for each child present. The play area shall be fenced or afford adequate protection by some other means as determined by the section.

(j) The outdoor play area shall be free of equipment, litter, animals and other objects which may be hazardous to children.

(k) The requirements set forth in Rule .1403 for the use of swimming pools on or off the premises shall apply to large homes.

*Statutory Authority G.S. 110-86(3); 110-91(3), (4), (5), (6); 143B-168.3.*

#### **.2612 TRANSPORTATION REQUIREMENTS**

(a) The requirements set forth in Rule .1717(a)(4) for transportation of children in child day care homes shall apply to large homes.

(b) In addition, the staff/child ratios in Rule .2607 of this Section shall be maintained. If children under age two are being transported, the driver shall not be counted in the staff/child ratio.

*Statutory Authority G.S. 110-86(3); 110-91(13).*

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*Notice is hereby given in accordance with G.S. 150B-12 that the Director of the Division of Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations cited as 10 NCAC 14C .1115(f)(5), (6) and .1128(e)(9).*

*The proposed effective date of this action is June 1, 1988.*

*The public hearing will be conducted at 10:30 a.m. on March 17, 1988 at Administration Building, Room 3106T, 116 West Jones Street, Raleigh, N.C. 27611.*

*Comment Procedures: Any interested person may present his/her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact: Jan Warren, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, N.C. 27611, (919) 733-7971 by March 17, 1988. The hearing record will remain open for written comments from Feb-*

ruary 15, 1988 through March 17, 1988. Written comments must be sent to the above address. Fiscal information on these rules is also available from the same address.

## CHAPTER 14 - MENTAL HEALTH: GENERAL

### SUBCHAPTER 14C - GENERAL RULES

#### SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

##### .1115 FUNDING GROUP HOMES FOR MENTALLY RETARDED ADULTS

(f) Programs may spend funds for group homes for mentally retarded adults for the following:

(5) the purchase, construction ~~and or~~ or alteration, improvement or repair of a facility by the area program or a non-profit board with division approval with the exception of programs participating in federal Department of Housing and Urban Development (HUD) Section 202 projects which shall follow the requirements specified in (f)(6) of this Rule. The program shall meet the following requirements:

(6) to participate in a federal Department of Housing and Urban Development (HUD) Section 202 project (12 U.S.C. §1701q) for the purchase, construction or alteration, improvement or repair of a group home with division approval. The program shall meet the following requirements:

(A) The area program may request funds for this project from the division. The division may participate in the HUD Section 202 project contingent upon the availability of state funds.

(B) The area program shall sign a legally binding contract with a private non-profit agency to specify that if the group home ceases to be used in the delivery of services to the clients, the private non-profit agency shall reimburse the division according to the following requirements:

(i) If the group home is sold, it should be sold at the current fair market value as determined by two independent appraisals acceptable to the division and the division shall be reimbursed a pro rata share of the selling price of the group home based on the contribution made by the division in the purchase, construction, or alteration, improvement or repair of the group home.

(ii) If the group home is retained by the private non-profit agency, the division shall be reimbursed a pro rata share of

the current fair market value of the facility as determined by two independent appraisals acceptable to the division based on the contribution made by the division in the purchase, construction, or alteration, improvement or repair of the group home.

(C) The area program shall maintain a record which reflects the amount of contribution made by the state for purchase, construction, and/or alteration, improvement or repair to the group home.

Statutory Authority G.S. 122C-112(a) (6); 122C-141; 122C-147.

##### .1128 APARTMENT LIVING FOR MENTALLY RETARDED ADULTS

(e) Programs may spend funds for apartment living for mentally retarded adults for the following:

(9) to participate in a federal Department of Housing and Urban Development (HUD) Section 202 project (12 U.S.C. §1701q) for the purchase, construction or alteration, improvement or repair of a facility with division approval. The program shall meet the following requirements:

(A) The area program may request funds for this project from the division. The division may participate in the HUD Section 202 project contingent upon the availability of state funds.

(B) The area program shall sign a legally binding contract with a private non-profit agency to specify that if the facility ceases to be used in the delivery of services to the clients, the private non-profit agency shall reimburse the division according to the following requirements:

(i) If the facility is sold, it should be sold at the current fair market value as determined by two independent appraisals acceptable to the division and the division shall be reimbursed a pro rata share of the selling price of the facility based on the contribution made by the division in the purchase, construction, or alteration, improvement or repair of the facility.

(ii) If the facility is retained by the private non-profit agency, the division shall be reimbursed a pro rata share of the current fair market value of the facility as determined by two independent appraisals acceptable to the division based on the contribution made by the division in the purchase, construction, or

alteration, improvement or repair of the facility.

(C) The area program shall maintain a record which reflects the amount of contribution made by the state for purchase, construction, or alteration, improvement or repair to the facility.

Statutory Authority G.S. 122C-112(a) (6); 122C-147.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to adopt regulations cited as 10 NCAC 26L .0001 - .0003.*

*The proposed effective date of this action is June 1, 1988.*

*The public hearing will be conducted at 1:30 p.m. on March 16, 1988 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.*

*Comment Procedures: Written comments concerning this adoption must be submitted by March 16, 1988 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on each of these proposed rules is available upon written request from the same address.*

## CHAPTER 26 - MEDICAL SERVICES

### SUBCHAPTER 26L - QUALIFIED PROVIDERS

#### .0001 DEFINITION

A provider qualified to make presumptive determinations of Medicaid eligibility for pregnant women must meet the conditions required by the Social Security Act as amended by P.L. 99-509 and sign a written agreement with the Division of Medical Assistance (DMA).

Authority G.S. 108A-25(b); 1987 Session Laws, c. 738; P.L. 99-509.

#### .0002 AGREEMENT

(a) The provider must agree to participate in training offered by the Division of Medical Assistance (DMA) or its agents and to make presumptive eligibility determinations based on the procedures and guidelines issued by the DMA.

(b) The DMA may terminate the provider's agreement and authority to make presumptive determinations if the provider fails to make required referrals within five days or fails to follow procedures and guidelines resulting in eligibility denials for a majority of the provider's referrals.

(c) Termination of the agreement will occur 30 calendar days following notification when termination is initiated by the DMA.

Authority G.S. 108A-25(b); 1987 Session Laws, c. 738; P.L. 99-509.

#### .0003 PRESUMPTIVE DETERMINATIONS

(a) Presumptive determinations of eligibility shall apply only to pregnant women whose family income does not exceed the federal poverty guidelines as revised annually.

(b) Only one presumptive determination of eligibility during a single pregnancy may be made by the same qualified provider.

(c) A presumptive determination of eligibility may be made by a different qualified provider if the provider has no knowledge of a prior determination.

Authority G.S. 108A-25(b); 1987 Session Laws, c. 738; P.L. 99-509.

## TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

*Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to adopt, amend, repeal regulations cited as 15 NCAC 2H .0101, .0103, .0105, .0107 - .0109; .0114, .0127, .0129 - .0131, .0133, .0137, .0142, .0203, .0205, .0208, .0212 - .0213, .0219, .0222, .0603, .0605, .0609.*

*The proposed effective date of this action is August 1, 1988.*

*The public hearing will be conducted at the following locations, dates and time:*

*March 16, 1988 at 1:30 p.m.  
Environmental Protection Auditorium  
1200 Blythe Blvd.  
Charlotte, North Carolina*

*March 18, 1988 at 1:30 p.m.  
Ground Floor Hearing Room  
Archdale Building  
512 North Salisbury Street  
Raleigh, North Carolina*

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearings. Persons desiring to comment on the proposals are requested to give written notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the second hearing to receive additional written statements. To be included, the statement must be received by the Division within 30 days.

The hearings will be divided into two parts because there will be two hearing records, one for each part. The first part of the hearing will be on the air quality permit fees (15 NCAC 2H .0603, .0605, and .0609). The second part will be on the water quality fees and other water quality matters. (15 NCAC 2H .0100 and .0200). Persons wishing to comment on both the air quality proposals and the water quality proposals are requested to make two sets of comments, one on the air quality proposals and one on the water quality proposals. Additional information concerning the hearing or the air quality proposals may be obtained by contacting:

Mr. Thomas C. Allen  
Division of Environmental Management  
Air Quality Section  
P.O. Box 27687  
Raleigh, North Carolina 27611-7687  
(919) 733-3340.

Additional information concerning the water quality proposals may be obtained by contacting:

Mr. Boyd DeVane  
Division of Environmental Management  
Water Quality Section  
P.O. Box 27687  
Raleigh, North Carolina 27611-7687  
(919) 733-5083.

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

#### SECTION .0100 - WASTEWATER DISCHARGES TO THE SURFACE WATERS

##### .0101 PURPOSE

(a) These Rules implement G.S. 143-215.1 which requires permits for control of sources of water pollution by providing the requirements and procedures for application and issuance of state NPDES permits for a discharge from an outlet, point source, or disposal system discharg-

ing to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge (see Section .0200 of this Subchapter regarding permits for disposal systems not discharging to the surface waters of the state). These Rules also contain the requirements and procedures for issuance of state permits for pretreatment facilities. (See Section .0900 of this Subchapter for rules for permits issued by local pretreatment programs).

(b) Rules and Statutes referenced in this Section may be obtained by writing or visiting the Division of Environmental Management, Water Quality Section's offices at the following locations:

- ~~Permitting~~ Permits and Engineering Unit, Archdale Building  
P.O. Box 27687,  
512 N. Salisbury St.,  
Raleigh, N.C. 27611
- Raleigh Regional Office  
3800 Barrett Dr.,  
Raleigh, N.C. 27611
- Asheville Regional Office  
159 Woodfin St.,  
Asheville, N.C. 28802
- Mooresville Regional Office  
919 N. Main St.,  
Mooresville, N.C. 28115
- Fayetteville Regional Office  
Wachovia Bldg. Suite 714,  
Fayetteville, N.C. 28301
- Washington Regional Office  
1424 Carolina Avenue,  
Washington, N.C. 27889
- Wilmington Regional Office  
7225 Wrightsville Ave.,  
Wilmington, N.C. 28403
- Winston-Salem Regional Office  
8025 North Point Blvd.,  
Winston-Salem, N.C. 27106

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

##### .0103 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

(1) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.

(+) (2) "Committee" means the NPDES committee of the Environmental Management Commission.

(-) (3) "Director" means the Director of the Division of Environmental Management,

- Department of Natural Resources and Community Development or his delegate.
- (4) (4) "EPA" means the United States Environmental Protection Agency.
- (5) (5) "NPDES" means the National Pollutant Discharge Elimination System.
- (6) (6) "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards and/or pretreatment standards for new sources by the Environmental Protection Agency.
- (7) (7) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.
- (8) (8) "POTW" means Publicly Owned Treatment Works.
- (9) (9) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 30F(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.
- (10) (10) "Primary industry" means an industry listed in 40 CFR 122, Appendix A as amended through July 1, 1986 or any later adopted amendments or editions of this document as is allowed by G.S. 150B-14(c).
- (11) (11) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (12) (12) "Staff" means the staff of the Division of Environmental Management, Department of Natural Resources and Community Development.
- (13) (13) "General permit" means an NPDES "permit" issued under 40 CFR 122 authorizing a category of discharges which all involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, require the same or similar monitoring, and in the opinion of the director are more appropriately controlled under a general permit than under individual permits.
- (14) (14) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.
- (15) (15) "Notice of Intent" means formal written notification to the division that a proposed discharge is intended to be covered by a general permit and takes the place of "application" used with individual permits.
- (16) (16) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.
- (17) (17) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.
- (18) (18) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.
- (19) (19) "Seafood packing facility" means a business which is primarily engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.
- (20) (20) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools as well as spas with backwash filter facilities.
- (21) (21) "Trout farm" means a facility for the commercial production of trout.
- (22) (22) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.

Statutory Authority G.S. 143-215.3(a)(1); 143-213.

**.0105 APPLICATION: PERMIT FEES:  
ASSESSMENT FOR NEW SOURCES**

- (a) Except as provided in Subdivisions (e) (d) and (e) (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an application accompanied by the processing fee

described herein for each application in the form of a check or money order made payable to N.C. Department of Natural Resources and Community Development.

The NPDES application forms to be used for the various types of discharges are as follows:

- Std. Form A: all municipal systems greater than or equal to 1.0 MGD as well as any municipal system receiving industrial waste from a primary industry.
- Short Form A: any municipal system not covered by Std. Form A.
- Short Form B: All agriculture related discharges.
- Std. Form C or EPA Form 2-C: All primary industries as listed in 40 CFR 122.21, Appendix A and all other industrial process and commercial discharges greater than or equal to 50,000 GPD except cooling waters, cooling tower blowdown, and boiler blowdown.
- Short Form C: Cooling waters, cooling tower blowdown, and boiler blowdown. ~~and any industrial or commercial discharges not covered under Std. Form C, Short Form E, or Short Form F.~~
- Short Form D: All domestic waste discharges not covered by Std. Form A and Short Form A.
- Short Form E: Notice of Intent to be covered by general permit for once - through non - contact cooling waters, statewide.
- Short Form F: Notice of Intent for mine dewatering facilities, statewide.
- Short Form G: Notice of Intent for water filtration facilities, statewide.
- ~~Short Form H: Notice of Intent for swimming pool filter backwash facilities, statewide.~~
- Short Form HI: Notice of Intent for seafood packing facilities, statewide.
- Short Form I: Notice of Intent for oil terminal storage facilities discharging to water supply (WS-III) waters.
- Short Form KJ: Notice of Intent for oil terminal storage facilities discharging to waters, other than water supply (WS-III) waters.
- Short Form LK: Notice of Intent for sand dredges, statewide.

Short Form ~~MI~~: Notice of Intent for trout farms, statewide.

Short Form ~~NM~~: Notice of Intent for aquifer restoration.

The pretreatment application forms to be used will be supplied by the division.

~~A nonrefundable processing fee of one hundred dollars (\$100.00) shall be submitted with each application or Notice of Intent, and a public notice fee of fifty dollars (\$50.00) shall be submitted with each application, except for general permits, processed by the division including requests for name changes, and modifications to the permit requested by the applicant. If the permit does not go to public notice, the public notice fee will be refunded to the applicant. No processing fee will be charged for modification of unexpired permits when the modifications are initiated by the director to correct processing errors, to change permit conditions, or otherwise to implement new standards. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation. An application is incomplete until required processing fees, public notice fees and adequate information to evaluate the proposed facility have been received. Incorrect or incomplete applications may be returned to the applicant.~~

(b) Permit Fees.

- (1) Permit Application Processing Fees. For every application for new or renewed NPDES permits or Notice of Intent to be covered by a general permit, a nonrefundable application processing fee in the amount stated in Subparagraph (5) of this Paragraph shall be submitted at the time of application.
- (A) This fee schedule does not apply to renewal of general permits.
- (B) Each permit or renewal application is incomplete until the processing fee is received.
- (C) For a facility with multiple discharges under a single permit, the application processing fee shall be set by the single discharge with the highest fee in the fee schedule.
- (D) No application processing fee will be charged for modification of unexpired permits when the modifications are initiated by the director.
- (E) An application processing fee of twenty-five dollars (\$25.00) will be charged for the minor modifications such as name changes listed in Rule .0114(b).
- (F) A full processing fee will be charged for major modifications specifically including any which increase the design flow or

otherwise require new modeling; this fee will be in the same amount as shown in Subparagraph (5) of this Paragraph for standard applications.

- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, including general permits, according to the schedule in Subparagraph (5) of this Paragraph.

(A) Collection of annual fees shall begin upon approval of this Rule for new, reissued, or modified permits.

(B) Annual fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The Director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual administering and compliance monitoring fees.

(C) For any permit which undergoes a modification which requires a public notice in accordance with Rule .0114(b) of this Section, the annual fee shown in Subparagraph (5) of this Paragraph must be paid for each whole permit-years left in the duration of its permit.

(D) For a facility with multiple discharges under a single permit, the annual administering and compliance monitoring fee shall be set by the single discharge with the highest fee in the fee schedule.

(E) A person with only one permit will be billed annually on an anniversary date to be determined by the division. This will normally be the first day of the month of permit issuance.

(F) A person with multiple permits may have annual fees consolidated into one annual bill.

(G) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the director that no Notice of Noncompliance or a Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the director can send a letter

of correction to the permittee clearing the record for compliance purposes.

(11) Cooling water and totally domestic waste discharges shall be provided a lower annual administering and compliance monitoring fee as provided in Subparagraph (5) of this Paragraph.

(1) In addition to those wastes specified in (11) of this Rule, a discharge which has recognized low potential for environmental impact may be charged the same fee schedule as cooling water and domestic waste. A low potential for environmental impact exists if it can be shown that the effluent flow originates as storm-water runoff or groundwater seepage and can be expected to meet all water quality standards including a BOD<sub>5</sub> concentration of less than 2 mg/l at the outlet of the treatment works. Also, intermittent discharges meeting these quality criteria with average flows less than 100,000 GPD but which are permitted at a higher flow may upon request be allowed to meet the fee schedule of the cooling water rate of the less than 100,000 GPD category.

(J) A facility not yet in operation or which has ceased all operations at a site will not be required to pay the next annual administering and compliance monitoring fee provided operations are not started or resumed during that permit year. Any operations will necessitate the payment of the entire annual fee for that year.

(K) Permit Application Processing Fees and Annual Administering and Compliance Monitoring Fees for pretreatment facilities permitted by the division shall be at the same rate as provided in Subparagraph (5) of this Paragraph.

(3) No fees are required to be paid under this Regulation by a farmer who submits an application or receives a permit that pertains to his farming operations.

(4) Failure to pay an annual fee within 30 days after being billed may cause the division to initiate action to revoke the permit.

(5) Schedule of Maximum Fees:

Permit Application Processing Fee		Simple Renewal
Category	Standard	
> 10,000,000 GPD	\$ 400	\$ 200
Domestic or Cooling water	400	200

# PROPOSED RULES

1,000,001 - 10,000,000 GPD Domestic or Cooling Water	300	150
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100,001 - 1,000,000 GPD Domestic or Cooling Water	250	125
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> = 100,000 GPD Domestic or Cooling Water	200	100
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Single family dwelling	120	60
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General permit for cooling water, water filtration, and aquifer restoration	200	0
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General permit for Mine dewatering, sand dredges	200	0
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General permit for swimming pools	0	0
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Other general permits	100	0
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## Annual Administering and Compliance Monitoring Fee

Category	Standard	Compliance Reduction
> 10,000,000 GPD Domestic or Cooling water	\$1200	\$ 900
1,000,001 - 10,000,000 GPD Domestic or Cooling Water	900	675
100,001 - 1,000,000 GPD Domestic or Cooling Water	800	600
> = 100,000 GPD Domestic or Cooling Water	600	450
100,001 - 1,000,000 GPD Domestic or Cooling Water	400	300
> = 100,000 GPD Domestic or Cooling Water	300	225
> = 100,000 GPD Domestic or Cooling Water	225	150

Single family dwelling	0	0
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General permit for cooling water, water filtration, and aquifer restoration	200	0
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General permit for Mine dewatering, sand dredges	200	0
---	-----	---

General permit for swimming pools	0	0
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Other general permits	100	0
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(6) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (5) of this Paragraph will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:

(A) All facilities treating domestic wastewater with design flows of 100,000 gallons per day or less, except single family dwellings and general permits, seventy-five dollars (\$75.00);

(B) Single family dwellings, forty dollars (\$40.00);

(C) All general permits except swimming pools, ten dollars (\$10.00); and

(D) All facilities with design flows greater than 100,000 gallons per day, zero.

(7) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the permit application processing fees for facilities with discharges of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Rule .0142. This reduction shall continue until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the permit application

processing fees as listed in Subparagraph (5) of the Paragraph shall be charged.

~~(b)~~ (c) Applicants for projects requiring construction of control facilities shall in addition to applications required in Subsection (a) of this Rule, file, in triplicate, an engineering proposal setting forth the following information:

- (1) a description of the origin, type, and flow of waste which is proposed to be discharged. Flow shall be determined in accordance with Rule 211 .0219(1) of this Chapter;
- (2) a summary of waste treatment and disposal options that were considered and why the proposed system and point of discharge were selected; the summary should have sufficient detail to assure that the most environmentally sound alternative was selected from the reasonably cost effective options;
- (3) a narrative description of the proposed treatment works including type and arrangement of major components, in sufficient detail to assure that the proposed facility has the capability to comply with the permit limits; for commonly used treatment system or components with well established treatment capabilities, detailed plans and specifications need not be submitted until the application for the authorization to construct; however, detailed plans and specifications shall be required with the permit application for any system or component without well established treatment capabilities for the nature of waste or degree of treatment needed to meet the permit limits;
- (4) a general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams, rivers, etc.);
- (5) a scale location plan of the site showing location of the proposed treatment works and the proposed point of discharge;
- (6) special studies or modelling may be required in cases where the impacts of the discharge cannot be readily determined by the division;
- (7) a statement to demonstrate applicant, or any parent or subsidiary corporation if the applicant is a corporation:

(A) Is financially qualified to carry out the activity for which the permit is required under Subsection (a); and

(B) Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant

has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

~~(c)~~ (d) Applications for permit renewals shall be accomplished by filing the appropriate application form as listed in (a) above, with the processing fee described herein in the form of a check or money order made payable to N.C. Department of Natural Resources and Community Development, at least 180 days prior to expiration of a permit. The notice and public participation procedures set in Rules .0109 and .0111 of this Section shall be followed for each request for re-issuance of the permit. All applications are incomplete until required processing fees are received, and may be returned to the applicant. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation. The processing fee for Permit Renewal issued by the division is the same as listed in (a) above.

~~(d)~~ (e) Applications for permits for pretreatment facilities shall be made in triplicate upon forms approved by the director and submitted along with applicable supporting information to the division at the addresses given in subdivision (a) of this Rule.

~~(e)~~ (f) Applicants for permits for new discharges which propose to discharge industrial process wastewater in excess of 100,000 gallons per day or 10 MGD of cooling water or any other proposed discharge of 1 MGD or greater to the surface waters shall file, in addition to the applications and supporting documents required in Subsections (a) and (b), an assessment sufficient to describe the impact of the proposed action upon the waters of the area. As a minimum, the assessment shall contain the following:

- (1) Cover Sheet. The cover sheet shall indicate the nature of the proposed action, the name of the permit applicant, the date of the assessment, and the signature of the responsible company official.
- (2) The assessment shall identify, develop, and analyze the pertinent issues concerning the impact on the aquatic environment as follows:

(A) Background and description of the proposed discharge: The assessment shall describe the proposed discharge, its product or purpose, its location, and its construction and operation time schedule in as broad a context as is reasonable. The relationship of the project to other projects and proposals directly affected by or stemming from the construction and operation of the discharge should be dis-

cussed. Maps, photos, or artist sketches should be incorporated if available to help depict the environmental setting and, if not available, supporting documents should be referenced.

(B) Alternatives available for treatment or other control methods should be described, developed and objectively weighed against the proposed discharge. The analysis should be sufficiently detailed to allow for comparative evaluation of impacts on the aquatic environment. The analysis of alternatives shall be compared to the existing aquatic environment.

(C) The assessment should discuss the primary and secondary environmental impacts both beneficial and adverse. The scope of the description should include both short term and long term impacts.

(D) Adverse impacts which cannot be avoided should the permit be issued should be described in detail and proposed remedial or protective measures which will be taken to minimize such impacts should be described. This shall be a description of the extent to which the proposed activity involves trade-offs between short term environmental gains at the expense of long term losses or vice-versa and the extent to which proposed actions may foreclose future options. The assessment must adequately address irreversible and irretrievable commitments of aquatic resources which will result if the permit is issued.

(3) Any assessment which is required by any other state agency or any federal agency shall be deemed to comply with requirements of this subsection provided aquatic impacts are adequately addressed.

(4) ~~No permit shall be subject to challenge by a third party on the grounds that information required under this subsection is incomplete or insufficient.~~

(g) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to the North Carolina Environmental Policy Act, NCGS 113A. NPDES permit applications for which such documentation is required will be considered incomplete until supported by the required documentation.

(h) For NPDES permits, a full disclosure of all known toxic components that can be reasonably expected to be in the discharge, including but not limited to those contained in a priority pollutant analysis, must be submitted for all primary industrial direct discharges in accordance

with 40 CFR 122.21 Appendix D which are adopted by reference as amended through January 1, 1986 and for other direct discharges as required by the director.

*Statutory Authority G.S. 143-215.1(c); 143-215.3(a); 143-215.3(b).*

#### .0107 STAFF REVIEW AND EVALUATION

(a) The director is authorized to accept applications for the commission and shall refer all applications to the staff for review and evaluation. Additionally, the director shall refer applications for the disposal of waste into waters classified as sources of public water supply (classification WS II and III) and shellfish waters classified SA to the Division of Health Services, Department of Human Resources, for review and written approval.

(b) The director shall acknowledge receipt of a complete application or, if not complete, shall return the application to the applicant with a statement of what additional information is required.

(c) Tentative Determination and Draft Permit

(1) The staff shall conduct a site investigation including an on-site inspection and shall prepare its written evaluation and tentative determination to issue or deny the permit.

(2) If the staff's tentative determination in Paragraph (1) of this Subdivision is to issue the permit, it shall if necessary make the following additional determinations in writing:

(A) proposed effluent limitations for those pollutants proposed to be limited;

(B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(C) a brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

(3) The staff shall organize the determinations made pursuant to Paragraphs (1) and (2) of this Subdivision into a draft permit.

(d) In the case of permits for which notice of intent is given on short forms E through ~~N~~ M as described in Rule .0105(a) of this Article, a Certificate of Coverage under a general permit shall be prepared and issued directly to the applicant in lieu of any other acknowledgement. If the Notice of Intent is unacceptable, it will be returned to the applicant with a brief explanation.

*Statutory Authority G.S. 130-161; 143-215.3 (a) (1); 143-215.3 (a) (4); 143-215.1 (a); 143-215.1 (c).*

**.0108 FACT SHEETS**

(a) For all discharges which do not qualify for a general permit and which have a total volume of 500,000 or more gallons on any day, or as may be determined by the director, a fact sheet providing a brief synopsis of the application shall be prepared by the staff and made available upon request following issuance of the public notice. The contents of such fact sheets shall include at least the following information:

- (1) sketch or detailed description of the location of the discharge described in the application;
- (2) a quantitative description of the discharge described in the application which includes at least the following:
  - (A) the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day;
  - (B) for thermal discharges subject to limitation under the act, the average summer and winter temperatures in degrees Fahrenheit; and
  - (C) the average daily discharge in pounds per day of any pollutants which are present in significant quantities or which are subject to limitations or prohibition;
- (3) the tentative determinations required under Rule .0107 of this Section;
- (4) a brief citation of the water quality standards and effluent standards and limitations applied to the proposed discharge, including a brief identification of the uses for which the receiving waters have been classified; and
- (5) a fuller description of the procedures for the formulation of final determinations than that given in the public notice including:
  - (A) the 30-day comment period required by Rule .0110 of this Section,
  - (B) procedures for requesting a public meeting and the nature thereof, and
  - (C) any other procedures by which the public may participate in the formulation of the final determinations.

(b) Any person, upon request, will be furnished, without charge, one copy of any fact sheet. ~~Any person may also request and receive all fact sheets as they are published by the department. Persons requesting all fact sheets shall be included in a special fact sheet mailing list. Requests for all fact sheets shall be renewed by~~

~~July 1 of each year or the name of the person making the request shall be dropped from the fact sheet mailing list. Appropriate notice shall be given by the director prior to dropping persons from the fact sheet mailing list.~~

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(c)(2)(i).*

**.0109 PUBLIC NOTICE**

(a) Notice of Application

- (1) Public notice of each complete NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the director at least 45 days prior to any proposed final action:
  - (A) by publishing the notice one time in a newspaper having general circulation in said county; and
  - (B) by mailing the notice to all persons or agencies listed in Subsection (c) of this Rule.
- (2) The notice shall set forth at least the following:
  - (A) name, address, and phone number of agency issuing the public notice;
  - (B) name and address of each applicant;
  - (C) brief description of each applicant's activities or operations which result in the discharge described in the NPDES application;
  - (D) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;
  - (E) a statement of the tentative determination to issue or deny an NPDES permit for the discharge described in the NPDES application;
  - (F) a brief description of the procedures for the formulation of final determinations, including a 30-day comment period and any other means by which interested persons may influence or comment upon the determinations; and
  - (G) address and phone number of state agency premises at which interested persons may obtain further information, request a copy of the draft permit, request a copy of the fact sheet, and inspect and copy NPDES application forms and related documents. Copies of the fact sheet shall be made available free upon request. Copies of the information on file, other than fact sheets, will be made available upon request and payment of the cost of reproduction.

(3) ~~Public notice of NPDES applications for discharges from single family dwellings of 1,000 gallons per day or less shall not be required.~~

(4) (3) Public notice for those activities covered by general permits shall not be required.

(b) Notice of Public Meeting

(1) Notice of public meeting on any NPDES permit application shall be circulated in the geographical areas of the proposed discharge by the director at least 30 days prior to the date of the meeting:

(A) by publishing the notice one time in a newspaper having general circulation in said county;

(B) by mailing the notice to all persons and government agencies which received a copy of the notice or the fact sheet for the NPDES application; and

(C) by mailing the notice to any person or group upon request.

(2) The contents of public notice of any meeting shall include at least the following:

(A) name, address, and phone number of agency holding the public meeting;

(B) name and address of each applicant whose application will be considered at the meeting;

(C) name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(D) a brief reference to the public notice issued for each NPDES application including identification number and date of issuance;

(E) information regarding the time and location for the meeting;

(F) the purpose of the meeting;

~~(G) a concise statement of the issues raised by the persons requesting the meeting;~~

~~(H)~~ (G) address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit, request a copy of each fact sheet, and inspect and copy NPDES forms and related documents; and

~~(H)~~ (II) a brief description of the nature of the meeting including the rules and procedures to be followed; The notice shall also state that additional information is on file with the Division of Environmental Management, Department of Natural Resources and Community Development at the Archdale Building at

512 North Salisbury Street, Raleigh, North Carolina, and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost of reproduction.

(c) Mailing Lists. Any person may request to receive copies of all notices required under this Rule and the director shall mail such notice to any such person. The director shall also give notice to the following for NPDES permits:

(1) State water pollution control agency for the States of Virginia, South Carolina, Tennessee, and Georgia;

(2) Appropriate district engineer, U.S. Army Corps of Engineers;

(3) Lead agency responsible for preparation of plan pursuant to Section 208(b) of the Clean Water Act, 33 U.S.C. Section 1251 et seq, in approved 208 areas;

(4) State agency responsible for the preparation of plans pursuant to Section 303(e) of the Clean Water Act, 33 U.S.C. Section 1251 et seq;

(5) North Carolina Department of Human Resources, Division of Health Services, and appropriate local health agency;

(6) Any other federal, state, or local agency upon request; and

(7) The local governmental unit or units having jurisdiction over specific residential projects as specified in N.C.G.S. 143-215.1(d1).

*Statutory Authority G.S. 143-215.1(a)(1); 143-215.1(c); 143-215.4(a); 143-215.4(c).*

#### .0114 MODIFICATION AND REVOCATION OF PERMITS

(a) Any permit issued pursuant to this Regulation is subject to revocation or modification in whole or part pursuant to 40 CFR 122.62 or for good cause including but not limited to:

(1) violation of any terms or conditions of the permit;

(2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

(3) a change in any condition that requires either a temporary or permanent reduction or limitation of the permitted discharge; and

(4) refusal of the permittee to permit the director or his authorized representative upon presentation of credentials:

(A) to enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit,

- (B) to have access to any copy and records required to be kept under terms and conditions of the permit,
- (C) to inspect any monitoring equipment or method required in the permit, or
- (D) to sample any discharge of pollutants.
- (5) failure to pay the annual fee for administering and compliance monitoring.
- (b) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as follows:
  - (1) modifications of the monitoring program contained in the permit,
  - (2) name changes or changes in the ownership of the discharge when no other change in the permit is indicated,
  - (3) a single modification of any compliance schedule not in excess of four months,
  - (4) modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational,
  - (5) modifications to include or amend pretreatment program requirements.

The director may disallow these exemptions on a case by case basis.

(c) A request for a modification or revocation by the permittee shall constitute a waiver of the 60 day notice required by G.S. 143-215.1(b) for modifications or revocations.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.1(b)(3).*

#### .0127 GENERAL PERMITS

(a) To the extent adopted by the commission and approved by EPA, the director is authorized to issue general permits for certain specifically defined classes of dischargers. General permits, which are developed for categories of activities shown in this Rule, will cover all those dischargers in the State that received a "Certificate of Coverage" for that category from the division. Each of the general permits will be issued as an individual permit under G.S. 143-215.1, using all procedural requirements specified for individual NPDES or state permits including application and public notice. Each general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered

under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the commission and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the director or his designee shall grant appropriate certification.

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities discharging to water supply (WS-III) waters;
- (7) oil terminal storage facilities discharging to waters other than those classified as water supply waters;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration.

(b) Coverage under general permits will only be issued granted for discharge into waters classified either WS or SA following review and written approval by the Division of Health Services, Department of Human Resources.

(c) Coverage under general permits will only be issued granted where the applicant certifies individual requesting coverage verifies that best management practices have been installed. These general permits apply statewide except where restrictions based on the classification of receiving waters are stated.

(d) These general permits apply only to cooling water, and mine dewatering discharges with volumes of less than 10 MGD and to other discharges listed in this Rule with volumes of less than 1 MGD.

(e) No provision in any general permit issues under this Rule shall be interpreted as allowing the permittee to violate state water quality standards or other applicable environmental standards.

(f) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using short forms E through M described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this Article. If all requirements are met, ~~a coverage under the general permit may be issued.~~ granted. If all requirements are not met, a long form application and full application review procedure will be required.

(g) General permits will be effective for a term of five years at the end of which the division may renew them. All public notice requirements shall be satisfied prior to renewal of general permits.

**Facilities Dischargers** covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the division. If the division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(h) All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked by approval of the Notice of Intent to be covered by a general permit.

(i) Anyone engaged in activities covered by the general permit regulations but not permitted in accordance with this Section will be considered in violation in G.S. 143-215.1.

~~(j) If a facility has multiple discharges, not all of which can be covered by one or more general permits, it is not eligible for any general permit, and all discharges must be approved under a single individual permit.~~

~~(k) (i) Any applicant individual covered or considering coverage under a general permit may choose to pursue an individual permit for any facility covered by this Rule.~~

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

#### .0129 GENERAL PERMIT FOR MINE DEWATERING FACILITIES

(a) Operators of mine dewatering facilities are authorized to discharge to all receiving waters except classified trout (Tr) and water supply I (WS-I) waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) Monitoring and reporting of flow, settleable matter, turbidity, and pH is required monthly.

(c) The following discharge limitations apply to discharges under this general permit:

- (1) Settleable matter: monthly average not to exceed 0.1 ml/l, daily maximum not to exceed 0.2 ml/l;
- (2) Turbidity in the effluent shall not exceed 50 NTU.
- (3) TSS: monthly average not to exceed 30 mg/l, daily maximum not to exceed 45 mg/l;
- (4) pH: between 6.0 and 9.0 standard units for freshwater or between 6.8 and 8.5 for salt waters.

(d) The permittee shall utilize sound management practices to ensure that contaminants do not enter the surface waters as a result of blasting at this site.

(e) Use of any additive chemical will require the discharger to obtain an individual NPDES permit.

Statutory Authority G.S. 143-215(1);  
143-215(3).

#### .0130 GENERAL PERMIT FOR WATER FILTRATION FACILITIES

(a) Operators of water filtration facilities are authorized to discharge to all receiving waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) Monitoring and reporting of settleable matter, turbidity, total suspended solids, and pH is required monthly.

(c) The following discharge limitations apply to discharges under this general permit:

- (1) Settleable matter: monthly average not to exceed 0.1 ml/l, daily maximum not to exceed 0.2 ml/l.
- (2) Turbidity in receiving water due to a discharge shall not exceed 50 NTU in streams or 25 NTU in lakes or reservoirs; if turbidity exceeds these levels due to natural background conditions, the discharge level cannot cause any increase in turbidity in the receiving water.
- (3) TSS: monthly average not to exceed 30 mg/l, daily maximum not to exceed 45 mg/l.
- (4) pH: between 6.0 and 9.0 standard units in freshwater or between 6.8 and 8.5 for salt waters.

(d) The permittee shall operate the facility in a manner which will minimize the impact on receiving waters.

Statutory Authority G.S. 143-215(1);  
143-215(3).

#### .0131 GENERAL PERMIT/SWIMMING POOL FILTER BACKWASH FACILITIES

(a) Operators of swimming pool filter backwash facilities are authorized to discharge to all receiving waters except for classified Trout (Tr) waters in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule. All swimming pools which are operated in accordance with Paragraphs (c) through (f) of this Rule shall be deemed to be covered by this general permit. Paragraph (f) of Rule .0127 of this Section does not apply to swimming pools and no Notice of Intent need be submitted.

(b) No monitoring is required.

(c) The following discharge limitation applies to discharges under this general permit: pH between 6.0 and 9.0 standard units in freshwater and 6.8 and 8.5 standard units in salt waters.

(d) The permittee shall take steps to limit the discharge of chlorine by following manufacturers' recommendations on the use of products containing chlorine and by controlling the discharge.

(e) Solids shall be disposed of in an approved manner.

(f) The permittee shall take adequate precaution to ensure that nuisance conditions do not occur as a result of this discharge.

*Statutory Authority G.S. 143-215(1); 143-215(3).*

#### .0133 GENERAL PERMIT/OIL STORAGE FACILITIES DISC/WS-III WATERS

(a) Operators of oil storage facilities are authorized to discharge to water supply waters classified WS-III in accordance with discharge limitations, monitoring requirements, and other conditions set forth in this Rule.

(b) Monitoring and reporting of oil and grease in effluent is required twice monthly. Monitoring and reporting of phenols in effluent and in receiving water is required twice monthly.

(c) The following discharge limitations apply to discharges under this general permit:

- (1) Oil and grease: monthly average not to exceed 30 mg/l, maximum not to exceed 60 mg/l.
- (2) Phenols: average in discharge shall not cause instream concentration of phenols to be greater than 1.0 ug/l.

(d) The permittee shall maintain a list of all oils and toxic and hazardous substances used or stored at the facility, all potential sources of spill and leaks of these materials, a method for containment, a description of training, inspection and security procedures, and emergency response measures to be taken in the event of a discharge to surface waters. The list shall be maintained at the plant site and shall be available for inspection by EPA or division personnel.

*Statutory Authority G.S. 143-215(1); 143-215(3).*

#### .0137 GENERAL PERMIT FOR AQUIFER RESTORATIONS

(a) Operators of facilities for the recovery and treatment of contaminated groundwater are authorized to discharge, for a period not to exceed 180 days following issuance of the Certificate of Coverage under the General Permit, to all receiving waters except WS-I, WS-II, WS-III and

SA in accordance with the discharge limitations, monitoring requirements and other conditions set forth in this Rule.

(b) The ~~applicant individual~~ requesting coverage must demonstrate by predictive calculations, accepted modeling procedures, or other methods approved by the director that contravention of the applicable water quality standards will not occur as a result of this discharge. Furthermore, ~~the applicant that individual~~ shall demonstrate by testing that there will be no acute toxicity in the wastestream and no aquatic chronic toxicity in the receiving stream.

(c) Monitoring and reporting of effluent for the toxic, hazardous or deleterious substances, which are the subject of the site-specified aquifer restoration, is required on a monthly frequency unless otherwise specified in the General Permit.

(d) Certificates of Coverage under the general permits permit for aquifer restoration will only be issued in cases where it has been demonstrated to the satisfaction of the director that the threat to human health and safety or to the aquatic environment are too great to allow for the normal processing time of an NPDES Permit. If the ~~applicant individual seeking coverage~~ or the division determines that the restoration cannot be completed within 180 days, ~~the applicant an application must be filed~~ for a standard NPDES Permit at the same time that the request for coverage under the general permit application is filed. ~~for the general permit.~~

(e) Contaminated soils shall be disposed of at an approved solid or hazardous waste disposal facility.

*Statutory Authority G.S. 143-215(1); 143-215(3).*

#### .0142 USE OF WASTEWATER TREATMENT WORKS EMERGENCY MAINTENANCE: OPERATION AND REPAIR FUND

(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the director to correct the cause of such conditions.

(b) In this, the director shall:

- (1) Ensure the fiscal integrity of the fund;
- (2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;
- (3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);

- (4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;
- (5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;
- (6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and
- (7) Provide a quarterly accounting of the fund to the commission.

Statutory Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e).

## SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS

### .0203 DEFINITION OF TERMS

The terms used in this Section shall be as defined in G.S. 143-213 except for G.S. 143-213(15) and (18)a. and as follows:

- (1) "Agronomist" means an individual who is a Certified Professional Agronomist by ARCPACS (American Registry of Certified Professionals in Agronomy, Crops and Soil) or an individual with a demonstrated knowledge in agronomy.
- (2) "Bedrock" means any consolidated or coherent and relatively hard, naturally-formed mass of mineral matter which cannot be readily excavated without the use of explosives or power equipment.
- (+)(3) "Building" means any structure or part of a structure built for the separate shelter or enclosure of persons, animals, chattels, or property of any kind and which has enclosing walls for at least 50 percent to its perimeter. Each unit separated from other units by a four hour fire wall shall be considered as a separate building.
- (+)(4) "Building drain" means that part of the lowest piping of a drainage system which receives waste from inside the building and conveys it to the building sewer which begins ten feet outside the building wall.
- (+)(5) "Building sewer" means that part of the horizontal piping of a drainage system which receives the discharge of the building drain and conveys it to a public sewer, private sewer, or on-site sewage disposal system.
- (+)(6) "C horizon" means the unconsolidated material underlying the soil solum, which may or may not be the same as the parent material from which the solum is formed but is below the zones of major biological ac-

tivity and exhibits characteristics more similar to rock than to soil.

- (+)(7) "Director" means the Director of the Division of Environmental Management, Department of Natural Resources and Community Development or his delegate.
- (+)(8) "Dedicated site" means a site:
  - (a) to which sludge is applied at rates or frequencies greater than agronomically justifiable, or ~~at agronomic rates~~ where the primary use of the land is for sludge disposal and crop or ground cover production is of secondary importance, or
  - (b) any sludge disposal site designated by the director.
- (+)(9) "Division" means the Division of Environmental Management, Department of Natural Resources and Community Development.
- (+)(10) "Groundwaters" means those waters in the saturated zone of the earth.
- (+)(11) "Industrial wastewater" means all wastewater other than sewage and includes:
  - (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
  - (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants;
  - (c) stormwater will not be considered to be an industrial wastewater unless it is contaminated with an industrial wastewater;
  - (d) any combination of sewage and industrial wastewater.
- (+)(12) "Pollutant" means waste as defined in G.S. 143-213(18).
- (+)(13) "Private sewer" means any part of a sewer system which collects wastewater from more than one building, is privately owned and is not directly controlled by a public authority.
- (+)(14) "Professional engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.
- (+)(15) "Public or community sewage system" means a single system of sewage collection, treatment, and/or disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county, a municipality, or a public utility.
- (+)(16) "Public sewer" means a sewer located in a dedicated public street, roadway, or dedicated public right-of-way or easement which is owned or operated by any municipi-

pality, county, water or sewer district, or any other political subdivision of the state authorized to construct or operate a sewer system.

(17) "Rapid infiltration system" means rotary distributor systems or other similar systems that dispose of tertiary treated waste at high surface area loading rates.

~~(15)~~ (18) "Sewage" means the liquid and solid human waste, and liquid waste generated by domestic water-using fixtures and appliances, from any residence, place of business, or place of public assembly. Sewage does not include wastewater that is totally or partially industrial wastewater, or any other wastewater not considered to be domestic waste.

~~(16)~~ (19) "Sewer system" means pipelines or conduits, pumping stations, and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.

~~(17)~~ (20) "Sludge" means any solid or semisolid waste generated from a wastewater treatment plant, water supply treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

(21) "Soil Scientist" means an individual who is a Certified Professional in Soils through the N.C. Soil Science Society or a Certified Professional Soil Scientist or Soil Specialist by ARCPACS (American Registry of Certified Professionals in Agronomy, Crops and Soils) or an individual with a demonstrated knowledge in soils science.

~~(18)~~ (22) "Staff" means the staff of the Division of Environmental Management, Department of Natural Resources and Community Development.

~~(19)~~ (23) "Subsurface ground absorption sewage disposal system" means a waste disposal method which distributes waste beneath the ground surface and relies primarily on the soil for leaching and removal of dissolved and suspended organic or mineral wastes. Included are systems for public or community sewage systems and systems which are designed for the disposal of industrial wastes.

~~(20)~~ (24) "Surface waters" means all waters of the state as defined in G.S. 143-213(20) except underground waters. Land application systems utilizing subsurface sludge injection are not included.

(25) "Toxicity test" means a test for toxicity conducted using the procedures contained in 40 CFR 261, Appendix II as amended through July 1, 1986 or any later adopted

amendments or additions of this document as is allowed by G.S. 150B-14(c).

~~(24)~~ (26) "Treatment works or disposal system which does not discharge to surface waters" means any treatment works or disposal system which is designed to:

- (a) operate as closed system with no discharge to waters of the state, or
- (b) dispose of wastes, including residual sludges, after treatment to the surface of the land, or
- (c) dispose of wastes through a subsurface absorption system.

~~(22)~~ (27) "Underground waters" means all waters in the subsurface including ~~infiltration and groundwaters.~~ waters in the unsaturated and saturated zone.

Statutory Authority G.S. 130A-335; 143-213; 143-215.3(a)(1).

#### .0205 APPLICATION: PERMIT FEES: SUPPORTING INFORMATION: REQUIREMENTS

(a) Jurisdiction. Applications for sewer system extensions under the jurisdiction of a local sewer system program shall be made in accordance with applicable local laws and ordinances. Applications for permits from the division shall be made in accordance with this Rule as follows.

(b) Applications. Application for a permit must be made in triplicate on official form completely filled out, where applicable, and fully executed in the manner set forth in Rule .0206 of this Section. A processing fee as described herein must be submitted with each application in the form of a check or money order made payable to N.C. Department of Natural Resources and Community Development. Applications may be returned if not accompanied by the processing fee. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization.

(c) Processing Fee. ~~A non refundable processing fee of one hundred dollars (\$100.00) shall be submitted with each application. No processing fee will be charged for modification of unexpired permits when the modifications are initiated by the director to correct processing errors, to change permit conditions, or otherwise to implement new standards. The processing fee shall not apply to any farmer who submits an application which pertains to his farming operation. The division shall not require permit processing fees for permits issued by local sewer system programs.~~

(c) Permit Fees:

- (1) Permit Application Processing Fees. For every application for new or revised permit under this Section, a nonrefundable application processing fee in the amount stated in Subparagraph (5) of this Paragraph shall be submitted at the time of application.
  - (A) Each permit or renewal application is incomplete until the application processing fee is received;
  - (B) For a facility with multiple treatment units under a single permit, the processing fee shall be set by the total design treatment capacity;
  - (C) No processing fee will be charged for modification of unexpired permits when the modifications are initiated by the director;
  - (D) A processing fee of twenty-five dollars (\$25.00) will be charged for minor modifications such as name changes;
  - (E) A full application processing fee will be charged for major modifications specifically including any which increase the design capacity; this fee will be in the same amount as shown in Subparagraph (5) of this Paragraph for standard applications.
- (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every renewable permit according to the schedule in Subparagraph (5) of this Paragraph. Annual fees will not be charged for permits which do not require renewal.
  - (A) Collection of annual fees shall begin upon approval of this Rule for new or modified permits;
  - (B) Annual administering and compliance monitoring fees must be paid for any facility operating on an expired permit after the effective date of this Rule. The director shall establish an anniversary date for such a facility and notify the responsible party of the requirement to pay annual fees;
  - (C) For any permit which undergoes a major modification which requires an application processing fee in accordance with Subparagraph (1) of this Paragraph, the annual administering and compliance monitoring fee shown in Subparagraph (5) of this Paragraph must be paid for each whole permit-year left in the duration of its permit;
  - (D) For a facility with multiple treatment units under a single permit, the annual administering and compliance monitoring fee shall be set by the single treatment system with the highest fee in the fee schedule;
  - (E) A person with only one permit will be billed annually on an anniversary date to be determined by the division. This will normally be the first day of the month of permit issuance;
  - (F) A person with multiple permits may have annual administering and compliance monitoring fees consolidated into one annual bill;
  - (G) Any permittee which has maintained full compliance with all permit conditions during the previous calendar year will have its administering and compliance monitoring annual fee reduced by 25 percent. Permittees operating under interim limits, judicial orders, or special orders by consent will not be eligible for any discount. Full compliance will be established if it can be certified by the director that no Notice of Noncompliance or Notice of Violation was sent to the permittee during the compliance period being considered. If a Notice of Noncompliance or a Notice of Violation was based on erroneous information, the director can send a letter of correction to the permittee clearing the record for compliance purposes;
  - (H) A change in the facility which changes the annual fee set by Subparagraph (5) of this Paragraph will result in the revised annual fee being billed in all remaining whole permit years;
  - (I) A facility not yet in operation or which has ceased all operations at a site will not be required to pay the next annual administering and compliance monitoring fee provided operations are not started or resumed during that permit year. Any operations will necessitate the payment of the entire annual fee for that year;
  - (J) Closed-loop recycle systems, which store or recycle industrial waste and do not discharge to the surface water, groundwater or land surface, shall be charged a constant annual administering and compliance monitoring fee for all sizes of facilities at the fee amount shown by Subparagraph (5) of this Paragraph.
- (3) No fees are required to be paid under this Regulation by a farmer who submits an

- application or receives a permit that pertains to his farming operations.
- (4) Failure to pay an annual administering and compliance monitoring fee within 30 days after being billed may cause the division to initiate action to revoke the permit.
- (5) Schedule of Maximum Nondischarge Fees:

Permit Application Processing Fee		
Category	Standard	Simple Renewal
> 1,000,000 GPD	\$ 300	\$ 150
Domestic or Cooling water	300	150
10,001 - 1,000,000 GPD	250	125
Domestic or Cooling Water	250	125
1,001 - 10,000 GPD	200	100
Domestic or Cooling Water	200	100
< = 1000 GPD and Single family dwelling	120	60
Sludge < = 300 acres	250	125
Sludge > 300 acres	250	125
Sewer extensions (nondelegated)	200	:
Sewer extensions (delegate to municipalities)	100	:
Closed-loop recycle system	250	100

Annual Administering and Compliance Monitoring Fee

Category	Standard	Compliance Reduction
> 1,000,000 GPD	\$ 800	\$ 600
Domestic or Cooling water	600	450

10,001 - 1,000,000 GPD	400	300
Domestic or Cooling Water	300	225
1,001 - 10,000 GPD	300	225
Domestic or Cooling Water	225	150
< = 1000 GPD and Single family dwelling	0	0
Sludge < = 300 acres	300	225
Sludge > 300 acres	500	375
Sewer extensions (nondelegated)	:	:
Sewer extensions (delegate to municipalities)	:	:
Closed-loop recycle system	150	:

(6) A portion of the permit application processing fees shown in the fee schedule in Subparagraph (5) of this Paragraph will be transferred into the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund according to the following schedule:

(A) All facilities treating domestic wastewater with design flows of 100,000 gallons per day or less, except single family dwellings, seventy-five dollars (\$75.00);

(B) Single family dwellings, forty dollars (\$40.00); and

(C) All facilities with design flows greater than 100,000 gallons per day, zero.

(7) When the total value of the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund, as certified by the State Treasurer, is at least seven hundred fifty thousand dollars (\$750,000.00) at the end of a quarter, the application processing fees for facilities with capacities of one hundred thousand gallons per day (100,000 GPD) or less shall be reduced by the amounts being transferred under Subparagraph (6) of this Paragraph. This reduction shall continue

until, at the end of some subsequent quarter, the State Treasurer certifies that the fund's balance is less than seven hundred fifty thousand dollars (\$750,000.00), in which case the full amount of the application processing fees as listed in Subparagraph (5) of this Paragraph shall be charged.

(d) Supporting Documents and Information. This Paragraph outlines those supporting documents and information which must be submitted for sewers, sewer extensions, and disposal systems and wastewater treatment works which do not discharge to the surface waters of the state.

(1) For all facilities:

(A) Required sets of plans and specifications:

(i) regular projects -- three sets of detailed plans and specifications signed and sealed by a professional engineer;

(ii) federal and state grants projects -- four sets of detailed plans and specifications plus federal assurances required by appropriate federal agency;

(B) Specifications describing all materials to be used, methods of construction and means for assuring the quality and integrity of the finished project;

(C) A general location map, showing orientation of the facility with reference to at least two geographic references (numbered roads, named streams/rivers, etc.);

(D) A description of the origin, type and flow of waste to be treated. Waste analysis must be extensive enough to allow a complete evaluation of the system to treat the waste and any potential impacts on the waters of the state;

~~(D)~~ (E) When required, a statement submitted that the wastewater treatment facility involved will be properly disconnected and the wastewater discharged into an adequate district or municipal system when it becomes available;

~~(E)~~ (F) Permits which result in construction of facilities which will be funded by public monies may require environmental documentation pursuant to the North Carolina Environmental Policy Act. Permit applications for which such documentation is required will not be considered complete until supported by the required documentation;

~~(F)~~ (G) If more than one contiguous acre of land is to be uncovered by a project, documentation should be supplied verifying that the applicant has completed or is working with the appropriate regional en-

gineer of the Land Quality Section on the completion of an erosion control plan.

(2) For wastewater facilities specified in G.S. 143-215.1 (d1) that are or will be jointly or commonly owned, either a copy of a properly executed operational agreement or evidence to show that the applicant has been designated as a public utility by the State Utilities Commission.

(3) For sewers and sewer extensions:

(A) design flow;

(B) rate of infiltration in gallons per day per inch of pipe diameter per mile of pipe;

(C) letter of agreement from owner or proper official of treatment works accepting the wastewater, if application is not submitted by owner or proper official having charge of treatment works;

(D) plan and profile of sewers, showing their proximity to other utilities and natural features, such as water supply lines, water lines, storm drains, surface waters, roads and other trafficked areas.

(E) Construction of sewers and sewer extensions are prohibited in the following areas unless the specified determinations are made:

(i) in a natural area designated on the State Registry of Natural Heritage Areas by a protection agreement between the owner and the Secretary of the N.C. Department of Natural Resources and Community Development, unless the EMC agrees that no prudent, feasible or technologically possible alternative exists;

(ii) in a natural area dedicated as a North Carolina Nature Preserve by mutual agreement between the owner and State of North Carolina (Governor and Council of State), unless the EMC recommends and the Governor and Council of State agree that no prudent, feasible or technologically possible alternative exists.

(4) For pumping stations:

(A) design calculations for pump and force main sizing;

(B) plan and profile of sewers, showing their proximity to other utilities and natural features, such as water supply lines, water lines, storm drains, surface waters, roads and other trafficked areas;

(C) pump station site location map;

(D) name and classification of adjacent surface waters which could be affected by a failure.

(5) For subsurface ground absorption systems:

(A) soil evaluation of the disposal site conducted by a soils scientist ~~down to the top of the "C" horizon and deeper if necessary~~ to adequately evaluate the soils to be utilized for treatment and disposal ~~down to a depth of seven feet to include, but is not limited to, field descriptions of texture; porosity; color; percolation rate; field capacity; total structure, the depth thickness and type of restrictive horizons; cation exchange capacity;~~ the presence or absence and depth of evidence of any seasonal high water table; ~~and his~~ recommendations concerning application rates of liquids, solids, ~~minerals~~ and other wastewater constituents; ~~of the wastewater;~~ field estimates of saturated hydraulic conductivity in the most restrictive horizon; and cation exchange capacity. Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site;

(B) design data;

(C) plans of complete system including plan and profile and cross section views for all relevant system components;

(D) a map of the site, with topographic contour intervals not exceeding two feet ~~or 25 percent of total site relief, whichever is less,~~ and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);

(E) For systems treating industrial waste, and any system with a design flow of over 25,000 gpd, a hydrogeologic and soils description of the subsurface to a depth of 20 feet or bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:

- (i) significant changes in lithology underlying the site;
- (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone, and
- (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data);

(F) For all projects with a design flow of greater than 25,000 gpd, a determination of transmissivity, or hydraulic conductiv-

ity, or permeability of the unconfined aquifer. Values for aquifer transmissivity, hydraulic conductivity or permeability coefficients must be determined using site-specific data and derived from field test or laboratory measurements using one or more of the following:

(i) withdrawal or recovery tests utilizing a network of pumping and observation wells;

(ii) constant or variable head permeameters conducted on samples, collected with a sampling device that will not require remoulding of the sample for use in the permeameter;

(iii) slug tests conducted in the saturated zone utilizing fluid recharge or withdrawal in either cased or uncased boreholes, and

(iv) any other method approved by the director.

~~(F)~~ (G) Information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within 500 feet of the waste treatment/disposal area;

~~(G)~~ (H) Degree of treatment (primary, secondary, tertiary);

~~(H)~~ (I) For industrial waste a complete chemical analysis of the typical wastewater or sludge to be discharged, may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus, Ammonia, Nitrates, Phenol, Total Trihalomethanes, ~~EP~~ Toxicity test parameters, Total Halogenated Compounds, Total Coliforms and Total Dissolved Solids;

~~(I)~~ (J) proposed location and construction details of a monitoring well network.

(6) For land application of sludge on other than dedicated sites:

(A) a map of the site with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility related structures within the property boundary and the location of all wells, pits and quarries, springs, lakes, ponds, or other surface drainage features within 500 feet of the disposal site;

(B) a soil scientist's recommendations concerning application rates of liquids, solids, minerals and other wastewater constituents;

(C) a project evaluation conducted by an agronomist including recommendations concerning cover crops and their ability to accept the proposed application rates of

- liquids, solids, minerals, and other wastewater constituents;
- (D) project description for the land application system, including treatment, storage, land application method, equipment, and a receiver management plan;
- (E) for industrial wastes, a complete chemical analysis of the typical wastewater or sludge to be applied may include, but is not limited to percent Total Solids, pH, NH<sub>3</sub>-N, NO<sub>3</sub>-N, TKN, Total Phosphorus, Potassium, Toxicity test parameters, Cadmium, Chromium, Copper, Lead, Nickel, Zinc, Mercury, Arsenic, Selenium;
- (F) information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within 500 feet of the disposal site;
- (G) For sites previously permitted: Soil evaluation of the application sites by a soils scientist to confirm or establish the soil map through field evaluation of soil texture; color; structure; the depth, thickness, and type of restrictive horizons; the presence or absence of seasonal high water table within three vertical feet of the surface or subsurface application depth; and cation exchange capacity;
- (H) For sites not previously permitted:
- (i) A USDA-SCS soils map of the application site. In addition, a soil evaluation of the application site by a Soils Scientist, to verify the accuracy of the SCS soils map regarding the presence or absence of a seasonally high water table or bedrock within three vertical feet of the deepest point of sludge application; and cation exchange capacity;
  - (ii) If a USDA-SCS soils map of the application site is not available, soil evaluation of the disposal site by a soils scientist down to a depth of seven feet or the "C" horizon, whichever is less, to develop a soil map through field evaluation of soil texture; color; the depth; thickness, and type of restrictive horizons; the presence or absence of a seasonal high water table, or bedrock within three vertical feet of the deepest point of sludge application; and cation exchange capacity.
- (6) (7) For spray irrigation, land application on dedicated sites, or sludge disposal systems and treatment works, except for rotary distributor rapid infiltration disposal systems and systems for composting sludge for land application:
- (A) a map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, pits and quarries, springs, lakes, ponds, or other surface drainage features within 500 feet of the waste treatment/disposal site(s);
  - (B) excepting the application of sludge at other than dedicated sites, the information specified in Subsections (d) (5) (E), (F) (G) and (H) and (I) of this Rule;
  - (C) soil evaluation of the disposal site conducted by a soils scientist, down to the top of the "C" horizon, to adequately evaluate the soils to be utilized for treatment and disposal down to a depth of seven feet to include, but is not limited to field descriptions of texture; porosity; color; structure; percolation rate; field capacity; total the depth; thickness and type of restrictive horizons; cation exchange capacity; the presence or absence and depth of evidence of any seasonal high water table; and his recommendations concerning application rates of liquids, solids, minerals and other wastewater constituents; of the wastewater; field estimates or measurements of saturated hydraulic conductivity in the most restrictive horizon; and cation exchange capacity. Applicants may be required to dig pits when necessary for proper evaluation of the soils at the site.
  - (D) a project evaluation conducted and a receiver site management plan (if applicable) prepared by a qualified agronomist and his recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater;
  - (E) complete plans and specifications for the entire system, including treatment, storage, application, and disposal facilities and equipment. Treatment works previously permitted will not need to be shown, unless they are directly tied into the new units or are critical to the understanding of the complete process;
  - (F) For industrial waste, a complete chemical analysis of the typical wastewater or sludge to be discharged, treated, may include but not limited to Percent Total Solids, pH, Total Organic Carbon, BOD, COD, Chlorides, Sodium, Phosphorus, Sulfides, Bicarbonate, Magnesium, Nitrates, Phenol, Total Trihalomethanes,

- EP Toxicity test parameters, Total Halogenated Compounds, Total Coliforms and Total Dissolved Solids;
- (G) ~~Excepting the application of sludge at other than dedicated sites,~~ proposed location and construction details of a monitoring well network;
- (H) Information on the location, construction details, and primary usage (drinking water, process water, monitoring, etc.) of all wells within the ~~perimeter of compliance specified in Rule 21 .0103 (h) of this Chapter.~~ 500 feet of the disposal site.
- (7) (8) For systems for composting sludge for land application:
- (A) a map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds, or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
- (B) complete plans and specifications for the entire system, including facilities and equipment for treatment, storage and preparation for disposal;
- (C) for industrial waste, a hydrogeologic description of the subsurface, to a depth of 20 feet or bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
- (i) significant changes in lithology underlying the site;
  - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone; and
  - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data);
- (D) proposed location and construction details of a monitoring well network.
- (8) (9) For closed system or recycle disposal systems and treatment works:
- (A) for industrial waste, a complete chemical analysis of the typical wastewater or sludge to be discharged, may include but not limited to Total Organic Carbon, BOD, COD, Chlorides, Phosphorus, Nitrates, Phenol, Total Trihalomethanes, EP Toxicity test parameters, Total Halogenated Compounds, Total Coliforms and Total Dissolved Solids;
- (B) plans and specifications of the entire system. When necessary for an understanding of a treatment process, the applicant should also submit process flow diagrams;
- (C) For industrial waste, a hydrogeologic description of the subsurface to a depth of 20 feet or bedrock, whichever is less. The number of borings shall be sufficient to define the following for the area underlying each major soil type at the disposal site:
- (i) significant changes in lithology underlying the site;
  - (ii) the vertical permeability of the unsaturated zone and the hydraulic conductivity of the saturated zone; and
  - (iii) depth to the mean seasonal high water table (if definable from soil morphology or from evaluation of other applicable available data).
- (9) (10) ~~For rotary distributors:~~ RAPID INFILTRATION SYSTEMS:
- (A) a map of the site, with a horizontal scale of one inch equal 1,000 feet or less and topographic contour intervals not exceeding two feet or 25 percent of the total site relief, whichever is less, and showing all facility-related structures within the property boundary and the location of all wells, springs, lakes, ponds or other surface drainage features within 500 feet of the principal waste treatment/disposal site(s);
- (B) hydrogeological information describing the vertical and horizontal extent and lithologic character of the unconfined aquifer and its hydraulic relationship to the first confined aquifer beneath the site and the vertical permeability and thickness of the confining bed. The information must also include a determination of the transmissivity and specific yield of the unconfined aquifer, determined by either a withdrawal or recharge test;
- (C) a determination of the quality and movement of groundwater and surface water in the area and an evaluation of the impact that the proposed system will have on water levels, movement and quality of waters;
- (D) complete plans and specifications for the entire system, including treatment storage and rotary distributor facilities and equipment;
- (E) the information specified in .0205 (d) (5) (H);

- (F) proposed location and construction details of monitoring well network;
- (G) proposed monitoring plan including the method of determining groundwater levels and quality of water parameters and frequency of sampling.

Statutory Authority G.S. 143-215.1; 143-215.3(a)(1); 143-215.3B(b).

#### .0208 STAFF REVIEW AND PERMIT PREPARATION

(a) The staff of the permitting agency shall conduct a review of plans, specifications and other project data accompanying the application and shall determine if the application and required information are complete. The staff shall acknowledge receipt of a complete application. The local government unit or units having jurisdiction over specific residential projects shall be notified of permit applications in accordance with N.C.G.S. 143-215.1 (d1).

(b) If the application is not complete with all required information, the staff shall advise the applicant by mail:

- (1) how the application or accompanying supporting information may be modified to make them acceptable or complete;
- (2) that the 90 day processing period required in G.S. 143-215.1 and Rule .0209 of this Section begins upon receipt of corrected or complete application with required supporting information;
- (3) that, if complete plans with all required information are not resubmitted within 60 days, the application packet will be returned to the applicant as "incomplete".

(c) Pursuant to G.S. 143-215.67(a), the staff of the division shall determine for sewer system construction or sewer system extensions, whether the treatment works or the sewer system to which the new proposed system will connect discharge is adequate to receive waste which will be discharged to the new from the proposed system.

(d) For treatment works and disposal systems, the staff shall make a site-specific evaluation to determine the potential impacts of the proposed project on surface and ground water quality.

Statutory Authority G.S. 143-215.1 (b); 143-215.1 (d); 143-215.3 (a) (1); 143-215.3 (a) (4).

#### .0212 ADMINISTRATIVE HEARINGS (REPEALED)

Statutory Authority G.S. 143-215.1(e); 143-215.3(a)(1); 143-215.4.

#### .0213 MODIFICATION AND REVOCATION OF PERMITS

Any permit issued by the division pursuant to these Rules is subject to revocation, or modification upon 60 days notice by the director in whole or part for good cause including but not limited to:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) refusal of the permittee to ~~permit~~ allow authorized employees of the Department of Natural Resources and Community Development upon presentation of credentials:
  - (a) to enter upon permittee's premises on which a system is located in which any records are required to be kept under terms and conditions of the permit;
  - (b) to have access to any copy and records required to be kept under terms and conditions of the permit;
  - (c) to inspect any monitoring equipment or method required in the permit; or
  - (d) to sample any discharge of pollutants.
- (4) failure to pay the annual fee for administering and compliance monitoring.

Statutory Authority G.S. 143-215.1(b)(2); 143-215.3(a)(1).

#### .0219 MINIMUM DESIGN REQUIREMENTS

(a) All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice and shall not result in nuisance conditions. The plans and specifications must be ~~stamped and~~ sealed by a Professional Engineer.

(b) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling methods acceptable to the director.

(c) Impoundments, trenches or other excavations made for the purpose of storing or treating waste will not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of assigned standards, as demonstrated by predictive calculations or modeling methods acceptable to the director.

(d) The bottoms of earthen impoundments, trenches or other similar excavations with the exception of nitrification fields, infiltration systems, and sewer line excavations shall be at least

four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  centimeters per second. Liner thickness will be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Separation distances or liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the director, that construction and use of these treatment and disposal units will not result in contravention of assigned standards.

(c) Industrial waste shall not be applied or discharged onto or below the land surface when the vertical separation between the waste and the seasonal high water table is less than one foot. If the area to be utilized has a separation of less than three feet, and in other areas as designated by the director, a demonstration must be made using predictive calculations or modeling methods, acceptable to the director, that such placement will not result in contravention of classified groundwater standards.

(f) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding nitrification fields, infiltration systems, and holding ponds containing treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

(g) Except as otherwise provided by these requirements or by terms of a permit, all waste treatment, storage and disposal facilities must maintain and operate a groundwater monitoring system as approved by the division. The monitoring system must be designed to assess the impact of any discharge on the quality of the underlying groundwaters and must be based on the results of the hydrogeologic investigation.

(h) For pumping stations:

- (1) no by-pass or overflow lines;
- (2) multiple pumps shall be provided capable of pumping at a rate of 2.5 times the average daily flow rate with any one pump out of service. Pump-on/Pump-off elevations shall be ~~located~~ set such that 2-8 pumping cycles per hour may be achieved in the pump station at average flow. If extended detention times are necessary

due to phased development, the need for odor and corrosion control must be evaluated by the applicant;

- (3) where waters classified as WS, SA, B or SB could be impacted by a power failure, at least one of the following shall be required:

(A) dual source or standby power supply on site or;

(B) telemetry systems with sufficient numbers of standby generators and personnel for distribution or;

(C) approval by the director that the pump station:

(i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and

(ii) has sufficient storage capacity that no potential for overflow exists, and

(iii) is connected to facilities that can tolerate septic wastewater due to prolonged detention;

- (4) The need for screened vents must be evaluated for all wet wells;

(5) high water alarms;

(6) protection from a 100 year flood;

(7) restricted access to the site and equipment;

(8) all-weather roadway to the site.

(i) For sewer systems and sewer system extensions:

- (1) All building drains and building sewers which are approved by the local building inspector in accordance with the North Carolina Building Code are deemed to be permitted by the Environmental Management Commission;

- (2) All sewers shall be designed based upon at least minimum standards which include:

(A) wastewater flow rate at design loading should result in the sewer flowing approximately half full. The sewer must also be evaluated as to its ability to carry peak loadings;

(B) a velocity of two feet per second;

(C) construction and operation shall not result in water pollution;

(D) infiltration rate limited to 200 gallons per day per inch of pipe diameter per mile of pipe;

(E) construction and operation consistent with all applicable local ordinances;

(F) for public sewers, a minimum eight inch diameter pipe;

(G) minimum separations:

(i) Storm sewers (vertical) - 12 inches

## PROPOSED RULES

- (ii) Water mains (vertical- water over sewer) - 18 inches or (horizontal) - 10 feet
  - (iii) In benched trenches (vertical) - 18 inches
  - (iv) Any private or public water supply source, including any WS-I waters or Class I or Class II impounded reservoirs used as a source of drinking water - 100 feet
  - (v) Waters classified WS-I, WS-II, WS-III, B, SA, or SB [from normal high water (or tide elevation)] - 50 feet
  - (vi) Any other stream, lake or impoundment - 10 feet
  - (vii) Any building foundation - 5 feet
  - (viii) Any basement - 10 feet
  - (ix) Top slope of embankment or cuts of 2 feet or more vertical height - 10 feet
  - (x) Drainage systems
    - (I) Interceptor drains - 5 feet
    - (II) Ground water lowering and surface drainage ditches - 10 feet
  - (xi) Any swimming pool - 10 feet
  - (xii) Ferrous sewer pipe with joints equivalent to water main standards, shall be used where these minimum separations cannot be maintained. The minimum separation shall however not be less than 25 feet from a private well or 50 ft from a public water supply well.
  - (II) Three feet minimum cover shall be provided for all sewers unless ferrous material pipe is specified. Ferrous material pipe or other pipe with proper bedding to develop design supporting strength shall be provided where sewers are subject to traffic bearing loads;
  - (I) The maximum separation between manholes shall be 425 feet unless written documentation is submitted with the application that the owner/authority has the capability to perform routine cleaning and maintenance on the sewer at the specified manhole separation;
  - (J) Drop manholes shall be provided where invert separations exceed 2.5 feet;
  - (K) Manholes shall be designed for 100-year flood protection;
  - (L) The need for air relief valves shall be evaluated at all high points along force mains;
  - (M) Odor and corrosion control must be evaluated by the applicant for all sewers and force mains with extended travel times.
- (j) For treatment works and disposal systems:
- (1) no by-pass or overflow lines;
  - (2) multiple pumps if pumps are used;
  - (3) where waters classified as WS-I, WS-II, WS-III, B, SA, or SB could be impacted by a power failure, at least one of the following:
    - (A) dual or standby power supply on site, capable of powering all essential treatment components under design conditions, or
    - (B) approval by the director that the facility:
      - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
      - (ii) has sufficient storage capacity that no potential for overflow exists, and
      - (iii) can tolerate septic wastewater due to prolonged detention;
  - (4) protection from 100 year flood;
  - (5) buffer zones of at least the following distances, and greater where necessary to comply with Section 2H .0400 of this Subchapter or to address particular site or waste characteristics:
    - (A) Any habitable residence or place of public assembly under separate ownership or which are to be sold:
      - (i) for spray irrigation systems not covered by 2H .0219(k) 400 feet
      - (ii) for surface sludge application 400 feet
      - (iii) for subsurface sludge injection 200 feet
      - (iv) for facultative lagoons 400 feet
      - (v) for activated sludge plants or surface sand filters 100 feet
    - (B) Any private or public water supply source 100 feet
    - (C) Streams classified as WS-I, WS-II, WS-III or B:
      - (i) for subsurface disposal 50 feet
      - (ii) for non-discharge surface disposal 100 feet
    - (D) Waters classified SA or SB 100 feet from normal high water

# PROPOSED RULES

(E) Any other stream, canal, marsh, or coastal waters (i) for subsurface disposal	50 feet	(M) Drainage systems (i) <u>Interceptor drains and surface water diversions (upslope)</u> (I) for subsurface disposal	10 feet
(ii) for non-discharge surface disposal	100 feet	(II) for surface disposal <u>other than spray irrigation systems and rapid infiltration systems</u>	10 feet
(F) Any Class I or Class II impounded reservoir used as a source of drinking water	100 feet from normal high water:	(III) <u>for spray irrigation systems</u>	<del>400</del> 10 feet
(G) Any other lake or impoundment:		(IV) <u>for rapid infiltration systems</u>	<u>100 feet</u>
(i) for subsurface disposal	50 feet	(ii) <u>Interceptor drains and surface water diversions (downslope)</u> (I) for subsurface disposal	<u>200 feet</u>
(ii) for surface disposal	100 feet	(II) for surface disposal <u>other than spray irrigation systems and rapid infiltration systems</u>	25 feet
(II) Any building foundation <u>except treatment facilities</u> :		(III) <u>for spray irrigation systems</u>	<del>400</del> 25 feet
(i) for subsurface disposal	10 feet	(IV) <u>for rapid infiltration systems</u>	<u>100 feet</u>
(ii) for surface disposal	<del>400</del> 15 feet	(iii) Groundwater lowering and surface drainage ditches (I) for subsurface disposal	<u>200 feet</u>
(I) Any basement (i) for subsurface disposal	15 feet	(II) for surface disposal <u>other than spray irrigation systems and rapid infiltration systems</u>	<del>400</del> 25 feet
(ii) for surface disposal	<del>400</del> 15 feet	(III) <u>for spray irrigation systems</u>	<u>100 feet</u>
(J) Any property line (i) for spray irrigation	150 feet	(IV) <u>for rapid infiltration systems</u>	<u>200 feet</u>
(ii) for other surface disposal systems	100 feet	(N) Any swimming pool (i) for subsurface disposal	15 feet
(iii) for subsurface sludge injection	100 feet	(ii) for surface disposal	100 feet
(iv) for other surface treatment systems	50 feet		
(v) for other subsurface systems	<del>40</del> 50 feet		
(K) Top of slope of embankments or cuts or two feet or more in vertical height			
(i) for <del>subsurface disposal</del> <u>systems other than rapid infiltration systems</u>	15 feet		
(ii) for <del>surface disposal</del> <u>rapid infiltration systems</u>	100 feet		
(L) Any water line			

## PROPOSED RULES

- (O) Any other nitrification field (except repair area) 20 feet
- (P) Any well with the exception of an approved groundwater monitoring well 100 feet
- (Q) Public right-of-way surface disposal 50 feet
- (6) adequate flow equalization for facilities with fluctuations in influent flow which may adversely affect the performance of the system;
- (7) preparation of an operational management plan, including restricted access to the site and equipment, and, if appropriate, a crop management plan;
- (8) except for facilities for single family residences or as approved by the director, appropriate monitoring wells designed to assess the impacts on the groundwater of any discharge and constructed in accordance with Section 2C .0100 of this Chapter.
- (k) For Land Application of Domestic Wastewater on Golf Courses and Other Public Access Areas:
- (1) Aerated flow equalization facilities with a capacity of at least 25 percent of the daily system design flow.
- (2) All essential treatment and disposal units shall be provided in duplicate.
- (3) The treatment process shall produce an effluent with a monthly average TSS of less than 5 mg/l and a daily maximum TSS of less than 10 mg/l and a maximum fecal coliform level of less than 1/100 ml, prior to discharge to a five-day detention pond.
- (4) There must be no public access to the five-day detention pond.
- (5) The size of the irrigation pond, that follows the five day holding pond, shall be justified using a mass water balance for worse case conditions of record.
- (6) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the five-day detention pond shall be provided.
- (7) Requirements for the lining of the five-day detention and irrigation ponds shall be site-specific.
- (8) In the design of the sprinkler system, the piping shall be a separate system, with no cross-connections to a potable water sup-

ply (includes no spigots on the distribution system).

- (9) The rate of application shall be site-specific but not exceeding 1 and 3/4 inches/week (as given in 2H .0404(g)(8).
- (10) The time of spraying shall occur between 11:00 p.m. and three hours prior to the daily opening of the course.
- (11) There shall be a 100 foot vegetative buffer zone between the edge of spray influence and the nearest dwelling.
- (12) Signs shall be posted at the proshop stating that the course is irrigated with treated wastewater.
- (13) There shall be a certified operator of a class equivalent to the class plant on call 24 hours/day.

(l) Wastewater Flow Rates:

- (1) In determining the volume of sewage from dwelling units, the flow rate shall be 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms will increase the volume by 120 gallons per day. Each bedroom or any other room or addition that can reasonably be expected to function as a bedroom shall be considered a bedroom for design purposes. When the occupancy of a dwelling unit exceeds two persons per bedroom, the volume of sewage shall be determined by the maximum occupancy at a rate of 60 gallons per person per day.
- (2) The following table shall be used to determine the minimum allowable design daily flow of wastewater facilities. Design flow rates for establishments not identified below shall be determined using available flow data, water-using fixtures, occupancy or operation patterns, and other measured data.

Type of Establishments	Daily Flow For Design
Airports, also RR Stations, bus terminals. (not including food service facilities)	5 gal/passenger
Barber Shops	50 gal/chair
Bars, Cocktail Lounges (not including food services)	20 gal/seat
Beauty Shops	125 gal/booth or

## PROPOSED RULES

Bowling Alleys	bowl 50 gal/ lane	(1) Per 100 square feet of total floor space	50 gal
Businesses (other than those listed in this table)	25 gal/ employee	(2) Add per employee Motels/Hotel	25 gal 120 gal/ room
Camps		with cooking facilities in room	175 gal/ room
Construction or work camps	60 gal/ person	Nursing/Rest Homes -- With laundry	120 gal/ bed
Summer camps	60 gal/ person	Without laundry	60 gal/ bed
Camp grounds Without water and sewer hookups	100 gal/ campsite	Offices -- per shift	25 gal/ person
Travel trailer/recreational vehicle park with water and sewer hookup	120 gal/ campsite	Residential Care Facilities	60 gal/ person
Churches (not including food service, day care and camps)	3 gal/ seat	Resort	200 gal/ room
Country Clubs	60 gal/ person	Restaurants	40 gal/ seat
- Resident Members	20 gal/ person		or 40 gal/ 15 ft sq. of dining area (whichever is greater)
Nonresident Members	15 gal/ person		
Day Care Facilities			
Factories (exclusive of industrial wastes) - - per shift	25 gal/ person	Schools	
Add for showers -- per shift	10 gal/ person	Day Schools	
Food Service Facilities		With cafeteria, gym, and showers	15 gal/ student
Restaurants (including fast food)	40 gal/ seat or 40 gal/ 15 ft sq of dining area, whichever is greater	With cafeteria only	12 gal/ student
24-hour Restaurants	50 gal/ seat	With neither cafeteria nor showers	10 gal/ student
Single-Service (exclusive of fast food)	25 gal/ seat	Boarding	60 gal/ person
Food Stands		Service Stations	250 gal/ water closet or urinal
(1) Per 100 square feet of total floor space	50 gal	Stadiums, Auditoriums, Theaters, Drive-ins	5 gal/seat or space
(2) Add per employee	25 gal	Stores, shopping centers and malls -- Note: if food service is included, add 40 gal/seat	120gal/ 1000 ft sq.
Hospitals	300 gal/ bed	Swimming Pools and Bathhouses	10 gal/ person
Laundries (self-service)	500 gal/ machine		
Marinas	10 gal/ boat slip	(3) An adjusted daily sewage flow may be granted upon a showing that a sewage system is adequate to meet actual daily water consumption from a facility in- cluded in Subparagraph (1) or (2) of this	
With bathhouse	30 gal/ boat slip		
Meat Markets			

Paragraph. Documented, representative data from that facility or a comparable facility shall be submitted, consisting of at least 12 consecutive monthly total water consumption readings and daily total water consumption readings for at least 30 consecutive days of water use. The daily readings shall be taken during a projected peak sewage flow month. The adjusted design daily sewage flow shall be determined by taking the numerical average of the daily readings that fall within the upper 10 percent of the daily readings when ranked in descending order.

(m) Additional requirements:

- (1) distance between water supply wells and waste facilities in accordance with Rule 2C .0107(a) of this Chapter or, if a greater area may be impacted, a distance in accordance with the perimeter of compliance described in Rule 2L .0103(h) of this Chapter;
- (2) compliance with the groundwater standards specified in Subchapter 2L of this Chapter;
- (3) where applicable compliance with rules on "coastal waste treatment disposal" found in Section .0400 of this Subchapter; and
- (4) For subsurface disposal systems, compliance with rules on subsurface disposal systems found in Section .0300 of this Subchapter.

(n) Alternative Design Criteria may be approved by the director. This approval will only be given in cases where the applicant can demonstrate that the Alternative Design Criteria will provide the following:

- (1) Equal or better treatment of the waste; and
- (2) Equal or better protection of the waters of the state; and
- (3) No increased potential for nuisance conditions.

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

#### .0222 USE OF WASTEWATER TREATMENT WORKS EMERGENCY MAINTENANCE: OPERATION AND REPAIR FUND

(a) In cases in which water quality standards are violated or an environmental health threat exists, monies from the Wastewater Treatment Works Emergency Maintenance, Operation and Repair Fund may be used at the discretion of the director to correct the cause of such conditions.

(b) In this, the director shall:

- (1) Ensure the fiscal integrity of the fund;

- (2) Use the fund only as a measure of last resort to protect water quality or public health when all other compliance and enforcement procedures have failed;
- (3) Limit the use of the fund to wastewater treatment works with design flow capacities of less than or equal to one hundred thousand gallons per day (100,000 GPD);
- (4) Notify the permittee by certified mail of the intention to take emergency corrective action and to recoup monies spent;
- (5) Make every effort to recoup fund expenditures, including collection costs, from the parties responsible;
- (6) Coordinate use of the fund with the program of the Public Utilities Commission when a permittee is also a regulated utility; and
- (7) Provide a quarterly accounting of the fund to the commission.

Statutory Authority G.S. 143-215.3(a); 143-215.3B(c); 143-215.3B(e).

#### SECTION .0600 - AIR QUALITY PERMITS

##### .0603 APPLICATIONS

(b) A permit or permit renewal application shall be filed in writing with the Director, Division of Environmental Management, Department of Natural Resources and Community Development, P.O. Box 27687, Raleigh, N.C. 27611. ~~For each plant or facility, multiple air emission sources may be included in each permit application.~~ Application for permit renewal or ownership transfer may be by letter to the director, if no alteration or modification has been made to the originally permitted source. A non-refundable permit ~~or permit renewal~~ application processing fee shall accompany each application. The ~~permit application~~ processing fee rates are in ~~Paragraph (e)~~ Regulation .0609 of this ~~Rule~~ Section. Each permit or renewal application is incomplete until the ~~permit application~~ processing fee is received. ~~Payment shall be by check or money order made payable to the N.C. Department of Natural Resources and Community Development.~~ A processing fee is not required for a request to change permit conditions. A processing fee is required to add additional emission sources or control equipment. ~~Permit changes which are instituted by the division to correct processing errors; to change permit conditions; or to implement new standards shall not require a processing fee.~~

(c) Permit and permit renewal applications are divided into the following three categories with separate processing fees for each category:

- (1) **Minor Source.** A minor source is an entire plant or facility that emits or is applying to emit actual air emissions less than 100 tons per calendar year per pollutant. For existing sources the actual air emissions calculations shall be based on the latest calendar year of source operation. The pollutants are particulates, sulfur dioxide, hydrocarbons, nitrogen dioxide, carbon monoxide, and lead. The permit application processing fee for a new, existing, or modified minor source is fifty dollars (\$50.00). The permit processing fee for renewal or ownership transfer of a minor source permit is twenty-five dollars (\$25.00).
- (2) **Major Source.** A major source is an entire plant or facility that emits or is applying to emit actual air emissions of 100 tons or greater per calendar year for at least one pollutant. The pollutants are particulates, sulfur dioxide, hydrocarbons, nitrogen dioxide, carbon monoxide, or lead. The permit application processing fee for a new, existing, or modified major source is one hundred dollars (\$100.00). The permit application processing fee for renewal or ownership transfer of a major source permit is seventy-five dollars (\$75.00).
- (3) **Prevention of Significant Deterioration Source.** A Prevention of Significant Deterioration (PSD) Source is a new major stationary source or major modification that is required to obtain an air permit under DEEM Regulation 15 NCAC 2D .0530 Prevention of Significant Deterioration. The permit application processing fee for a new major stationary source or major modification subject to PSD is one hundred dollars (\$100.00). The permit processing fee for renewal or ownership transfer of a PSD permit is seventy-five dollars (\$75.00).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

#### .0605 ISSUANCE; REVOCATION; AND ENFORCEMENT OF PERMITS

- (b) Any permit or permit renewal issued under this Regulation may be revoked or modified if:
  - (2) the conditions under which the permit or permit renewal was granted have changed, or

- (3) violations of conditions contained in the permit have occurred, or
- (4) the permit holder fails to pay the annual administering and compliance monitoring fee required under Regulation .0609 of this Section within 30 days after being billed.

Statutory Authority G.S. 143-215.3 (a) (1), (1a), (1b); 143-215.108; 143-215.109; 143-215.114.

#### .0609 PERMIT FEES

- (a) For the purposes of this Regulation, the following definitions apply:
  - (1) "Minor facility" means any plant site where the allowable emissions of each regulated pollutant under Subchapter 2D of this Title are each less than 100 tons per year, except a site that is only a complex source.
  - (2) "Major facility" means any plant site where the allowable emissions of any one regulated pollutant under Subchapter 2D of this Title are 100 tons per year or more, except a site that is only a complex source.
  - (3) "PSD facility" means a plant site having one or more sources subject to the prevention of significant deterioration requirements of Regulation 15 NCAC 2D .0530 or a plant site applying for a permit for a major stationary source or a major modification subject to Regulation 15 NCAC 2D .0530.
  - (4) "NSPS source" means a source subject to a new source performance standard in Regulation 15 NCAC 2D .0524.
  - (5) "NESHAP source" means a source subject to a national emission standard for hazardous air pollutants in Regulation 15 NCAC 2D .0525.
  - (6) "Complex source" means a source requiring a permit under Section 15 NCAC 2D .0800.
  - (7) "Allowable emissions" means the actual emissions that are permitted to occur if the source were to operate constantly under maximum permitted conditions. Sources may request permit conditions that limit emissions to less than regulation allowables or that restrict operations. If neither a regulation nor a permit limiting emissions from a particular source specifies an emission rate, then the allowable emissions shall be the actual emissions that are expected to occur if the source were to operate constantly under maximum conditions allowed by the permit.

## PROPOSED RULES

When a new source is added to an existing facility, the allowable emissions for the facility shall be the sum of the new and existing sources.

(b) The following fees shall be charged for processing an application for an air permit and for administering and monitoring compliance with the terms of an air permit:

### Permit Application Processing Fee

Category	Standard	Simple Renewal
Minor facility	\$ 50	\$ 25
Major facility	100	75
PSD facility	400	100
Facility with an NSPS source	100	75
Facility with a NESHAP source	100	75
Complex source	100	0

### Annual Administering and Compliance Monitoring Fee

Category	Standard	Compliance Reduction
Minor facility	\$ 300	\$ 225
Major facility	1050	775
PSD facility	1500	1125
Facility with an NSPS source	1050	775
Facility with a NESHAP source	1050	775
Complex source	1050	775

If a facility or source belongs to more than one category, the fees shall be those of the applicable category with the highest fees. No fees are required to be paid under this Regulation by a farmer who submits an application or receives a permit that pertains to his farming operations.

(c) The standard permit application processing fee listed in Paragraph (b) of this Regulation is required for technical changes such as changing the location of a source; adding additional emission sources, pollutants, or control equipment; or changing a permit condition such that a change in air pollutant emissions could result. A simple renewal permit application processing fee is required for permit renewals without technical changes. A twenty five dollar (\$25.00) permit application processing fee is required for administrative changes such as ownership transfers, construction date changes, test date changes,

or reporting procedure changes. No permit application processing fee is required for changes to an unexpired permit initiated by the director to correct processing errors, to change permit conditions, or to implement new standards.

(d) If a facility has been in full compliance with all applicable administrative, regulatory, and self-monitoring reporting requirements and permit conditions during the previous calendar year, the annual administering and compliance monitoring fee shall be that which is in the "Compliance Reduction Annual Administering and Compliance Monitoring Fee" column. A facility shall be considered to have been in compliance during the previous calendar year if it has not been sent any Notices of Non-compliance or Notices of Violation during that calendar year. If a Notice of Non-compliance or a Notice of Violation was based on erroneous information, the director may send a letter of correction to the permittee clearing the record for compliance purposes.

(e) Payment of permit application processing fees and annual administering and compliance monitoring fees shall be by check or money order made payable to the N.C. Department of Natural Resources and Community Development. The payment should refer to the air permit application or permit number.

(f) The payment of the permit application processing fee required by Paragraph (b) or (c) of this Regulation shall accompany the permit, permit renewal, or permit modification application and is non-refundable. If the permit application processing fee is not paid when the application is filed, the application shall be considered incomplete until the fee is paid.

(g) The initial annual administering and compliance monitoring fee shall be paid when a permit, modified permit, or renewed permit is issued for which a permit application processing fee specified in Paragraph (b) or (c) of this Regulation has been paid. For complex sources only an initial annual administering and compliance monitoring fee needs to be paid; no subsequent annual administering and compliance monitoring fee is necessary for complex sources.

(h) If a permit or permit modification results in changing the category in which a facility belongs, the next annual administering and compliance monitoring fee shall be paid for category in which the facility belongs after the permit or permit modification is issued.

(i) A facility which has ceased all operations at a site will not be required to pay the next annual administering and compliance monitoring fee provided operations are not resumed during that annual period. Any resumed operations will ne-

cessitate the payment of the entire annual fee. A facility that is moved to a new site may receive credit for any unused portion of an annual administering and compliance monitoring fee if the permit for the old site is relinquished. Only one annual administrative and compliance monitoring fee needs to be paid annually for each permit.

(j) A fee payer with multiple permits may arrange to consolidate the payment of annual administrative and compliance monitoring fees into one annual payment.

(k) If the permit holder fails to pay an annual administering and compliance monitoring fee within 30 days after being billed, the director may initiate action to revoke the permit.

*Statutory Authority G.S. 143-215.3(a)(1), (1a), (1b).*

## **TITLE 21 - OCCUPATIONAL LICENSING BOARDS**

*Notice is hereby given in accordance with G.S. 150B-12 that the State Licensing Board for General Contractors intends to repeal regulations cited as 21 NCAC 12 .0606, .0816; and adopt regulations cited as 21 NCAC 12 .0817 - .0830.*

*The proposed effective date of this action is July 1, 1988.*

*The public hearing will be conducted at 11:00 a.m. on April 13, 1988 at State Room, North Carolina State University Faculty Club, 4200 Hillsborough Street, Raleigh, North Carolina.*

*Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule may file a notice with the Board at least 10 days prior to the public hearing. Any person may also file a written submission containing data, comments or arguments at any time until 10 days after the hearing. Submissions should be mailed to the Board at: P.O. Box 17187, Raleigh, North Carolina 27619.*

## **CHAPTER 12 - GENERAL CONTRACTORS**

### **SECTION .0600 - RULE-MAKING PROCEDURES**

#### **.0606 RULE-MAKING (REPEALED)**

*Statutory Authority G.S. 150B-11; 150B-14.*

### **SECTION .0800 - CONTESTED CASES**

#### **.0816 ADMINISTRATIVE HEARING (REPEALED)**

*Statutory Authority G.S. 150B-11; 150B-14.*

#### **.0817 RIGHT TO HEARING**

When the board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, privileges or a license of a specific, identifiable person, such person has the right to an administrative hearing. When the board proposes to act in such a manner, it shall give such person notice of their right to a hearing by mailing by certified mail to them at their last known address a notice of the proposed action and a notice of a right to a hearing.

*Statutory Authority G.S. 87-11 (b); 150B-11; 150B-38.*

#### **.0818 REQUEST FOR HEARING**

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

(b) Before an individual may file a request he must first exhaust all reasonable efforts to resolve the issue informally with the board.

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

- (1) Name and address of the Petitioner,
- (2) a concise statement of the action taken by the board which is challenged,
- (3) a concise statement of the way in which the Petitioner has been aggrieved, and
- (4) a clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the board, a hearing will be scheduled.

*Statutory Authority G.S. 87-11 (b); 150B-11; 150B-38.*

#### **.0819 GRANTING OR DENYING HEARING REQUEST**

(a) The board will decide whether to grant a request for a hearing.

(b) The denial of request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the board to deny the request.

(c) Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule .0302 of this Section.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38.*

**.0820 NOTICE OF HEARING**

(a) The board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address and telephone number of a person at the offices of the board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) The board shall give notice to all parties with a notice of hearing either personally or by certified mail or, if those methods are unavailable, in accordance with G.S. 1A-1, Rule 4(j)(1). In the event that notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of notice.

(c) If the board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or permit. Upon service of the order, the licensee or permit holder to whom the order is directed shall immediately cease the practice of general contracting in North Carolina. The board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the board of a final agency decision pursuant to G.S. 150B-42.

*Statutory Authority G.S. 87-11(b); 150B-3(c); 150B-11; 150B-38.*

**.0821 WHO SHALL HEAR CONTESTED CASES**

All administrative hearings will be conducted by the board, a panel consisting of a majority of the members of the board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40.*

**.0822 INFORMAL PROCEDURES**

(a) Except as prohibited by statute, the board and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

(b) Informal disposition may be made of any contested case or any issue therein by stipulation, agreement, or consent order at any time during the proceedings.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38.*

**.0823 PETITION FOR INTERVENTION**

(a) A person desiring to intervene in a contested case must file a written petition with the board's office. The request should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of case).

(b) The petition must include the following information:

- (1) The name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments of evidence petitioner seeks to present.

(c) The board will mail copies of the petition to the parties to the case, with the costs at the rate of twenty-five cents (\$0.25) per page chargeable to the petitioner.

(d) If the board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary, which are imposed on the intervenor.

(e) If the board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38.*

**.0824 TYPES OF INTERVENTION**

(a) **Intervention of Right.** A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.

(b) **Permissive Intervention.** A petition to intervene permissibly as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the board determines that:

(1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearing; and

(2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.

(c) The board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38.*

#### **.0825 DISQUALIFICATION OF BOARD MEMBERS**

(a) **Self-disqualification.** If for any reason a board member determines that personal bias or other factors render them unable to conduct the hearing and perform all duties in an impartial manner, that board member shall voluntarily decline to participate in the hearing or decision.

(b) **Petition for Disqualification.** If for any reason any party in a contested case believes that a board member is personally biased or otherwise unable to conduct the hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the board. The title of such affidavit should bear the notation: **AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF** (Name of case).

(c) **Contents of Affidavit.** The affidavit must state all facts the party deems to be relevant to the disqualification of the board member.

(d) **Timeliness of Affidavit.** An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a board member may be disqualified under this Rule.

(e) **Procedure for Determining Disqualification.**

(1) The board will appoint a board member to investigate the allegations of the affidavit.

(2) The investigator will report their findings and recommendations to the board.

(3) The board shall decide whether to disqualify the challenged individual.

(4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the board.

(5) A record of proceedings and the reasons for any decision reached will be maintained as part of the contested case record.

(6) When a board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the board.

(7) If three or more members of the board are disqualified pursuant to this Rule, the board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

(8) Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40.*

#### **.0826 FAILURE TO APPEAR**

Should a party fail to appear at a scheduled hearing, the board, or the designated administrative law judge, may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given proper notice. The board or the administrative law judge may order a continuance in order to give the party another opportunity to appear.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40.*

#### **.0827 SUBPOENAS**

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the board and shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of one of the members of the board or the board's secretary-treasurer; and a "return of service." The "return of service" form as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the board.

(d) Except as otherwise stated in a particular subpoena, any person receiving a subpoena from the board may object thereto by filing a written objection to the subpoena with the board's office. Such objection must be filed within five days of receipt of the subpoena or two days prior to the date on which the subpoena is returnable or testimony to be taken, whichever is soonest.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the board.

(g) The party who requested the subpoena, in such time as may be granted by the board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the board.

(h) After receipt of the objection and response thereto, if any, the board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Promptly after the close of such hearing, a majority of the board members with voting authority, or an administrative law judge assigned to the case pursuant to G.S. 150B-40(e), will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-39.*

#### .0828 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40.*

#### .0829 FINAL DECISION

In all cases heard by the board, the board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-42.*

#### .0830 PROPOSALS FOR DECISIONS

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45

days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 3 .0026. Any party may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be received within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter, must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the board within ten days of the receipt of the proposal for decision. The written exceptions should bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

(c) Any party may present oral argument to the board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the board may adopt the proposal for decision or may modify it as the board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled board meeting following receipt of the written exceptions.

*Statutory Authority G.S. 87-11(b); 150B-11; 150B-38; 150B-40.*

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*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Mortuary Science intends to amend regulations cited as 21 NCAC 34 .0109, .0123, .0125(a); and repeal regulations cited as 21 NCAC 34 .0110 - .0116, .0119 - .0120.*

*The proposed effective date of this action is July 1, 1988.*

*The public hearing will be conducted at 2:00 p.m. on April 12, 1988 at Office of State Board of Mortuary Science, 412 N. Wilmington St., Raleigh, NC 27601.*

*Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to Ms. Corrine J. Culbreth, Executive Secretary, State Board of Mortuary Science, 412 N. Wilmington St., Raleigh, NC 27601.*

## CHAPTER 34 - MORTUARY SCIENCE

### SECTION .0100 - GENERAL PROVISIONS

#### .0109 ADMINISTRATIVE HEARING PROCEDURES

~~When the board, by its official action, acts or proposes to act in a manner which will affect the rights, duties, privileges or the license of a specific, identifiable person or persons, those persons have a right to an administrative hearing. When the board proposes to act in such manner, it shall give to any such person or persons notice of their right to a hearing by mailing by certified mail to such person at his last known address a notice of the proposed action and a notice of a right to a hearing. Such person or persons may assert his or their right to a hearing by mailing to the board by certified mail a request for a hearing as provided in Rule .0110(e) of this Section, except that attempts at informal resolution are not required, and a hearing will be granted provided that the envelope containing the request bears a postmark dated prior to the date on which the board proposes to act.~~

The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby adopted by reference, as provided for in G.S. 150B-14(c), for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code and that 26 NCAC 3 .0001(2); .0002(a)(1); .0003(b); .0025; and .0026 shall not apply. Copies of Title 26, Chapter 3 of the

## PROPOSED RULES

North Carolina Administrative Code are on file in the board's office and may be obtained therefrom.

*Statutory Authority G.S. 90-210.23 (a); 150B-11 (1); 150B-14 (a) (4); 150B-38 (h).*

- .0110 REQUEST FOR HEARING IN  
CONTESTED CASE (REPEALED)
- .0111 GRANTING OR DENYING HEARING  
REQUEST IN CONTESTED CASE  
(REPEALED)
- .0112 NOTICE OF HEARING IN CONTESTED  
CASE (REPEALED)
- .0113 WHO SHALL HEAR (REPEALED)
- .0114 PETITION FOR INTERVENTION IN  
CONTESTED CASE (REPEALED)
- .0115 TYPES OF INTERVENTION  
(REPEALED)
- .0116 SUBPOENAS (REPEALED)
- .0119 FINAL DECISION IN CONTESTED  
CASE (REPEALED)
- .0120 PROPOSAL FOR DECISION IN  
CONTESTED CASE (REPEALED)

*Statutory Authority G.S. 90-210.23(a), (d); 150B-11; 150B-23; 150B-27; 150B-32 (a); 150B-34; 150B-36.*

### .0123 FEES

Fees shall be as follows:

Establishment permit	
Application	\$150.00
Annual renewal	\$100.00
Late renewal penalty	\$ 75.00
Courtesy card	
Application	\$ 25.00
Annual renewal	
Embalmer	\$ 15.00
Funeral director	\$ 15.00
Funeral service	\$ 30.00
Out-of-state licensee	
Application	\$150.00
Embalmer, funeral	
director, funeral	
service	
Application, North	
Carolina resident	\$100.00
Application,	
non-resident	\$100.00
Annual renewal	
Embalmer	\$ 25.00
Funeral director	\$ 25.00
Funeral service	\$ 50.00
Reinstatement fee	
Embalmer	\$ 25.00
Funeral director	\$ 25.00
Funeral service	\$ 50.00

### Resident trainee permit

Application	<del>\$ 35.00</del>	\$ 50.00
Annual renewal		\$ 10.00
Late renewal penalty		\$ 5.00
Duplicate license		
certificate		\$ 15.00
Chapel registration		
Application		\$150.00
Annual Renewal		\$ 75.00

*Statutory Authority G.S. 90-210.23(a); 90-210.28.*

### .0125 WORTHLESS CHECKS

(a) Any person, firm or corporation submitting to the board a check which is dishonored and returned shall be charged a processing fee of ~~ten dollars (\$10.00)~~ per check in the maximum amount per check as permitted by the North Carolina law in effect at the time.

*Statutory Authority G.S. 25-3-512; 90-210.23 (a); 150B-11 (1).*

## TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

*Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Community Colleges/Department of Community Colleges intends to adopt regulations cited as 23 NCAC 2C .0208; 23 NCAC 2D .0324 - .0327; 23 NCAC 2E .0305; and amend regulations cited as 23 NCAC 2D .0204, .0323; 23 NCAC 2E .0303.*

*The proposed effective date of this action is July 1, 1988.*

*The public hearing will be conducted at 1:00 p.m. on March 24, 1988 at First Floor State Board Conference Room, Caswell Building, 200 W. Jones Street, Raleigh, North Carolina.*

*Comment Procedures: A ten minute time limit per person may be imposed for oral presentations. The number of persons making oral presentations may be limited to stay within the time available. Individuals who plan to make oral presentations must submit their remarks in writing to the Hearing Officer. This procedure will assist the Hearing Officer in organizing and reporting information to the SBCC. Written statements not to be presented at the hearing should be addressed to Dr. William Cole, Hearing Officer, DCC, 200 W. Jones St., Caswell Bldg., Raleigh, NC 27603-1337 by March 25, 1988.*

**CHAPTER 2 - COMMUNITY COLLEGES**

**SUBCHAPTER 2C - INSTITUTIONS:  
ORGANIZATION AND OPERATIONS**

**SECTION .0200 - PERSONNEL**

**.0208 POLITICAL ACTIVITIES OF  
EMPLOYEES**

As an individual, each employee of the community college system retains all rights and obligations of citizenship provided in the Constitution and laws of North Carolina and the Constitution and laws of the United States. Therefore, the State Board of Community Colleges encourages employees of the system to exercise their rights and obligations of citizenship.

(1) Each local board of trustees shall develop a policy on the political activities of its employees, except for the president, that meets the following criteria and submit that policy to the Department of Community Colleges to determine if the policy meets these criteria:

- (a) Any employee who decides to run for a public office shall notify the board of trustees through the president of his intention to run and certify that he will not campaign or otherwise engage in political activities during his regular work hours or involve the college in his political activities.
- (b) Any employee, who is elected to a part-time public office, shall certify through the president to the board of trustees that his office will not interfere with his carrying out the duties of his position with the institution, or request leave.
- (c) Any employee, who is elected or appointed to a full-time public office or the General Assembly, shall be required to take a leave of absence without pay upon assuming that office. The length of the leave of absence shall be determined by the local board of trustees.
- (d) Any employee who becomes a candidate for public office shall be prohibited from soliciting support during his regular work hours or on college property.

(2) Political activities of institutional presidents:

- (a) Any institutional president, who decides to run for public office, shall notify the local board of trustees of his intention to run and certify that he will not campaign or otherwise engage in political activities during his regular work hours or involve the college in his political activities.

(b) Any institutional president, who is elected to a part-time public office, shall certify to the local board of trustees that his office will not interfere with his carrying out the duties of his position with the institution, or request leave.

(c) Any institutional president, who is elected or appointed to a full-time public office or the General Assembly, shall be required to take a leave of absence without pay upon assuming that office. The length of the leave of absence shall be determined by the local board of trustees.

(d) Any institutional president who is a candidate for public office, is prohibited from soliciting support during his regular work hours or on college property.

(3) Definitions as used in this Rule:

(a) Public office means any national, state or local governmental position of public trust and responsibility, whether elective or appointive, which is created or prescribed or recognized by constitution, statute, or ordinance.

(b) Membership in the General Assembly is a full-time public office under this Rule.

(4) Application of this Rule. The requirements of this Rule shall apply prospectively only. No change in the employment status of an employee who was an incumbent in public office on the effective date of this Rule shall be required under this Rule for the remainder of that term of office; provided, however, this Rule shall not apply to any employee in the system who was a full-time public officer on the effective date of this Rule.

*Statutory Authority G.S. 115D-5; 115D-20.*

**SUBCHAPTER 2D - INSTITUTIONS: FISCAL  
AFFAIRS**

**SECTION .0200 - STANDARD STUDENT FEES**

**.0204 OTHER FEES**

(a) Equipment Fees. A local equipment fee may be established not to exceed the fee charged high school students, in cases where high school buildings and equipment are being used; such fees shall be deposited in the institution's local account and paid to the local school unit.

(b) Damage or Breakage Fees. Institutions shall charge no breakage fee, property-damage fee, or laboratory fee to students, but in case of breakage or damage due to gross negligence or maliciousness, a student shall be expected to remunerate the institution. His credit may be withheld until proper payment is made.

(c) Library Fines. All library fines, except book-replacement fines, shall become local funds and be used for improvement of the library.

(d) General Educational Development (GED) Fee. All applicants who take the GED test at official GED Testing Centers in the system are required to pay a fee established by the State Board, a five dollar (\$5.00) fee. As stated in Chapter 1300 of the 1979 Session Laws (Second Session, 1980) "This fee shall not be required from individuals incarcerated or receiving treatment in institutions operated by the Department of Correction and the Department of Human Resources."

Statutory Authority G.S. 115D-5; 115D-54; S.L. 1979, c. 1300.

SECTION .0300 - BUDGETING; ACCOUNTING; FISCAL MANAGEMENT

.0323 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR CURRICULUM (FOR CREDIT) CLASSES

(a) Definition of Terms

(1) Full-time Equivalent Student (FTE). A FTE is a measure of a unit of instruction. Sixteen student membership hours per week for 44 weeks or 176 student membership hours for each quarter enrolled constitute a quarterly full-time equivalent student in the system. Also, 704 student membership hours constitute an annual FTE.

(2) The academic quarter for all credit courses shall normally be not less than 11 school weeks or 55 class days, whichever is greater, from the first day of classes through the final examination; but alternate lengths for quarters and/or courses may be used as long as credit hours are assigned consistent with Rule 23 NCAC 2E .0104.

(3) Student Membership. A student is considered to be in class membership when he/she meets all the following criteria:

(A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0202 of this Subchapter or Subparagraph (a) (3) of Rule .0203 of this Subchapter;

(B) attended one or more classes prior to or on the 20 percent point in the class;

(C) not withdrawn or transferred prior to or on the 20 percent point in the class.

(4) Student Membership Hour. A student membership hour is one hour of scheduled class, shop, or laboratory for which the student is enrolled. In certain classes

actual time of class attendance is to be reported. These classes are listed in Subparagraph (b) (3) of this Rule. An institution shall provide a minimum of 50 minutes of instruction for each scheduled class hour. An institution may not report more hours per student than the number of class hours scheduled in the institution catalog or other official institutional document. In addition, for non-curriculum classes, institutions may not report more hours per student excluding non-traditional delivery classes than the number of hours specified in the instructor's contract. Skills Laboratory/Computer Tutorial Laboratory. Individualized instructional laboratories are similar to

learning laboratories, except the participants are curriculum students. A skills laboratory instructor must be qualified in the single subject area of the skills laboratory. A computer tutorial laboratory coordinator need not be qualified in any of the subject area(s) provided in a computer tutorial laboratory. Student membership hours may be reported for budget/FTE when students are required by their instructor to attend either of the laboratories for additional work and when the skills laboratory instructors or computer tutorial coordinators are paid with curriculum instructional funds.

(6) Multi-Entry/Multi-Exit Class. A self-paced class in which the students are permitted to enroll at any time during the quarter, progress through the instructional materials at their own pace, and can complete the course as soon as they have successfully met the educational objectives. Students may enroll at different times, at different levels, or even in different courses in the same instructional setting.

(7) Learning Laboratory. Learning laboratory programs consist of self-instruction using programmed texts, audio visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the laboratory.

(b) Calculation of Student Membership Hours

(1) All classes except those identified in Subparagraphs (b) (2) and (b) (3) of this Rule. For all classes except those listed in Sub-

paragraphs (b) (2) and (b) (3) of this Rule student membership hours are obtained by multiplying the number of students in membership at the 20 percent point in the class by the total number of hours the class is scheduled to meet for the quarter as stated in the catalog or other official institutional documents.

- (2) **Classes Identified as Non-traditional Delivery.** In Non-traditional delivery classes, those in which instruction is delivered through radio, newspaper, television, correspondence, or other media; student contact; attendance in class or orientation session; submission of a written assignment or submission of an examination; is the basis for the determination of class membership at the 20 percent point in class. Student membership hours earned in non-traditional delivery classes will be calculated by multiplying the number of students in membership, as determined in the prior sentence, times the number of hours assigned to the class in official institutional documents. For non-traditional delivery curriculum classes, the number of hours assigned must be consistent with the credit hours assigned according to Rule .0104 of Subchapter 2E of this Chapter. For non-traditional delivery extension courses, the number of hours assigned would be determined as follows:

- (A) Determine number of hours of instruction delivered via non-traditional delivery; and
- (B) Add the number of hours of class meetings, review sessions, etc.

- (3) **Classes Identified as Learning Laboratories, Skills Laboratories, and Multi-Entry/Multi-Exit Classes.** For these types of classes actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student membership hours for these types of classes are the sum of all the hours of actual student attendance in a class in a given quarter.

(c) **Maintaining Records of Student Membership Hours.** Class rosters shall be maintained for each class taught. Rosters are to be signed by the instructor (or the registrar) and maintained at the institution for a period of three years. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee.

- (1) For all classes except as noted in Subparagraphs (c) (2) and (c) (3) of this Rule. Accurate attendance records must be

maintained for each class through the 20 percent point in the class. Institutions are encouraged to maintain attendance records for the duration of all classes.

- (2) **Classes Identified as Non-traditional Delivery.** Note Subparagraph (b) (2) of this Rule which denotes records to be maintained to document student membership.
- (3) **Classes Identified as Learning Laboratories, Skills Laboratories, and Multi-Entry/Multi-Exit Classes.** Accurate attendance records must be maintained for each class throughout the entire quarter.

(d) **Reporting of Components of Student Work Activities.** The following limitations apply to the reporting guidelines for students enrolled in work activity curriculum and extension courses, exclusive of in-plant regulations as specified in Rule .0402 of Subchapter 2E of this Chapter. Examples of work activities include work experience (cooperative education, practicums, and internships) and clinical practice.

- (1) Work experience for classes in curriculum programs and extension courses will earn budget/FTE at 100 percent rate of assigned work activity hours and shall not exceed a maximum of 220 membership hours per student per quarter. These classes must be specified in the approved curriculum of the institution and must be coordinated by institutional personnel paid with institutional instructional funds. The classes may be located at one or more sites.

- (2) Clinical practice for classes in curriculum programs and extension courses will earn budget/FTE at 100 percent rate of assigned work activity hours and shall not exceed 220 membership hours per student per quarter unless North Carolina licensure or program accreditation standards require additional hours. In such cases, work activity hours will earn budget/FTE at the 100 percent rate in accordance with licensure or program accreditation standards up to a maximum of 440 membership hours per student per quarter. These classes must be specified in the approved curriculum of the institution and must be supervised by institutional instructors qualified to teach in the particular program and who are paid with institutional instructional funds. The classes may be located at one or more sites.

- (3) Student membership hours for student work activities shall not generate budget/FTE without prior approval of

such activities by the department on forms provided for this purpose. Approval of student work activities approved prior to November 1, 1983 by the department must be resubmitted for reapproval on the forms provided for this purpose. When the number of approved student work activity membership hours increases by more than 20 percent per course, a new approval form must be submitted.

- (4) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation will not earn budget/FTE. Classroom instruction funded with regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs will earn budget/FTE.
- (e) Limitation in Reporting Student Membership Hours.

- (1) Student hours may not be reported which result from:

- (A) visits, conferences, meetings, seminars, and programs of a community service nature;

- (B) enrollment of high school students in excess of those allowed in Paragraph (d) of Rule .0301 of Subchapter 2C of this Chapter;

- (C) enrollment of non-high school graduates below the age of 18 except as provided for in Rule .0301 of Subchapter 2C of this Chapter;

- (D) unsupervised classes;

- (E) credit obtained through proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students must be registered in the class consistent with Subparagraph (a) (3) of this Rule in order to report student membership hours for budget/FTE;

- (F) homework assignments;

- (G) inter-institutional or intramural sports activities (including those of prison inmates).

- (2) Self-supporting classes except those funded entirely from JFPA are not to be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

- (3) New and expanding industry, human resources development, and cooperative skills training programs are separate budget allotments and, therefore, do not

earn budget/FTE. Regular budget extension funds excluding adult high school may be used in human resources development programs when the special allocations for these purposes are obligated and, in this event, will earn budget/FTE.

(4) **Sixty/Forty Funding.** All student membership hours generated by the institution where 60 percent of the instructional salaries, by program area defined below, are paid from state funds will be counted for budgeting purposes. The term "program area" is defined as:

- (1) the four curriculum areas (college transfer, general education, technical, and vocational); and

- (2) the regular budget extension areas (occupational extension, adult high school extension, academic extension, practical skills extension, and avocational extension). Self-supporting classes do not earn budget/FTE even though the program area in which they are taught is eligible for 60/40 funding. Program areas in which less than 60 percent of the instructional salaries are paid from state funds will be prorated in the same proportion as the state funding.

(g) Reporting Student Membership Hours to the department.

- (1) Curriculum and extension institution class reports summarizing student membership hours will be submitted to the department during each student membership hour reporting period defined in this Paragraph.

- (A) The four student membership hour reporting periods are as follows:

- (i) Period 1 - June 1 through August 31;

- (ii) Period 2 - September 1 through November 30;

- (iii) Period 3 - December 1 through February 28 (29);

- (iv) Period 4 - March 1 through May 31.

- (B) Institution Class Reports for all regular budget curriculum and extension classes will be submitted 21 calendar days after the conclusion of each student reporting period defined in Part (A) of this Subparagraph. Therefore, all reports received by September 21 will be designated Period 1; all reports received by December 21 will be designated Period 2; all reports received by March 21 will be designated Period 3; and all reports received by June 21 will be designated Period 4.

- (2) For Learning Laboratories, skills laboratories and multi-entry/multi-exit classes where actual student time in class is de-

terminated, student membership hours will be calculated on the last day of each respective student membership hour reporting period, as specified in Part (A) of this Subparagraph (g) (1). The student membership hours calculated in these classes will be submitted on institution class reports to the department in accordance with Part (B) of Subparagraph (g) (1). Also, note Paragraph (b) of this Rule regarding calculation of student membership hours.

- (3) Institution class reports for non-regular budget extension classes such as new and expanding industry, HRD, JTPA, self-supporting, and recreational will also be submitted to the department in accordance with Parts (A) and (B) of Subparagraph (g) (1).

(a) Academic Quarter. The academic quarter for all credit courses shall normally be not less than 11 school weeks or 55 class days, whichever is greater. The academic quarter should be designed so that all classes may be scheduled to include the number of instructional hours shown in the college catalog and reported for FTE purposes. Instructional hours include scheduled class and laboratory sessions as well as examination sessions. Alternate lengths for quarters or courses may be used as long as credit hours are assigned consistent with 23 NCAC 2E Rule .0104 and as long as membership hours are reported consistent with Subparagraphs (b) (3) and (c) (3) of this Rule.

(b) Regularly-Scheduled Classes:

- (1) A class is regularly scheduled if it meets all of the following criteria:
  - (A) assigned definite beginning and ending time;
  - (B) specific days the class meets is predetermined;
  - (C) schedule included on the Institution Master Schedule (to be arranged, designation not appropriate);
  - (D) class hours assigned consistent with institutional catalog and curriculum standard requirements;
  - (E) identified class time and dates the same for all students registered for the class;
  - (F) a student is considered absent if he did not attend during the specified times or days the class was scheduled to meet.
- (2) A student is considered to be in class membership when the student meets all the following criteria:
  - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a

waiver as defined in Paragraph (a) of Rule .0202 of this Subchapter;

- (B) attended one or more classes prior to or on the 20 percent point in the class;
  - (C) continues to be enrolled in class at the 20 percent point.
- (3) Student Membership Hour. A student membership hour is one hour of scheduled class, shop or laboratory for which the student is enrolled. An institution shall provide a minimum of 50 minutes of instruction for each scheduled class hour. An institution may not report more hours per student than the number of class hours scheduled in the institution catalog or other official institutional documents.
  - (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 20 percent point in the class by the total number of hours the class is scheduled to meet for the quarter as stated in the catalog or other official institutional documents.
  - (5) Maintenance of Records of Student Membership Hours. Accurate attendance records must be maintained for each class through the 20 percent point of the class. Institutions are encouraged to maintain attendance records for the duration of all classes. Attendance records are to be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the institution until released from all audits (see the Public Records Retention and Disposition Schedule for Institutions in the Community College System). Student membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee. For classes identified as non-traditional delivery, which utilize broadcast media, documentation of student contact prior to the 20 percent point must be maintained in the same manner as the attendance records mentioned in this Rule.
  - (c) Non-Regularly Scheduled Classes:
    - (1) A non-regularly scheduled class is as follows:
      - (A) a class where a definitive beginning and ending time is not determined;
      - (B) a class usually offered in a learning laboratory type setting (see Subparagraph (b) (6) of Rule .0324 of this Subchapter for definition of learning laboratory);

- (C) a class self-paced in that the student progresses through the instructional materials at his own pace, and can complete the courses as soon as he has successfully met the educational objectives. Students may enroll at different levels or even in different courses in the same instructional setting;
- (D) a class which a student may enroll during the initial institutional registration period or may be permitted to enroll at any time during the quarter;
- (E) any class not meeting all criteria for a regularly scheduled class as shown in Subparagraph (b) (1) of this Rule, is considered to be a non-regularly scheduled class for reporting purposes.
- (2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:
- (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0202 of this Subchapter or Subparagraph (a) (3) of Rule .0203 of this Subchapter;
- (B) attended one or more classes.
- (3) A student membership hour is one hour of scheduled class, shop, or laboratory for which the student is enrolled. Sixty minutes shall constitute an hour.
- (4) Calculation of Student Membership Hours for Non-Regularly Scheduled Classes. For these classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student membership hours for these classes are the sum of all the hours of actual student attendance in a class in a given quarter.
- (5) Maintenance of Records of Student Membership Hours. Accurate attendance records must be maintained for each class of the nature described in this Rule through the entire quarter. Attendance records are to be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the institution until released from all audits (see the Public Records Retention and Disposition Schedule for Institutions in the Community College System). Student membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee.
- (d) Skills Laboratory or Computer Tutorial Laboratory. Individualized instructional laboratories are similar to learning laboratories (see Subparagraph (b) (6) of Rule .0324 of this Sub-

chapter) except the participants are curriculum students. A skills laboratory instructor must be qualified in the single-subject area of the skills laboratory. A computer tutorial laboratory coordinator need not be qualified in any of the subject area(s) provided in a computer tutorial laboratory. Student membership hours may be reported for budget FTE when students are required by their instructor to attend either of the laboratories for additional work and when the skills laboratory instructors or computer tutorial coordinators are paid with curriculum instructional funds.

- (1) Documentation of instructor referral should be maintained for auditing purposes. Maintain documentation until released by audit.
- (2) Calculation of Student Membership Hours for Skills Laboratory or Computer Tutorial Laboratory. For these classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student membership hours for these types of classes are the sum of all the hours of actual student attendance in a class in a given quarter.
- (e) Classes Identified as Curriculum Non-Traditional Delivery. Non-traditional delivery classes are classes which are not regularly scheduled and classified as follows:
- (1) Curriculum Non-Traditional Classes Utilizing Broadcast Media Based Delivery. Those classes in which instruction is delivered through radio, television, or other broadcast media, student contact such as attendance in class or in an orientation session, submission of a written assignment or submission of an examination, is the basis for the determination of class membership at the 20 percent point of the class. Student membership hours earned in non-traditional delivery classes shall be calculated by multiplying the number of students in membership, as determined in the prior sentence, times the number of hours assigned to the class in official institutional documents. For these classes, the number of hours assigned must be consistent with the credit hours assigned according to 23 NCAC 2E Rule .0104.
- (2) Curriculum Non-Traditional Classes Not Utilizing Broadcast Media Based Delivery. Those classes utilizing individualized instructional techniques which are not broadcast media based may include correspondence classes, independent study classes, classes through the newspaper,

and other similar individualized instructional classes.

(A) Student membership in this category of non-traditional classes shall be determined as noted in Subsection (A) of Subparagraph (b) (2) of this Rule and attendance in one or more classes.

(B) Calculation of Student Membership Hours. For these types of classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student membership hours for these types of classes are the sum of all the hours of actual student attendance in a class for a given quarter.

(f) Curriculum Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in curriculum work experience and clinical practice courses, exclusive of in-plant training as specified in 23 NCAC 2E Rule .0402. Examples of student work experience include cooperative education, practicums, and internships. Clinical practice refers to work experience in health occupation programs:

(1) Student membership hours for student work experience and clinical practice shall not generate budget FTE without prior approval by the department of such activities through the appropriate curriculum standard.

(2) Work Experience. Work experience for curriculum courses shall earn budget FTE at the 100 percent rate of assigned work experience hours and shall not exceed a maximum of 220 membership hours per student per quarter:

(A) These classes must be coordinated by institutional personnel paid with institutional instructional funds and may be located in one or more sites.

(B) These classes must be specified in the approved curriculum of the institution consistent with the applicable curriculum standard.

(C) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget FTE. Classroom instruction funded with regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget FTE.

(3) Clinical Practice. Curriculum clinical practice, as defined in 23 NCAC 2E Rule

.0104, refers to clinical experience in health occupation programs which shall earn budget FTE at the 100 percent rate for student membership hours. The applicable classes must be consistent with the curriculum standards policy as noted in Paragraph (a) of 23 NCAC 2E Rule .0203. The maximum membership hours in a clinical experience which can be reported per student in a given quarter is 440. These classes must be supervised by institutional instructors qualified to teach in the particular program and who are paid with institutional instructional funds. These classes may be located in one or more sites.

Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.

Present .0324 will become .0328.

#### **.0324 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR EXTENSION (NON-CREDIT) CLASSES**

(a) Regularly Scheduled Classes:

(1) Definition of Regularly Scheduled Class. A class is considered to be regularly scheduled if it meets all of the following criteria:

- (A) assigned definite beginning and ending time;
- (B) specific predetermined days and time the class meets;
- (C) schedule included on the Institution Master Schedule (to be arranged, designation not appropriate);
- (D) class hours assigned consistent with institutional catalog and curriculum standard requirements;
- (E) identified class time and dates the same for all students registered for the class;
- (F) a student considered absent if he did not attend during the specified times or days the class was scheduled to meet.

(2) Definition of Student Membership. A student is considered to be in class membership when the student meets all the following criteria:

- (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
- (B) attended at least 50 percent of the classes held prior to or on the 50 percent point in the class;
- (C) continues to be enrolled in class at the 50 percent point.

- (3) **Student Membership Hour.** A student membership hour is one hour of scheduled class, shop or laboratory for which the student is enrolled. An institution shall provide a minimum of 50 minutes of instruction for each scheduled class hour. An institution may not report more hours per student than the number of class hours scheduled in the institution catalog or other official institutional documents. Institutions may not report more hours per student, excluding non-traditional classes, than the number of hours specified in the instructor's contract.
  - (4) **Calculation of Student Membership Hours for Regularly Scheduled Classes.** Student membership hours are obtained by multiplying the number of students in membership at the 50 percent point in the class by the total number of hours the class is scheduled to meet for the quarter as stated in the catalog or other official institutional documents.
  - (5) **Maintenance of Records of Student Membership Hours.** Accurate attendance records must be maintained for each class throughout the entire class or quarter. Attendance records are to be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the institution until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee. For classes identified as non-traditional delivery, which utilize broadcast media, documentation of student contact prior to the 50 percent point must be maintained in the same manner as the attendance records mentioned in this Rule.
- (b) **Non-Regularly Scheduled Classes:**
    - (1) **Definition of Non-Regularly Scheduled Classes** is as follows:
      - (A) a class where a definitive beginning and ending time is not determined;
      - (B) a class usually offered in a learning laboratory type setting (see Subparagraph (b)(6) of this Rule for definition of learning laboratory);
      - (C) a class self-paced in that the student progresses through the instructional materials at his own pace, and can complete the courses as soon as he has successfully met the educational objectives. Students may enroll at different levels or even in different courses in the same instructional setting;
    - (D) a class that a student may enroll during the initial institutional registration period or may be permitted to enroll at any time during the quarter;
    - (E) any class not meeting all criteria for a regularly scheduled class as shown in Subparagraph (b)(1) of Rule .0323 of this Subchapter, is considered to be a non-regularly scheduled class for reporting purposes.
  - (2) **Definition of Student Membership.** A student is considered to be in class membership when the student meets the following criteria:
    - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
    - (B) attended one or more classes.
  - (3) **Definition of Student Membership Hour.** A student membership hour is one hour of scheduled class, shop, or laboratory for which the student is enrolled. Sixty minutes shall constitute an hour.
  - (4) **Calculation of Student Membership Hours for Non-Regularly Scheduled Classes.** For these classes, actual time of class attendance is to be reported; 60 minutes shall constitute an hour. Student membership hours for these classes are the sum of all the hours of actual student attendance in a class in a given quarter.
  - (5) **Maintenance of Records of Student Membership Hours.** Accurate attendance records must be maintained for each class throughout the entire class or quarter. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and are to be maintained by the institution until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or his designee. For classes identified as non-traditional delivery, which utilize broadcast media, documentation of student contact prior to the 50 percent point must be maintained in the same manner as the attendance records mentioned in this Rule.
  - (6) **Learning Laboratory.** Learning laboratory programs consist of self-instruction using

programmed text, audio-visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the laboratory. Membership hours are to be calculated as noted in Subparagraph (b)(4) of this Rule.

(c) **Non-Traditional Delivery Classes.** Non-traditional delivery classes are classes which are not regularly scheduled and are identified in two categories noted below:

(1) **Extension Classes Utilizing Broadcast Media Based Delivery.** In those classes in which instruction is delivered through radio, television, or other broadcast media, student contact such as attendance in class or in an orientation session, submission of a written assignment or submission of an examination, is the basis for the determination of class membership at the 50 percent point of the class. Student membership hours in such classes shall be calculated by multiplying the number of students in membership at the 50 percent point of the class times the number of instructional hours delivered which is determined as follows:

(A) determine the number of hours of instruction delivered via non-traditional delivery; and,

(B) add the number of hours of class meetings, review sessions, etc.

(2) **Extension Classes Not Utilizing Broadcast Media Based Delivery.** In those classes in which instruction is delivered utilizing individualized techniques which are not media based including correspondence classes, independent study classes, classes through the newspaper, and other similar techniques, actual contact with the instructor, as described in Subparagraph (b)(4) of this Rule, shall be the basis for reporting student membership hours.

(d) **Extension Student Work Experience and Clinical Practice.** The following criteria apply to the reporting guidelines for students enrolled in extension work experience and clinical practice courses, exclusive of in-plant training as specified in 23 NCAC 2E Rule .0402. Examples of student work experience include cooperative education, practicums, and internships:

(1) Student membership hours for student work experience and clinical practice shall not generate budget FTE without prior

approval of such activities by the department on forms provided for this purpose. Approval of student work experience and clinical practice approved prior to November 1, 1983 by the department must be resubmitted for reapproval on the forms provided for this purpose. When the number of approved student work experience membership hours increases by more than 20 percent per course, a new approval form must be submitted.

(2) **Work Experience.** Work experience for extension courses shall earn budget FTE at the 100 percent rate for student membership hours, as determined in Subparagraph (a)(3) of this Rule, and shall not exceed a maximum of 220 membership hours per student per quarter:

(A) These classes must be coordinated by institutional personnel paid with institutional instructional funds and may be located in one or more sites.

(B) Formal or informal apprenticeship on-the-job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget FTE. Classroom instruction funded with regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget FTE.

(3) **Clinical Practice.** Clinical practice refers to clinical experience in health occupation courses which shall earn budget FTE at the 100 percent rate for student membership hours, as determined in Paragraph (c) of this Rule, and shall not exceed a maximum of 220 membership hours per student per quarter unless North Carolina licensure or program accreditation standards require additional hours. In such cases, work activity hours shall earn budget FTE at the 100 percent rate in accordance with licensure or program accreditation standards up to a maximum of 440 membership hours per student per quarter. These classes must be supervised by institutional instructors qualified to teach in the particular program and who are paid with institutional instructional funds. These classes may be located in one or more sites.

*Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.*

**.0325 LIMITATION IN REPORTING**

**STUDENT MEMBERSHIP HOURS**

(a) Student hours may not be reported which result from:

- (1) Conference or visits. General types of meetings usually of one or more day's duration, attended by a fairly large number of people. A conference or visit may have a central theme, but is loosely structured to cover a wide range of topics. The emphasis is on prepared presentations by authoritative speakers, although division into small group sessions for discussion purposes is often a related activity.
- (2) Seminar or Meeting. A small group of people meeting primarily for discussion under the direction of a leader or resource person or persons. Seminars and meetings are generally one-time offerings even though they may continue for more than one day.
- (3) Programs of a community service nature.
- (4) Enrollment of high school students consistent with 23 NCAC 2C .0301.
- (5) Enrollment of non-high school graduates below the age of 18 except as provided for in 23 NCAC 2C .0305.
- (6) Unsupervised classes.
- (7) Credit obtained through proficiency or challenge exams except that the actual time required to take the exam may be counted in membership; students must be registered in the class consistent with Paragraph (a) of Rules .0202 and .0203 of this Subchapter.
- (8) Homework assignments.
- (9) Inter-institutional or intramural sports activities including those of prison inmates.
- (b) Self-supporting classes are not to be reported for regular budget purposes (those classes supported by student fees or a class in which instruction is provided gratis); all recreational extension classes fall in this category.

(c) Student class hours for class-size projects in which instructional salaries are funded by Title II of the Job Training Partnership Act (JTPA) shall not receive full FTE funding. Those JTPA class-size projects that are totally JTPA Title II funded shall receive administrative cost reimbursement. The sixty-forty rule does not apply to JTPA class size projects.

(d) New and Expanding Industry, human resource development, cooperative skills training, small business, apprenticeship and high priority programs are separate budget allotments and, therefore, do not earn budget FTE. Regular budget extension funds excluding adult high school may be used in human resources development programs when the special allocations

for these purposes are obligated and, in this event, shall earn budget FTE.

*Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.*

**.0326 SIXTY-FORTY FUNDING**

All student membership hours generated by the institution where 60 percent of the instructional salaries, by program area defined in this Rule, are paid from state funds, shall be counted for budgeting purposes. The term "program area" is defined as:

- (1) the four curriculum areas (college transfer, general education, technical, and vocational);
- (2) the regular budget extension areas (occupational extension, adult high school extension, academic extension, practical skills extension, and a vocational extension);
- (3) self-supporting classes do not earn budget FTE even though the program area in which they are taught is eligible for sixty-forty funding. Program areas in which less than 60 percent of the instructional salaries are paid from state funds shall be prorated in the same proportion as the state funding;
- (4) all funds (both state and non-state) which are used for instructional salaries, must be budgeted and expended through the institution's budget;
- (5) all contracts for instruction (including part-time instructors or third party) must reflect total cost of instruction;
- (6) instructional salaries paid totally by other agencies or companies cannot be considered as part of the sixty-forty funding, but rather as gratis instruction (note Paragraph (b) of Rule .0325 of this Subchapter concerning gratis instruction).

*Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.*

**.0327 REPORTING STUDENT MEMBERSHIP HOURS TO THE DEPARTMENT**

(a) Curriculum and extension institution class reports summarizing student membership hours shall be submitted to the department during each student membership hour reporting period defined in this Paragraph:

- (1) The four student membership hour reporting periods are as follows:
  - (A) Period 1 - June 1 through August 31;
  - (B) Period 2 - September 1 through November 30;
  - (C) Period 3 - December 1 through February 28 (29);

(D) Period 4 - March 1 through May 31.

- (2) Institution class reports for all regular budget curriculum and extension classes shall be submitted 21 calendar days after the conclusion of each student reporting period defined in Subparagraph (a)(1) of this Rule. Note the following schedule concerning application of the designated periods:

- (A) all reports received by September 21 shall be designated Period 1;
- (B) all reports received by December 21 shall be designated Period 2;
- (C) all reports received by March 21 shall be designated Period 3; and,
- (D) all reports received by June 21 shall be designated Period 4.

(b) For learning laboratories, skills laboratories, and multi-entry, multi-exit classes where actual student time in class is determined, student membership hours shall be calculated on the last day of each respective student membership hour reporting period, as specified in Subparagraph (a)(1) of this Rule. The student membership hours calculated in these classes shall be submitted on institution class reports to the department in accordance with Subparagraph (a)(2) of this Rule. Also, note Paragraphs (a) and (b) of Rule .0323 of this Subchapter and Paragraph (a) of Rule .0324 of this Subchapter regarding calculation of student membership hours.

(c) Institution class reports for non-regular budget extension classes such as new and expanding industry, HRD, JTPA, self-supporting, and recreational shall also be submitted to the department in accordance with Subparagraphs (a)(1) and (a)(2) of this Rule.

*Statutory Authority G.S. 115D-5; 115D-31; 115D-58.5.*

## SUBCHAPTER 2E - EDUCATIONAL PROGRAMS

### SECTION .0300 - GENERAL ADULT: SPECIAL EXTENSION: AND COMMUNITY SERVICE

#### .0303 GENERAL EDUCATIONAL DEVELOPMENT (GED) TESTING PROGRAM

(a) The department, under the state board is responsible for the administration of the ~~general education development testing~~ General Educational Development Testing program in cooperation with the office on Educational Credit of the American Council on Education.

(b) The State Board and the Community College System shall encourage persons to complete

high school rather than seek testing for the High School Diploma Equivalency.

(c) Title of State Credential: High School Diploma Equivalency.

(d) Minimum Requirements for Testing:

- (1) Any person 16, or 17 years of age meeting one of the following conditions may be admitted to testing:

(A) Incarcerated in a correctional institution, correctional youth center, training school for adjudicated youth, or similar institution;

(B) A patient or resident of a state-operated hospital or alcoholic rehabilitation center;

(C) Enrolled in or have completed a program of instruction provided by the Job Corps or other such agency, or an apprenticeship training program; or

(D) A member of the United States Armed Forces.

- (2) Any person 16 or 17 years of age having officially dropped out of school and not subject to the conditions in this Rule may be admitted to testing provided:

(A) Application is supported by a notarized petition of the individual's parent, legal guardian, or other person or agency having legal custody and control over the applicant; the petition shall certify the applicant's residence, date of birth, date applicant officially withdrew from school and the petitioner's legal relationship to the applicant; and

(B) Application for testing is made no less than six months from the date the applicant officially withdrew from school. However, all or any part of the six-month waiting period may be waived by the chief administrative school officer of the public or private school unit in which the applicant resides. This waiver may be accomplished through the endorsement of the notarized petition by the superintendent or his designee; or

(C) Applicant is an emancipated minor.

- (3) All persons shall have officially dropped out of school prior to applying to take the GED tests.

(4) These requirements shall apply to both public and private school students.

(e) Requirements for Issuance of High School Diploma Equivalency:

(1) Minimum Test Scores. A standard score of 35 on each of the five tests and a total of 225 on all five tests.

(2) Minimum age: 16.

(3) Residence. Legal residents of North Carolina or armed forces personnel stationed

within the geographic confines of this State (and members of their immediate families living in their households) are eligible to take the GED tests.

(f) Requirements for Retesting. Part or all of the GED test battery may be taken again after a period of at least six months from the date the tests were first taken. The procedure in applying for a retest is the same as required for the original test. In some instances a retest may be authorized in less than six months by the chief examiner of an official GED testing center or by the State GED Administrator, upon presentation of satisfactory evidence of intensive study to the chief examiner or other written justification satisfactory to the ~~state president~~ President of the Community College System or his designee.

(g) Security:

(1) The security of the tests, the integrity of the testing program and the validity of test scores attained shall be protected; and the ~~state president~~ President of the Community College System or his designee may resolve any doubtful case by requiring the applicant to retest;

(2) A person who begins testing at an official GED testing center shall complete testing at that center. If the person needs to continue testing at another center, the person shall have approval from the office of the State GED Administrator; otherwise, such testing shall be invalid. The same rule shall apply to retesting when a person completes the GED test battery and fails to achieve a passing score.

(h) Method of Applying. Civilian applications must be on a special form obtainable from the office of the State GED Administrator, the Department of Community Colleges, offices of local superintendents of schools, and institutions of the Community College System. ~~Application~~ Applications must be endorsed and approved by a president of an institution of the Community College System or his designee, or by the manager of a Veterans Administration hospital having an authorized educational therapy program. Applications from military personnel must be on the appropriate Department of Community Colleges form endorsed by the military education officer.

(i) Official Transcripts. Test scores are accepted as official only when reported directly by:

- (1) Official GED centers,
- (2) Transcript Service of the Defense Activity for Non-Traditional Education Support (DANTES),

(3) Veterans Administration hospitals and centers, and

(4) the GED Testing Service.

(j) Fee:

(1) A ~~five dollar (\$5.00)~~ fee is required from each student (applicant) who takes the General ~~Education~~ Educational Development GED Test at official GED Testing Centers in the community college system. ~~The fees collected for this purpose shall revert to the general fund.~~ Two dollars and fifty cents (\$2.50) of the GED fee shall be used to pay the cost for scoring the written essay part of the test; this portion of the fee shall be deposited as state funds. The remaining portion of the GED fee shall revert to the General Fund.

(2) Issuance of High School Diploma Equivalency; no charge.

(k) The state board shall, upon the recommendation of the State GED Administrator, determine the establishment or disestablishment of GED testing centers.

(l) GED testing centers shall inform the State GED Administrator of any new, alternate, or replacement chief examiners and proctors before such persons assume their duties.

(m) Record Keeping. Official GED testing centers shall supply the State GED Administrator's office with information necessary to maintain permanent records on all examinees.

*Statutory Authority G.S. 115D-1; 115D-5; S.L. 1987, c. 738, s. 219.*

#### .0305 CONTINUING EDUCATION CLASS SITES

The Community College System was created for the purpose of, and is committed to delivering appropriate educational services to adult citizens. Efforts shall be made to ensure that facilities where classes are held provide appropriate environments which are conducive to learning. Continuing education classes offered in private homes or private home-based businesses shall be approved by the institutional president or his designee prior to the classes being offered. Documentation of such approval shall be maintained at the institution until released from all audits (see Public Records Retention and Disposition Schedule for Institutions in the Community College System).

*Statutory Authority G.S. 115D-1; 115D-5.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.*

## TITLE 5 - DEPARTMENT OF CORRECTION

### CHAPTER 2 - DIVISION OF PRISONS

#### SUBCHAPTER 2D - PUBLIC COMMUNICATIONS

#### SECTION .0300 - INMATE USE OF THE MAILS

##### .0304 PACKAGES AND OTHER ITEMS

- (9) Toothbrushes, safety razors and blades.

*History Note: Filed as a Temporary Amendment Eff. February 1, 1988, for a Period of 30 Days to Expire on March 1, 1988; Statutory Authority G.S. 148-11; Eff. February 1, 1976; Amended Eff. March 1, 1988; October 18, 1976.*

#### SUBCHAPTER 2G - COURT RELATED PROCEEDINGS

#### SECTION .0300 - INMATE GRIEVANCE PROCEDURE

- .0301 GENERAL  
.0302 GRIEVANCES  
.0303 PROCEDURE

*History Note: Filed as a Temporary Repeal Eff. January 16, 1988 For a Period of 120 Days to Expire on May 13, 1988; Statutory Authority G.S. 148-101 through 148-113; Eff. February 1, 1976.*

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

### CHAPTER 45 - NORTH CAROLINA DRUG COMMISSION

#### SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

##### .0202 SCHEDULE I

(d) Hallucinogenic Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purposes of this Paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (2) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA) 7404

- (18) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA) 7402

- (25) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline) 1590

*History Note: Statutory Authority G.S. 90-88; 90-89; 143B-147; Eff. June 30, 1978; Amended Eff. March 1, 1988; December 1, 1987; August 1, 1987; December 1, 1986.*

## TITLE 17 - DEPARTMENT OF REVENUE

### CHAPTER 7 - SALES AND USE TAX

#### SUBCHAPTER 7B - STATE SALES AND USE TAX

#### SECTION .0100 - GENERAL PROVISIONS

##### .0106 RESALE CERTIFICATES: SALES FOR RESALE

(a) A purchaser of tangible personal property who is properly registered with the Sales and Use Tax Division of the North Carolina Department of Revenue or in a taxing jurisdiction outside this State and is engaged in the business of selling tangible personal property at retail or wholesale and makes purchases of tangible personal property for the purpose of resale shall furnish to his

vendors as their authority for not collecting the tax, either:

- (1) a Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale, Form E-590, or
- (2) other evidence in writing adequate to support the conclusion that he is registered with the Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes and that the property is being purchased for the purpose of resale.

Such certificates or other written evidence shall be completed in duplicate and a copy retained by both the vendor and the vendee in their files. In the absence of such certificates or other adequate written evidence, vendors selling taxable tangible personal property to wholesale and retail merchants shall be deemed to be making retail sales and will be liable for collecting and paying the tax thereon at the applicable rate.

(b) Certificates of resale shall not be used to purchase tangible personal property which is to be used or consumed by the purchaser. The secretary may revoke the license of any licensed merchant who makes such use of the certificate of resale. Vendors should charge the applicable rate of tax on sales to registered merchants when the property sold is for use by the purchaser and not for resale. Vendors selling taxable tangible personal property for resale should make reasonable and prudent inquiry regarding the principal nature of the business of the purchaser as it relates to the type of tangible personal property which is being purchased. A person making purchases of tangible personal property for resale shall not be required to furnish more than one certificate or additional written evidence to a vendor in connection with his purchases so long as the tangible personal property purchased is of the type generally and ordinarily sold by the type of business operated by the purchaser and provided there is no change in the character of the purchaser's business which is known to the vendor or which should be known to him in the exercise of ordinary and reasonable care. Whenever a person makes purchases of tangible personal property for resale and the property is not generally and ordinarily the type of property the purchaser will resell, the vendor thereof should require certificates of resale or other written evidence in connection with individual purchases supporting that the property is being purchased for resale.

(d) The foregoing provisions with regard to certificates of resale are applicable to sales to nonresident retail or wholesale merchants. The term "nonresident retail or wholesale merchant" means "a person who does not have a place of

business in this State, is engaged in the business of acquiring by purchase, consignment or otherwise, tangible personal property and selling the property outside this State, and is registered for sales and use tax purposes in a taxing jurisdiction outside this State." Reference is made to 17 NCAC 7B .2301 for the treatment of sales to such persons.

*History Note: Statutory Authority G.S.*

*105-164.28; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. February 1, 1988; May 11, 1979.*

**SECTION .1000 - BARBERS: BEAUTY SHOP  
OPERATORS: SHOE REPAIRMEN: WATCH  
REPAIRMEN**

**.1003 WATCH: CLOCK AND JEWELRY  
REPAIRMEN**

(c) Sales of watches, clocks, watch bands, watch chains, trophies, jewelry and other taxable tangible personal property are subject to the three percent State and applicable local sales or use tax on the full retail sales price. Any charges for labor or services rendered in engraving tangible personal property selected by a vendee and left with the vendor to be engraved are exempt from tax when such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. February 1, 1988.*

**SECTION .1100 - SALES OF BULK TOBACCO  
BARN: FARM MACHINES AND MACHINERY**

**.1101 IN GENERAL**

(a) Sales to farmers of machines and machinery, and parts therefor or accessories thereto for use by them in planting, cultivating, harvesting or curing of farm crops including nursery stock, or to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry products, eggs, or livestock are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise. Sales of machines and machinery, and the parts therefor or accessories thereto, to farmers for any purpose or use not defined in this Rule, or to any person other than a farmer as herein defined, even though for a use or purpose herein defined, are subject to the three percent rate of tax without limitation. In other words, to qualify for the

one percent rate of tax and the eighty dollar (\$80.00) maximum tax per article, the transaction must be a sale of a machine or machinery, or parts therefor or accessories thereto, to a farmer for one of the uses or purposes herein defined and unless all three conditions are met, the sale is subject to the three percent rate of tax without limit. The following sales of tangible personal property to farmers qualify for the one percent rate of tax with an eighty dollar (\$80.00) maximum tax per article of merchandise:

- (1) Effective July 1, 1971, sales to farmers of bulk tobacco barns, racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm product are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise. The sale to farmers of a bulk curing barn with perforated floors, curers, racks, fans, motors, dampers and flues will constitute the sale of one article and an eighty dollar (\$80.00) maximum tax will be applicable thereto.
- (2) Effective July 1, 1979, sales to farmers of grain, feed, or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
- (3) Effective July 1, 1979, sales to farmers of commercially manufactured portable swine equipment or facilities and accessories thereto; and sales to farmers for installing on the farm of all bulk feed handling equipment which has been designed and constructed to be used for raising, feeding, and the production of livestock and poultry products and all cages used in the production of livestock and poultry products are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise. Effective July 1, 1982, the sale of the total number of poultry cages to be served by the same automatic feeder, automatic waterer or automatic egg collector constitutes the sale of a single article that is separate and distinct from a feeder, waterer or egg collector. The statute was expanded, effective July 1, 1983, to include sales to farmers of commercially manufactured swine, livestock or poultry equipment or facilities and accessories thereto. Effective September 1, 1987, this Subparagraph is rescinded as a result of a statutory amendment to G.S. 105-164.13(4c). See 17 NCAC 7B .1123

for information in regard to the exemption from sales and use taxes for sales of articles described in this Subparagraph.

- (4) Effective July 1, 1982, sales of containers to farmers and producers for use in the planting, producing, transporting or delivery of their products are subject to the one percent rate of tax with a maximum tax of eighty dollars (\$80.00) per article of merchandise when such containers do not go with and become a part of the sale of the product at wholesale or retail.

(b) The following are examples of sales of machines and machinery and the parts therefor and accessories thereto, which qualify for the one percent rate of tax with the eighty dollars (\$80.00) maximum when sold to general farmers for use by them in planting, cultivating, harvesting or curing farm crops:

- (1) tractors,
- (2) plows,
- (3) harrows,
- (4) cultivators,
- (5) mowers,
- (6) planters,
- (7) corn pickers and snappers,
- (8) manure spreaders,
- (9) manure loaders,
- (10) harvester threshers,
- (11) rotary tillers,
- (12) fertilizer distributors,
- (13) wind-rowers,
- (14) forage blowers,
- (15) stalk cutters,
- (16) seeders,
- (17) grain loaders,
- (18) harvesters,
- (19) cotton pickers,
- (20) rotary hoes,
- (21) corn and hay elevators,
- (22) tobacco curers,
- (23) tobacco flues,
- (24) tobacco trucks or slides,
- (25) wagons,
- (26) non-highway trailers,
- (27) mechanical rakes,
- (28) balers,
- (29) rod weeders,
- (30) combines,
- (31) tobacco transplanters,
- (32) shredders for corn stalks,
- (33) power loader lifts,
- (34) platform carriers,
- (35) portable insecticide sprayers,
- (36) chain saws,
- (37) motor oils, greases, lubricants and anti-freeze, (effective February 15, 1984),
- (38) hydraulic fluids.

(c) Examples of items which are subject to the three percent sales or use tax when sold to general farmers:

- (1) lawn mowers;
- (2) snow plows;
- (3) oil storage tanks and fittings;
- (4) drainage tile;
- (5) paint, cleaning compounds and brushes;
- (6) baler twine;
- (7) tobacco sticks and tobacco twine;
- (8) tools for maintaining machinery and equipment;
- (9) plastic mulch, plant bed covers and tobacco canvas.

(d) The lists in Paragraphs (b) and (c) of this Rule are not intended to be exclusive, but are for illustrative purposes only. If there is any question whatever as to the tax status of any item which does not appear therein, such question should be submitted to the secretary, together with a detailed statement of the business of the purchaser, the design and structure of the article, and its use, to the end that the applicable rate of tax may be correctly determined.

(e) The word farmer as used in this Rule includes dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, orchardmen and other persons coming within the generally accepted definition of the word. It does not include a person who merely cultivates a garden for personal use.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1976;*

*Amended Eff. February 1, 1988; March 1, 1984;*

*December 1, 1982; November 1, 1982.*

#### **.1123 BUILDING MATERIALS SOLD TO COMMERCIAL SWINE, LIVESTOCK AND POULTRY FARMERS**

(a) Effective August 1, 1986, sales to commercial livestock and poultry farmers of materials to be used exclusively in the construction, repair or improvement of any enclosure or structure specifically designed, constructed, and used for commercial purposes for housing, raising, or feeding livestock and poultry or for housing equipment necessary for these activities, including work space used solely for these commercial activities, are exempt from sales and use taxes. Likewise, sales of materials for the above described uses to contractors performing contracts with commercial livestock and poultry farmers and subcontractors performing contracts with general contractors who have contracts with commercial livestock and poultry farmers shall be exempt. The exemption from tax extends

only to building materials, as such, which are used in the construction, repair or improvement of such enclosures or structures and which become a part of such enclosures or structures. The exemption does not extend to sales of equipment and machinery used to equip such enclosures or structures prior to September 1, 1987. Effective September 1, 1987, the exemption was expanded to include sales of commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used for such above commercial purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosures, or structures.

(b) For the purpose of this Rule, the words "swine, livestock and poultry" include swine, cattle, horses, mules, sheep, chickens, turkeys and other similar domestic animals and fowl usually held or produced on a farm for commercial purposes. The word "commercial" shall mean "held or produced for income or profit." It does not include one who merely produces swine, livestock or poultry for one's personal use or consumption and not for sale. Commercial swine, livestock or poultry farmers, and contractors performing contracts with commercial swine, livestock or poultry farmers and subcontractors performing contracts with general contractors who contract with commercial swine, livestock or poultry farmers may obtain Commercial Swine, Livestock and Poultry Farmers' Certificate, Form E-599S, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to exempt such purchases from sales and use taxes.

*History Note: Statutory Authority G.S.*

*105-164.4; 105-164.6; 105-262;*

*Eff. February 1, 1987;*

*Amended Eff. February 1, 1988.*

#### **SECTION .1600 - SALES TO OR BY HOSPITALS; EDUCATIONAL; CHARITABLE OR RELIGIOUS INSTITUTIONS; ETC.: AND REFUNDS THERE TO**

##### **.1602 REFUNDS TO INSTITUTIONS; ETC.**

(f) To substantiate a refund claim for sales or use taxes paid on purchases of building materials,

supplies, fixtures and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local one percent, one and one-half percent or two percent sales or use taxes included in the contractor's statements must be shown separately from the state sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the institutions and organizations named in Paragraph (a) of this Rule. Examples of property on which sales or use tax has been paid by the contractor and which should not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts, equipment rentals and blueprints.

*History Note: Statutory Authority G.S. 105-164.14; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. February 1, 1988; February 1, 1987; May 1, 1985; January 3, 1984.*

#### SECTION .2300 - SALES TO OUT-OF-STATE MERCHANTS FOR RESALE

##### .2301 IN GENERAL

(a) For the purpose of the Sales and Use Tax Law, the term "registered nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring by purchase, consignment or otherwise, tangible personal property and selling the property outside this State and is registered for sales and use tax purposes in a taxing jurisdiction outside this State.

(b) Sales of tangible personal property to registered nonresident retail or wholesale merchants for resale are exempt from the North Carolina

sales tax, if all of the following conditions are met:

- (1) The wholesale merchant who sells tangible personal property for resale delivers to the nonresident retail or wholesale merchant a bill of sale for each sale of merchandise whether sold for cash or on credit, itemizing therein the various articles of tangible personal property included in said sale, and makes and retains a duplicate or carbon copy of each such bill of sale, and keeps a file of all such duplicate bills of sale for at least three years from the date of sale.
- (2) The character of such tangible personal property is such as the nonresident retail or wholesale merchant ordinarily and customarily purchases as a part of his stock for resale.
- (3) The nonresident retail or wholesale merchant is registered for sales and use tax purposes in a taxing jurisdiction outside this State and furnishes each wholesale merchant with a resale certificate, Form E-590, certifying that he is a registered nonresident retail or wholesale merchant, and further certifying that the tangible personal property purchased by him from the wholesale merchant is purchased for the purpose of resale at retail or wholesale in accordance and compliance with the laws of the jurisdiction in which he resides or does business. Such resale certificate, Form E-590, when properly completed and executed by the nonresident retail or wholesale merchant and delivered to the supplier shall be deemed sufficient evidence that such nonresident retail or wholesale merchant is duly registered in a taxing jurisdiction outside this State and is engaged in the business of a retail or wholesale merchant purchasing tangible personal property at wholesale for legitimate sale in the taxing jurisdiction in which he resides or does business.

*History Note: Statutory Authority G.S. 105-164.3; 105-164.5; 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988.*

##### .2302 INTERSTATE SALE

Sales made by merchants in North Carolina to out-of-state purchasers where actual delivery of the property is made by the resident vendor to such nonresident vendee at a point beyond the boundaries of this state and actual possession is retained by the vendor until delivery is made, or where the delivery is made by a resident vendor

to a common carrier for delivery to such nonresident vendee at a destination beyond the boundaries of this state, are sales in interstate commerce. Certificates of resale, Form E-590, are not required for sales in interstate commerce.

*History Note: Statutory Authority G.S.  
105-164.13; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1988.*

**.2303 REGISTRATION: WHOLESALER'S RESPONSIBILITY**

*History Note: Statutory Authority G.S.  
105-164.3; 105-164.5; 105-262;  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1988.*

**SECTION .2600 - LIABILITY OF CONTRACTORS: USE TAX ON EQUIPMENT BROUGHT INTO STATE: BUILDING MATERIALS**

**.2611 BUILDING MATERIALS**

(d) Effective August 1, 1986, sales to commercial livestock and poultry farmers of materials to be used exclusively in the construction, repair or improvement of any enclosure or structure specifically designed, constructed, and used for commercial purposes for housing, raising, or feeding livestock and poultry or for housing equipment necessary for these activities, including work space used solely for these commercial activities, are exempt from sales and use taxes. Likewise, sales of materials for the above described uses to contractors performing contracts with commercial livestock and poultry farmers and subcontractors performing contracts with general contractors who have contracts with commercial livestock and poultry farmers shall be exempt. The exemption from tax extends only to building materials, as such, which are used in the construction, repair or improvement of such enclosures or structures and which become a part of such enclosures or structures. The exemption does not extend to sales of equipment and machinery used to equip such enclosures or structures prior to September 1, 1987. Effective September 1, 1987, the exemption was expanded to include sales of commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used

for such above commercial purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosure, or structures.

(e) For the purpose of this Rule, the words "swine, livestock and poultry" include swine, cattle, horses, mules, sheep, chickens, turkeys and other similar domestic animals and fowl usually held or produced on a farm for commercial purposes. The word "commercial" shall mean "held or produced for income or profit." It does not include one who merely produces swine, livestock or poultry for one's personal use or consumption and not for sale. Commercial swine, livestock or poultry farmers, and contractors performing contracts with commercial swine, livestock or poultry farmers and subcontractors performing contracts with general contractors who contract with commercial swine, livestock or poultry farmers may obtain Commercial Swine, Livestock and Poultry Farmers' Certificate, Form E-599S, from the Sales and Use Tax Division, North Carolina Department of Revenue, or any of its field offices, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to exempt such purchases from sales and use taxes.

*History Note: Statutory Authority G.S.  
105-164.4; 105-164.6; 105-262; 105-264;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1988; May 11, 1979;  
September 30, 1977.*

**SECTION .4600 - MOTOR VEHICLES AND BOATS**

**.4601 MOTOR VEHICLES IN GENERAL**

(c) Sales of motor vehicles to registered merchants for resale are not subject to tax when supported by properly executed:

- (1) a Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale, Form E-590, or
- (2) other evidence in writing adequate to support the conclusion that he is registered with the Department of Revenue or in a taxing jurisdiction outside this State for sales and use tax purposes and that the property is being purchased for the purpose of resale.

Certificates of resale may also be executed by registered motor vehicle leasing firms when purchasing motor vehicles which they will lease or rent to their customers since such firms must remit tax on their lease or rental receipts. Sales of motor vehicles to out-of-state merchants who

accept delivery of the vehicles in this State for resale in their respective states are not subject to tax provided such merchants are registered for sales and use tax purposes in a taxing jurisdiction outside this State and furnish the North Carolina merchant a properly completed Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale. Reference is made to 17 NCAC 7B .2301 for further information regarding sales to nonresident merchants.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; March 1, 1987; December 1, 1984; January 3, 1984.*

#### SECTION .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

##### .4701 IN GENERAL

(7) effective July 1, 1983, printed material which is sold by a printer to a purchaser within or without this state is exempt from sales or use tax when such printed material is delivered in this state by the printer to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this state, if the purchaser does not thereafter use the printed material in this state. Printed material which is sold by a printer to a purchaser within or without this state is exempt from sales or use tax when the printed material is delivered by the printer directly to a mailing house or to a common carrier or to the United States Postal Service for delivery to a mailing house in this state which will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this state designated by the purchaser.

(A) Sales of printed material by a printer located within or without this state which is delivered directly to the purchaser in this state for the original purpose of preparing and delivering the printed material to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state are exempt from sales and use tax provide such purpose is consummated. A purchaser of such printed material for preparation and delivery to prospective customers and other recipients outside this state must furnish the vendor

a written statement certifying that the printed material is being purchased for use in a mailing program which is in place at the time of purchase; otherwise, the vendor must collect and remit the tax on such sales. Sales of printed materials to a user or consumer in this state to be placed in the purchaser's inventory for use as needed are subject to sales or use taxes notwithstanding that all or a portion of the printed material may be delivered to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state.

(B) A printer who sells printed material which is delivered to an in-state or out-of-state purchaser at a point within this state or which is delivered to a common carrier or the United States Postal Service for delivery to the purchaser at a point within this state who prepares the material to be mailed to prospective customers or other recipients without charge and transports the material outside this state to be delivered to the United States Postal Service or a common carrier or to a mailing house outside this state for delivery to designated recipients is liable for sales or use tax except as provided herein.

(C) The sale of printed materials by vendors other than printers and other types of tangible personal property which is provided without charge to recipients, whether it be advertising materials or gifts or donations, are subject to sales or use tax even though the items in question may be mailed to designated recipients outside this state. For example, a purchaser in this state buys tangible personal property other than printed material from a printer which is given to a donee within or without this state and directs that the item be shipped or mailed to the donee. This transaction is subject to sales or use tax.

*History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. February 1, 1988; April 1, 1986; February 1, 1986; January 3, 1984.*

#### CHAPTER 8 - INTANGIBLE TAX

#### SECTION .0700 - BENEFICIAL OR EQUITABLE INTEREST IN FOREIGN TRUSTS

##### .0704 EXEMPTIONS

(c) If the trustee of a foreign trust has sole discretion under the terms of the trust instrument as to distribution of income, a North Carolina beneficiary would not have a beneficial or equitable interest in such foreign trust.

*History Note: Statutory Authority  
G.S. 105-204; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1988;  
August 31, 1981; July 1, 1977.*

## **SECTION .1000 - VALUATION DATES**

### **.1002 NEWLY CREATED BUSINESSES: ESTATES; ETC.**

All newly created or qualified partnerships, corporations, estates and other taxpayers (using a fiscal year) who have not previously reported on a fiscal year basis for North Carolina state income tax purposes prior to December 31 are required to report all intangible property as of December 31. After such taxpayers have reported on a fiscal year basis for North Carolina state income tax purposes, they are required to report accounts receivable; and notes, bonds and other evidences of debt as of the last fiscal year ending prior to December 31.

*History Note: Statutory Authority  
G.S. 105-199 to 105-205; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1988;  
December 1, 1985.*

## **SECTION .1800 - MINIMUM TAX REQUIREMENT FOR FILING RETURNS**

### **.1801 IN GENERAL**

No return (Form 11-801) is required if the total tax on all intangible property does not exceed fifteen dollars (\$15.00); however, if returns were filed for prior years, a taxpayer may file an "information only" return showing no tax due.

*History Note: Statutory Authority  
G.S. 105-214; 105-262;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1988;  
December 1, 1985; August 31, 1981;  
October 30, 1980.*

## **TITLE 18 - SECRETARY OF STATE**

### **CHAPTER 6 - SECURITIES DIVISION**

#### **SECTION .1600 - REGISTRATION OF QUALIFIED BUSINESSES**

##### **.1601 PURPOSE**

The Securities Division of the Office of the Secretary of State of North Carolina is authorized by Article 4 of Chapter 105 of the North Carolina General Statutes to register certain qualified businesses as "Qualified Investment Organizations", "Qualified Business Ventures", and "Qualified Grantee Businesses" as those terms are defined by G.S. 105-163.091, so that investments in such qualified businesses are eligible for the income tax credit provided for by G.S. 105-163.092. These rules also establish the procedure for filing the final report required by G.S. 105-163.094 when the existence of a "qualified investment organization" is terminated.

*History Note: Filed as a Temporary  
Adoption Eff. January 1, 1988  
For a Period of 180 Days to  
Expire on June 29, 1988;  
Statutory Authority G.S. 105-163.094.*

### **.1602 PROCEDURE FOR APPLICATION FOR REGISTRATION**

(a) A business which seeks to qualify as either a "qualified investment organization", "qualified business venture" or "qualified grantee business" shall make written application to the Securities Division of the Department of the Secretary of State of North Carolina on an application form entitled "Application For Registration as a Qualified Investment Organization/Qualified Business Venture/Qualified Grantee Business" furnished upon request by the Securities Division.

(b) General Information Required in Application. Each application for registration shall contain the following information:

- (1) the classification (either Qualified Investment Organization, Qualified Business Venture, or Qualified Grantee Business) for which the applicant business seeks to qualify;
- (2) an indication as to whether the application is for the initial registration of the applicant business, or for the renewal of a registration;
- (3) the full legal name of the applicant business;
- (4) the street address and, if different, the mailing address of the principal office of the applicant business;
- (5) the telephone number and the Employer Identification Number of the applicant business;
- (6) the date on which the applicant business' fiscal year ends;
- (7) the type of business organization of the applicant business, and a copy of the documents, if any, under which the applicant

business is organized (for example, the articles of incorporation; the certificate of limited partnership; trust documents; certificate of assumed name; etc.);

- (8) the name of the authorized representative of the applicant business, his title, street address, mailing address (if different from street address), and telephone number;
- (9) if the applicant business is a corporation, the date of and state of incorporation; and
- (10) a representation that the applicant business has disclosed or will disclose to its investors that a tax credit pursuant to G.S. 105-163.092 is not available for an investment in the applicant business until the following requirements have been satisfied:

- (A) the applicant business must have been designated by the Securities Division as either a qualified investment organization, a qualified business venture, or a qualified grantee business, as those terms are defined by G.S. 105-163.091;

- (B) all statutory limits on the tax credit for investments in qualified businesses must have been disclosed to the investors; and

- (C) the investor must have requested and received from the Securities Division a certificate stating that investments in the applicant business are eligible for the income tax credit of G.S. 105-163.092, and must have attached such certificate to the application made to claim the tax credit submitted by the investor to the Secretary of Revenue.

If, at the time the application for registration is submitted, the disclosures required by Item (b) (10) (B) of this Rule have been made to the investors, the applicant business shall attach to its application for registration written evidence of such disclosures.

(c) **Specific Information Required -- Qualified Investment Organization.** The application for registration as a "qualified investment organization" shall contain the following information and representations on a form entitled "Attachment A -- Qualified Investment Organization" available upon request from the Securities Division:

- (1) a statement that the following representations are true, complete, correct, and not misleading:

- (A) the applicant business intends to invest at least seventy percent of its capital in equity securities [as defined in G.S. 105-163.091(4)] or subordinated debt [as defined in G.S. 105-163.091(7)] of qualified business ventures [as defined in G.S. 105-163.091(7)] or of qualified grantee

businesses [as defined in G.S. 105-163.091(8)];

- (B) the applicant business has an initial capitalization of at least five million dollars (\$5,000,000), of which no more than two million dollars (\$2,000,000) is to be contributed pursuant to binding commitments;

- (C) the applicant business does not own the securities of any business for the purpose of operating the business or for any purpose other than as an investment for future sale;

- (D) the applicant is either controlled by a financial institution [as defined in G.S. 105-163.091(5)], or is not controlled by any other business (NOTE: if the applicant business is controlled by a financial institution, give the name, address, and telephone number of such financial institution); and

- (E) the applicant business was not organized to invest in only one business or one group of businesses that conduct the same or a similar type of business activity; and

- (2) in applications for renewal of registration as a qualified investment organization, a schedule describing the applicant business' investments in qualified business ventures and qualified grantee businesses, submitted on a form entitled "Attachment A-I -- Schedule of Investments in Qualified Business Ventures and Qualified Grantee Businesses" available upon request from the Securities Division.

(d) **Specific Information and Representations Required -- Qualified Business Venture.** The application for registration of a "qualified business venture" shall contain the following information and representations on a form entitled "Attachment B -- Qualified Business Venture" available upon request from the Securities Division:

- (1) a statement that the following representations are true, complete, correct, and not misleading:

- (A) both the headquarters and principal business operations of the applicant business are in North Carolina; or, as a condition for eligibility of an investment in the applicant business for the tax credit established by G.S. 105-163.092, the applicant business agrees to establish its headquarters and principal business operations in North Carolina within three months after the investment is made;

- (B) as a condition of an investment eligible for the tax credit established by G.S. 105-163.092, the applicant business agrees

to retain its headquarters and principal business operations in North Carolina for at least three years following the investment;

- (C) the applicant business is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, or research and development, or a service-related industry; and
  - (D) the applicant business does not engage as a substantial part of its business in construction, contracting, selling goods at retail, or the purchase, sale, development, or holding for investment of commercial paper, financial instruments, securities, or real property, or otherwise make investments;
- (2) in the event that the applicant business has agreed to establish its headquarters and principal business operations in North Carolina for the purpose of qualifying investments for the tax credit, an undertaking that the applicant will notify in writing the Securities Division of the Department of the Secretary of State of North Carolina immediately upon the occurrence of any of the following:
- (A) the receipt of the first investment in the applicant business for which a tax credit pursuant to G.S. 105-163.092 is claimed;
  - (B) the establishment by the applicant business of its headquarters and principal business operations in North Carolina; or
  - (C) the failure of the applicant business to establish its headquarters and principal business operations in North Carolina within three months following the first investment in the applicant business for which a tax credit pursuant to G.S. 105-163.092 is claimed;
- (3) an undertaking to immediately notify in writing the Securities Division of the Department of the Secretary of State of North Carolina of the date on which either the headquarters or the principal business operations of the applicant business are removed from North Carolina, in the event that the applicant business does not retain its headquarters or principal business operations in North Carolina for a period of at least three years following the date of each investment in that business for which a tax credit is claimed; and
- (4) a financial statement for its most recent fiscal year, certified by an independent certified public accountant, showing that the applicant business had revenues of five million dollars (\$5,000,000) or less, deter-

mined on a consolidated basis using generally accepted accounting procedures.

(e) Specific Information and Representations Required -- Qualified Grantee Business. The application for registration of a "qualified grantee business" shall contain the following information and representations on a form entitled "Attachment C -- Qualified Grantee Business" available upon request from the Securities Division:

- (1) a statement that the following representations are true, complete, correct, and not misleading:
  - (A) both the headquarters and principal business operations of the applicant business are in North Carolina; or that, as a condition for eligibility of an investment in the applicant business for the tax credit pursuant to G.S. 105-163.092, the applicant business agrees to establish its headquarters and principal business operations in North Carolina within three months after the investment is made;
  - (B) as a condition of an investment eligible for a tax credit pursuant to G.S. 105-163.092, the applicant business agrees to retain its headquarters and principal business operations in North Carolina for at least three years following the investment; and
  - (C) the applicant business has received during the three years preceding the filing of its initial application for registration a grant or other funding from either the North Carolina Technological Development Authority, the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, or the Federal Small Business Innovative Research Program;
- (2) in the event that the applicant business has agreed to establish its headquarters and principal business operations in North Carolina for the purpose of qualifying investments for the tax credit, an undertaking that the applicant will notify in writing the Securities Division of the Department of the Secretary of State of North Carolina immediately upon the occurrence of any of the following:
  - (A) the receipt of the first investment in the applicant business for which a tax credit pursuant to G.S. 105-163.092 is claimed;
  - (B) the establishment by the applicant business of its headquarters and principal business operations in North Carolina; or
  - (C) the failure of the applicant business to establish its headquarters and principal business operations in North Carolina within three months following the first

investment in the applicant business for which a tax credit pursuant to G.S. 105-163.092 is claimed;

- (3) an undertaking to immediately notify in writing the Securities Division of the Department of the Secretary of State of North Carolina of the date on which either the headquarters or the principal business operations of the applicant business are removed from North Carolina, in the event that the applicant business does not retain its headquarters and principal business operations in North Carolina for a period of at least three years following the date of each investment in that business for which a tax credit is claimed; and

- (4) documentary evidence of the receipt of the grant or funding certified to in Item (c) (1) (C) of this Rule.

(f) **Signing of the Application.** Each application for registration shall be signed by the authorized representative of the applicant business, and each application shall contain the following affirmation by the signing authorized representative: "Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete."

(g) **Filing Fee.** The filing fee for an initial application for registration as a qualified investment organization, qualified business venture, or qualified grantee business shall be One Hundred Dollars (\$100.00). The filing fee shall be payable by check, made payable to the order of "SECRETARY OF STATE", and shall accompany the application for registration.

(h) **Where to File Application for Registration.** All applications for registration shall be filed by mailing the application, together with any supplemental schedules or statements and the filing fee, to:

#### QUALIFIED BUSINESS REGISTRATION

Department of the Secretary of State  
Securities Division  
Room 404  
300 North Salisbury Street  
Raleigh, North Carolina 27611.

(i) **Due Date for Filing Application for Registration.** The initial application for registration shall be filed prior to making of the investment for which an income tax credit pursuant to G.S. 105-163.092 will be claimed.

(j) **Review of Application; Notification of Qualification Status.**

- (1) The date of filing of all applications for registration (both initial and renewals) shall be recorded at the time of receipt the Securities Division and shall not be construed to be the date of mailing. Recor-

dation of the date of filing does not indicate that the application is complete.

- (2) The Administrator of the Securities Division shall review all applications and designate those he determines to be complete. In the event that the administrator determines that an application is incomplete in any respect, the applicant will be notified within 15 days. An incomplete application shall be resubmitted.
- (3) Upon examination of the application for registration, the administrator shall determine whether the applicant business meets the requirements for classification as a qualified investment organization, qualified business venture, or qualified grantee business, as the case may be. When the determination has been made, the administrator shall notify the applicant business of its determination and that persons interested in tax-favored investments with respect to the applicant business may obtain from the Securities Division certificates of such qualified status.
- (4) The submission of any false or misleading information in connection with an application for registration shall be grounds for rejection of the application and/or revocation of the registration.

*History Note: Filed as a Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988; Statutory Authority G.S. 105-163.094.*

#### .1603 RENEWAL OF REGISTRATION

(a) Subsequent to its initial qualification as either a "qualified investment organization", "qualified business venture", or "qualified grantee business", a business which wishes to maintain its "qualified" status shall make written application for renewal of such status annually to the Securities Division of the Department of the Secretary of State of North Carolina on application forms entitled "Application For Registration as a Qualified Investment Organization Qualified Business Venture Qualified Grantee Business" furnished by the Securities Division upon request.

(b) **Information Required in Application for Renewal of Registration.** In its application for renewal of registration, the applicant business must certify the facts required in its original application for registration and that it has not moved its headquarters or principal business operations out of North Carolina. Such certification is accomplished by the execution and

submission to the Securities Division of an application for registration, with any necessary schedules or statements, marked with an indication that such application is for renewal of registration. An applicant business which wishes to renew its registration as a qualified investment organization must attach to its application a schedule of its investments in qualified business ventures and qualified grantee businesses, revised as of the close of the applicant business' most recent fiscal year. An applicant business which wishes to renew its registration as a qualified business venture must attach to its application a financial statement for its most recent fiscal year, certified by an independent certified public accountant and showing revenues of five million dollars (\$5,000,000) or less, as determined on a consolidated basis in accordance with generally accepted accounting procedures.

(c) Due Date for Filing Application for Renewal of Registration. The application for renewal of registration shall be filed with the Securities Division no later than the 15th day of the third month following the close of the applicant business' fiscal year.

(d) Signing of the Application for Renewal of Registration. Each application for renewal of registration shall be signed by the authorized representative of the applicant business, and each such application shall contain the following affirmation by the signing authorized representative: "Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete."

(e) Filing Fee. The filing fee for each application for renewal of registration as a "qualified" business shall be fifty dollars (\$50.00). The filing fee shall be payable by check, made payable to the order of "SECRETARY OF STATE", and shall accompany the application for renewal of registration.

(f) Where to File Application for Renewal of Registration. Each application for renewal of registration shall be filed in the same manner as the original application for registration.

*History Note: Filed as a Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988; Statutory Authority G.S. 105-163.094.*

#### **.1604 AMENDMENT OF APPLICATION**

A business which has registered with the Securities Division pursuant to G.S. 105-163.094 may amend an application which the administrator has determined to be complete at any time by

submitting new information or evidence as required by Rule .1602 or Rule .1603. The same procedural requirements shall apply to the amendment.

*History Note: Filed as a Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988; Statutory Authority G.S. 105-163.094.*

#### **.1605 OBTAINING CERTIFICATES OF REGISTRATION**

Persons who contemplate investment in a qualified investment organization, a qualified business venture, or a qualified grantee business may obtain a certificate stating that an applicant business has registered as a "qualified" business with the Securities Division of the Department of the Secretary of State and has met all requirements of qualification by requesting such certificate in writing from:

**CERTIFICATE OF QUALIFIED STATUS**  
Department of Secretary of State  
Securities Division  
Room 404  
300 North Salisbury Street  
Raleigh, North Carolina 27611.

*History Note: Filed as a Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988; Statutory Authority G.S. 105-163.094.*

#### **.1606 REPORTING REQUIREMENT /TERMINATION/QUALIFIED INVESTMENT ORGANIZATION**

When the existence of a business registered as a qualified investment organization is terminated, the business must file a final report with the Securities Division of the Department of the Secretary of State. In the final report, the business must include the following information:

- (1) its name and address;
- (2) its employer identification number;
- (3) the name, address, title, and telephone number of its successor in interest or person authorized to file the final report;
- (4) the date (approximate) on which the existence of the business will be or was terminated;
- (5) a description of its investments in qualified business ventures and qualified grantee businesses as of the date of termination;
- (6) a certification that it invested at least 70 percent of its capital in equity securities or subordinated debt of qualified business ventures or qualified grantee businesses; and

- (7) an affirmation of the person filing the final report in the following form: "Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief the information contained in this Final Report is true and complete."

The final report shall be in letter form and shall be filed by mailing it to the address at which the business had filed its application for registration. No fee is required to be submitted with the final report.

*History Note: Filed as a Temporary Adoption Eff. January 1, 1988 For a Period of 180 Days to Expire on June 29, 1988; Statutory Authority G.S. 105-163.094(a).*

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

### CHAPTER 2 - DIVISION OF HIGHWAYS

#### SUBCHAPTER 2B - HIGHWAY PLANNING

##### SECTION .0100 - RIGHT OF WAY

###### .0143 THE SALE OF SURPLUS LANDS

(a) Department of Transportation policy relative to disposal of remainder properties acquired in connection with acquisition of right of way is as follows:

- (1) The sale of all residues will be by public sale except as hereinafter specified.
- (2) Residue properties sold by public sale are to be sold by either sealed bid, or by auction at the election of the right of way branch. The sale of such properties must be advertised by publication in a newspaper having general circulation in the county in which the property is situated. After opening bids or closing of auction, no upset bids will be considered. The high bid shall be presented to the Department of Transportation at its next regular meeting after the date of the sale for rejection or acceptance. The Department of Transportation reserves the right to reject all bids.
- (3) Those residue properties located adjacent to controlled access projects that are landlocked may be sold to the adjoining property owner by negotiation rather than public sale for a consideration not less than the appraised value of the residue.
- (4) Residue properties may be sold to state agencies and institutions and other governmental units by negotiation rather than public sale for a consideration not less than the appraised value of the residue.

- (5) Surplus property acquired in connection with highway purposes may be used for the purpose of exchange with a public utility company in part or in full consideration for property to be acquired for highway purposes from the public utility company. Such exchanges shall be based on the appraised values of the surplus property and the property to be acquired for highway purposes. Residue property acquired in connection with right of way for a project may be used for the purpose of exchange in part or full consideration for right of way being acquired from another property owner on the project. Such exchanges to be based on the appraised values of the residue property and the right of way to be acquired.

- (6) Residues which have an area of one-half acre or less or a value of one thousand dollars (\$1,000) or less and the highest and best use is for assemblage with adjacent property may be sold without advertising by negotiations to an adjoining owner. The Property Management Unit together with an area appraiser will determine the value of the residue based on its after value as indicated in the original appraisal, sales of similar properties and sales of other residues, if any, in the area. After a value has been established, the State Property Manager may negotiate with the adjoining owners concerning the disposal of each residue. The decision of the State Property Manager to accept and complete a sale is final.

- (7) The Manager of Right of Way is delegated authority to dispose of residues with appraised values of less than one hundred dollars (\$100.00) by executing and delivering on behalf of the Department of Transportation, a quit claim deed to the buyers of such residues, after the transactions are first approved by the Board of Transportation. Conveyances of residues with appraised values of less than one hundred dollars (\$100.00) shall not require the approval of the Governor and Council of State.

- (b) Should the Department of Transportation purchase a property in its entirety for right of way purposes and at a later date reduce the right of way, thus creating a residue, the original owner shall be offered the first refusal to purchase the residue. The purchase price is to be negotiated with the former owner or other prospective buyers taking into consideration the purchase price paid by the Department of Transportation, the current value of the property, and the propor-

tionate part of the entire tract being retained by the Department of Transportation. In the event the former owner does not desire to repurchase the residue area, the residue shall be offered for sale at public sale with the right reserved to reject all bids.

*History Note: Statutory Authority G.S. 136-18(2); 136-19; 143B-350(f),(g); Eff. July 1, 1978; Amended Eff. February 1, 1988; November 1, 1986; August 1, 1982.*

### **CHAPTER 3 - DIVISION OF MOTOR VEHICLES**

#### **SUBCHAPTER 3I - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTIONS**

##### **SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL DRIVER TRAINING SCHOOLS**

###### **.0210 LICENSE FEES**

Every application for an original or renewal license for a commercial driver training school or branch must be accompanied by a fee of forty dollars (\$40.00), which is nonrefundable.

*History Note: Statutory Authority G.S. 20-324; Eff. February 1, 1988.*

##### **SECTION .0300 - SCHOOL LOCATION: PHYSICAL FACILITIES; AND COURSES OF INSTRUCTION**

###### **.0308 BRANCHES**

A branch shall meet all requirements of a principal place of business including those listed in Rules .0302 and .0303 of this Section.

*History Note: Statutory Authority G.S. 20-322 through 20-324; Eff. February 1, 1988.*

##### **SECTION .0500 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR**

###### **.0501 REQUIREMENTS**

(a) Each instructor of a commercial driver training school, or branch shall:

- (1) be of good moral character;
- (2) have at least four years of experience as a licensed operator of a motor vehicle;
- (3) not have been convicted of a felony or convicted of a misdemeanor involving

moral turpitude in the ten years immediately preceding the date of application;

- (4) not have had a revocation or suspension of his driver's license in the two years immediately preceding the date of application;
- (5) have graduated from high school or hold a high school equivalency certificate;
- (6) not have had convictions for moving violations totaling seven or more points in the year preceding the date of application;
- (7) have completed the two-semester hour, college credit preparatory course for teachers; an equivalent course approved by the commissioner, or an Instructor Training Program conducted by an approved Commercial Driver Training School.

(b) An applicant may apply for a temporary instructor's license which would be valid for three months. To be eligible for a temporary instructor's license, the applicant shall meet requirements (a) (1) through (6); and shall:

- (1) submit an Instructor Application with an eight dollar (\$8.00) application fee;
- (2) successfully complete 30 hours of classwork as a student at an approved commercial driver training school;
- (3) successfully complete six hours of behind-the-wheel training as a student at an approved commercial driver training school;
- (4) successfully complete six hours of observation of behind-the-wheel instruction of a new driver by a licensed instructor;
- (5) successfully complete the written test administered by a Driver Education Specialist;
- (6) successfully complete the Miller Road Test given by a Driver Education Specialist;
- (7) be allowed only one retest of written test and Miller Road Test given by a Driver Education Specialist;
- (8) successfully complete two hours of classroom instruction while being observed by a Driver Education Specialist;
- (9) successfully complete two hours of behind-the-wheel instruction while being observed by a Driver Education Specialist;
- (10) be recommended by a Driver Education Specialist to receive an instructor's license.

(c) An instructor at an approved commercial driver training school may apply for an Instructor Trainer license. The Instructor Trainer shall:

- (1) have five consecutive years as an active licensed instructor;
- (2) complete two hours of classroom observation by a Driver Education Specialist;

- (3) complete two hours of behind-the-wheel observation by a Driver Education Specialist;
- (4) be recommended by a Driver Education Specialist;
- (5) submit application for Instructor Trainer License with fee of eight dollars (\$8.00);
- (6) must qualify each school year.

*History Note: Statutory Authority G.S.*

*20-322 through 20-324;*

*Eff. July 2, 1979;*

*Amended Eff. February 1, 1988; May 1, 1987;*

*June 1, 1982.*

**SECTION .0800 - LICENSE REVOCATION OR  
SUSPENSION**

**.0803 REVOCATION OR SUSPENSION  
PROCEDURE**

If any school or instructor is alleged to be in violation of any provision of Article 14, G.S. Chapter 20 or of any provision of these Regu-

lations, the school or instructor shall be notified by certified or registered mail of the suspension or revocation. The notification shall set forth the details of the alleged violation which forms the basis for the action. The school (through its owner, partner, or corporate officer) or any instructor, may request in writing a "show-cause" hearing. This request must be made within 30 days of receipt of the certified or registered letter. The hearing shall be heard by an officer designated by the Commissioner and the school or instructor may be represented by counsel. Upon completion of the hearing, the division shall notify the school or instructor within 30 days of the decision of the hearing officer. This decision may be appealed as provided by G.S. Chapter 150B.

*History Note: Statutory Authority G.S.*

*20-325;*

*Eff. July 2, 1979;*

*Amended Eff. February 1, 1988, May 1, 1987;*

*June 1, 1982.*

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*LIST OF RULES AFFECTED*

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**NORTH CAROLINA ADMINISTRATIVE CODE**

**EFFECTIVE: January 1, 1988**

AGENCY				ACTION TAKEN
<u>DEPARTMENT OF ADMINISTRATION</u>				
1	NCAC	4A	.0701-.0704	Adopted
			.0801-.0806	Adopted
			.0901	Adopted
	6E		.0101-.0107	Repealed
			.0201	Repealed
			.0303-.0305	Repealed
			.0308	Repealed
			.0401-.0402	Repealed
			.0501	Repealed
	30B		.0001	Repealed
			.0005	Repealed
			.0007	Repealed
	30D		.0101-.0103	Adopted
			.0201-.0202	Adopted
			.0301-.0306	Adopted
	35		.0406	Amended
	<u>DEPARTMENT OF AGRICULTURE</u>			
2	NCAC	8F .0304	Amended	
		43L .0301-.0302	Repealed	
		.0303-.0305	Adopted	
<u>DEPARTMENT OF COMMERCE</u>				
4	NCAC	6C .0403	Amended	
		.0407	Adopted	
<u>GOVERNOR'S OFFICE</u>				
9	NCAC	2	Executive Order Number 58	
			Eff. 12-11-87	
			Executive Order Number 59	
			Eff. 12-11-87	
			Executive Order Number 60	
			Eff. 12-11-87	
			Executive Order Number 61	
			Eff. 12-30-87	
		Executive Order Number 62		
		Eff. 12-30-87		
<u>DEPARTMENT OF HUMAN RESOURCES</u>				
10	NCAC	8B	.0801 -.0802	Adopted
			8F .0208	Amended
		10B	.0626	Amended
		10C	.0312	Amended
			.0313	Repealed
			.0317	Repealed
			.0321-.0324	Amended

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**LIST OF RULES AFFECTED**

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	.0325	Repealed
10G	.0801-.0803	Temp. Adopted
		Expires 6-29-88
24A	.0607	Temp. Adopted
		Expires 6-28-88
26I	.0202	Amended
26J	.0103-.0104	Amended
	.0105-.0111	Repealed
	.0201-.0206	Repealed
26K	.0101-.0106	Adopted
46E	.0106-.0107	Repealed
	.0228-.0243	Repealed
	.0301-.0303	Repealed
46F	.0101-.0103	Repealed
	.0108-.0111	Adopted
46G	.0108	Adopted
	.0101-.0106	Amended
	.0201	Amended
49B	.0309	Temp. Amended
		Expires 6-28-88
	.0609	Temp. Adopted
		Expires 6-28-88
49E	.0101-.0103	Adopted

**DEPARTMENT OF JUSTICE**

12	NCAC 9A	.0103	Amended
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**DEPARTMENT OF LABOR**

13	NCAC 7C	.0101	Amended
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**DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

14A	NCAC 11	.0201-.0216	Repealed
		.0401-.0416	Adopted

**DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

15	NCAC 2B	.0217	Repealed
	2D	.0524	Temp. Amended
			Expires 6-30-88
	2H	.0408-.0409	Repealed
		.1001-.1004	Adopted
	3B	.0901	Amended
	3C	.0210	Amended
16E		.0101-.0106	Temp. Adopted
			Expires 6-11-88
		.0201-.0202	Temp. Adopted
			Expires 6-11-88

**DEPARTMENT OF EDUCATION**

16	NCAC 6C	.0312	Amended
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**DEPARTMENT OF REVENUE**

17	NCAC 5C	.2502	Amended
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**LIST OF RULES AFFECTED**

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**SECRETARY OF STATE**

18	NCAC	6	.1601-.1606	Temp. Adopted Expires 6-29-88
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**DEPARTMENT OF TRANSPORTATION**

19A	NCAC	3C	.0202	Amended
		3D	.0901-.0904	Adopted

**BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

21	NCAC	8F	.0409	Amended
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**BOARD OF MORTUARY SCIENCE**

21	NCAC	34	.0123	Amended
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**COMMUNITY COLLEGES**

23	NCAC	2C	.0105	Amended
		2E	.0201	Amended

**HOUSING FINANCE AGENCY**

24	NCAC	1D	.0601-.0604	Adopted
		1K	.0501-.0504	Adopted

**OFFICE OF STATE PERSONNEL**

25	NCAC	1C	.0404	Temp. Repealed Expires 6-28-88
		1H	.0604	Temp. Repealed Expires 6-28-88
			.0609	Temp. Repealed Expires 6-28-88
			.0618-.0624	Temp. Adopted Expires 6-28-88

**OFFICE OF ADMINISTRATIVE HEARINGS**

26	NCAC	2A	.0102	Amended
			.0201-.0202	Amended
			.0207	Amended
			.0209-.0210	Amended
			.0301	Amended
			.0401-.0405	Amended
			.0502	Amended
			.0507	Amended
		2B	.0302	Amended
		3	.0025	Temp. Repealed Expires 1-1-88
			.0025	Repealed
			.0026	Temp. Amended Expires 1-1-88
			.0026	Amended

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*LIST OF RULES AFFECTED*

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NORTH CAROLINA ADMINISTRATIVE CODE

EFFECTIVE: February 1, 1988

AGENCY		ACTION TAKEN
<u>DEPARTMENT OF CORRECTION</u>		
5	NCAC 2D .0304	Temp. Amended Expires 3-1-88
5	NCAC 2G .0301-.0303	Temp. Repealed Expires 5-13-88
<u>GOVERNOR'S OFFICE</u>		
9	NCAC 2 Executive Order Number 63 Eff. 1-29-88 Executive Order Number 64 Eff. 1-29-88 Executive Order Number 65 Eff. 1-29-88 Executive Order Number 66 Eff. 1-29-88	
	3L .0101-.0102	Temp. Adopted Expires 8-1-88
	.0201-.0205	Temp. Adopted Expires 8-1-88
	.0301-.0304	Temp. Adopted Expires 8-1-88
	.0401-.0403	Temp. Adopted Expires 8-1-88
	.0501-.0505	Temp. Adopted Expires 8-1-88
	.0601-.0606	Temp. Adopted Expires 8-1-88
	.0701-.0704	Temp. Adopted Expires 8-1-88
	.0801-.0803	Temp. Adopted Expires 8-1-88
	.0901-.0904	Temp. Adopted Expires 8-1-88
	.1001-.1002	Temp. Adopted Expires 8-1-88
	.1101-.1102	Temp. Adopted Expires 8-1-88
	.1201	Temp. Adopted Expires 8-1-88
<u>DEPARTMENT OF HUMAN RESOURCES</u>		
10	NCAC 3R .1003	Amended
	7A .0101-.0105	Temp. Repealed Expires 7-29-88
	.0106-.0109	Temp. Adopted Expires 7-29-88
	.0201-.0206	Temp. Repealed Expires 7-29-88
	.0208	Temp. Repealed

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*LIST OF RULES AFFECTED*

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	.0209-.0212	Expires 7-29-88 Temp. Adopted
	.0401	Expires 7-29-88 Temp. Adopted
	.0405-.0406	Expires 7-29-88 Temp. Adopted
	.0502	Expires 7-29-88 Temp. Repealed
	.0503	Expires 7-29-88 Temp. Adopted
7D	.0206	Expires 7-29-88 Temp. Amended
7E	.0401-.0403	Expires 7-29-88 Temp. Amended
8I	.0016	Expires 7-29-88
	.0017	Amended
9D	.0104	Adopted
		Temp. Adopted
10F	.0029	Expires 7-29-88
	.0032-.0035	Amended
	.0039	Amended
	.0042	Amended
10G	.0101	Amended
	.0103-.0105	Amended
	.0107	Amended
	.0108	Adopted
	.0202-.0203	Amended
	.0502-.0503	Amended
	.0505	Amended
	.0510	Amended
	.0704	Amended
26H	.0102	Amended
	.0104	Amended

DEPARTMENT OF JUSTICE

12	NCAC 11	.0103	Amended
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DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

14A	NCAC 11	.0402	Adopted
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DEPARTMENT OF REVENUE

17	NCAC	1C .0402	Amended
	6B	.0315	Amended
		.0801	Amended
		.0902	Amended
		.2203	Amended
		.2302	Amended
		.2402	Amended
		.2502	Amended
		.2806	Amended
		.2901	Amended
		.3303	Amended
		.3504	Amended
		.3712	Amended
		.3722	Amended

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**LIST OF RULES AFFECTED**

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		.3801-.3803	Amended
6C		.0202	Amended
6D		.0101-.0102	Amended
7B		.0106	Amended
		.1003	Amended
		.1101	Amended
		.1123	Amended
		.1602	Amended
		.2301-.2302	Amended
		.2303	Repealed
		.2611	Amended
		.4601	Amended
		.4701	Amended
8		.0704	Amended
		.1002	Amended
		.1801	Amended

**DEPARTMENT OF TRANSPORTATION**

19A	NCAC	2B .0143	Amended
		3I .0210	Adopted
		.0308	Adopted
		.0501	Amended
		.0803	Amended

**BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

21	NCAC	8G .0113	Amended
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**BOARD OF OPTICIANS**

21	NCAC	40 .0104	Amended
		.0108	Amended
		.0111	Amended
		.0206	Amended
		.0208	Repealed
		.0212	Adopted
		.0303	Amended
		.0312	Amended
		.0320	Amended

**REAL ESTATE LICENSING BOARD**

21	NCAC	58A .0107-.0108	Amended
		.0110	Amended
		.0403	Amended
		.1401-.1404	Adopted
	58B	.0203	Adopted
		.0501	Amended
		.0601-.0602	Adopted

**OFFICE OF STATE PERSONNEL**

25	NCAC	1E .0706	Adopted
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**OFFICE OF ADMINISTRATIVE HEARINGS**

26	NCAC	2B .0103	Amended
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**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

<b>CHAPTER</b>	<b>LICENSING BOARDS</b>
2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Marital and Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

## CUMULATIVE INDEX

### CUMULATIVE INDEX

(April 1987 - March 1988)

1987 - 1988

Pages	Issue
1 - 137 . . . . .	1 - April
138 - 169 . . . . .	2 - May
170 - 198 . . . . .	3 - June
199 - 285 . . . . .	4 - July
286 - 364 . . . . .	5 - August
365 - 417 . . . . .	6 - September
418 - 487 . . . . .	7 - October
488 - 544 . . . . .	8 - November
545 - 643 . . . . .	9 - December
644 - 818 . . . . .	10 - January
819 - 950 . . . . .	11 - February

AO - Administrative Order  
AG - Attorney General's Opinions  
C - Correction  
E - Errata  
EO - Executive Order  
FDL - Final Decision Letters  
FR - Final Rule  
GS - General Statute  
JO - Judicial Orders or Decision  
LRA - List of Rules Affected  
M - Miscellaneous  
NP - Notice of Petitions  
PR - Proposed Rule  
SO - Statements of Organization  
TR - Temporary Rule

#### ADMINISTRATION

Auxiliary Services, 203 PR  
Departmental Rules, 429 PR  
N.C. Low-Level Radioactive Waste Management Authority, 825 PR  
Property and Construction, 388 PR  
Purchase and Contract, 651 PR  
State Construction, 388 PR  
State Employees Combined Campaign, 13 PR, 334 PR

#### ADMINISTRATIVE HEARINGS

Hearings Division, 408 PR

#### AGRICULTURE

Food and Drug Protection Division, 204 PR, 429 PR, 652 PR  
Markets, 206 PR, 658 PR  
N. C. State Fair, 205 PR  
Pesticide Board, 13 PR, 662 PR

Plant Industry, 658 PR  
Standards Division, 206 PR, 657 PR  
Structural Pest Control, 205 PR, 393 PR, 492 PR  
Veterinary, 209 PR, 660 PR

#### **COMMERCE**

ABC Commission, 663 PR  
Cemetery Commission, 429 PR, 664 PR  
Credit Union Division, 334 PR  
Departmental Rules, 14 PR, 143 PR, 551 PR  
Savings and Loan Division, 147 PR  
Seafood Industrial Park Authority, 430 PR

#### **COMMUNITY COLLEGES**

Community Colleges, 270 PR, 911 PR

#### **CORRECTION**

Division of Prisons, 105 FR, 190 FR, 275 FR, 924 FR  
Parole Commission, 106 FR

#### **CRIME CONTROL AND PUBLIC SAFETY**

Alcohol Law Enforcement, 745 PR  
Governor's Crime Commission, 565 PR  
State Highway Patrol, 159 PR, 745 PR  
Victim and Justice Services, 342 PR, 570 PR

#### **EXECUTIVE ORDERS**

Executive Orders	34 - 42,	1	EO
	43 - 46,	138	EO
	47 - 49,	171	EO
		50,	199
			EO
	51 - 53,	288	EO
		54,	384
			EO
	55 - 56,	418	EO
		57,	545
			EO
	58 - 62,	644	EO
	63 - 66,	819	EO

#### **FINAL DECISION LETTERS**

Voting Rights Act, 10 FDL, 141 FDL, 200 FDL, 291 FDL, 385 FDL, 489 FDL, 547 FDL, 647 FDL, 822 FDL

#### **GENERAL STATUTES**

Chapter 7A, 382 GS  
Chapter 143B, 286 GS  
Chapter 150B, 366 GS

#### **GOVERNOR**

State Budget and Management, 828 PR

#### **HUMAN RESOURCES**

AFDC, 156 PR, 691 PR  
Children's Services, 689 PR  
Commission of Anatomy, 441 PR  
Departmental Rules, 492 PR  
Drug Commission, 530 FR, 924 FR  
Facility Services, 174 PR, 211 PR, 393 PR, 665 PR, 841 PR  
Family Services, 152 PR  
Health: Epidemiology, 694 PR

Health Services, 237 PR, 432 PR, 494 PR, 696 PR  
Individual and Family Support, 153 PR  
Medical Assistance, 149 PR, 174 PR, 248 PR, 339 PR, 396 PR, 443 PR, 506 PR  
Medical Services, 711 PR, 876 PR  
Mental Health, Mental Retardation  
and Substance Abuse, 15 PR, 247 PR, 337 PR, 442 PR, 557 PR, 874 PR  
Notice, 170 C, 488 C  
Social Services Commission, 397 PR, 686 PR  
State/County Special Assistance, 690 PR  
Vocational Rehabilitation Services, 559 PR  
Youth Services, 712 PR

#### **INDEPENDENT AGENCIES**

Housing Finance, 355 PR

#### **INSURANCE**

Life Accident and Health Division, 17 PR  
Special Services Division, 564 PR

#### **JUDICIAL ORDERS**

Martin v. Melott, 420 JO

#### **JUSTICE**

Education and Training Standards, 19 PR  
N.C. Alarm Systems, 341 PR  
Private Protective Services, 249 PR, 712 PR  
Sheriffs' Education and Training Standards Commission, 714 PR

#### **LICENSING BOARDS**

CPA, 269 PR, 351 PR, 516 PR, 766 PR  
Chiropractic Examiners, 178 PR  
Cosmetic Art Examiners, 593 PR  
Dental Examiners, 461 PR  
Electrical Contractors, 612 PR  
General Contractors, 906 PR  
Geologists, 524 PR  
Hearing Aid Dealers and Fitters, 769 PR  
Medical Examiners, 95 PR, 403 PR, 613 PR  
Mortuary Science, 404 PR, 910 PR  
Nursing, Board of, 627 PR  
Nursing Home Administrators, 182 PR  
Opticians, 404 PR  
Pharmacy, 786 PR  
Physical Therapy Examiners, 792 PR  
Practicing Psychologists, 795 PR  
Real Estate, 352 PR  
Refrigeration Examiners, 526 PR

#### **LIST OF RULES AFFECTED**

Volume 12, No. 1  
(April 1, 1987), 131 LRA  
Volume 12, No. 2  
(May 1, 1987), 163 LRA  
Volume 12, No. 3  
(June 1, 1987), 193 LRA  
Volume 12, No. 4  
(July 1, 1987), 277 LRA  
Volume 12, No. 5  
(August 1, 1987), 358 LRA

Volume 12, No. 6  
(September 1, 1987), 411 LRA  
October 1, 1987, 479 LRA  
November 1, 1987, 537 LRA  
December 1, 1987, 634 LRA  
January 1, 1988, 939 LRA  
February 1, 1988, 942 LRA

**NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

Coastal Management, 94 PR, 160 PR, 259 PR, 347 PR, 365 C, 401 PR, 445 PR, 510 PR, 573 PR  
Community Assistance, 511 PR, 758 PR  
Economic Opportunity, 161 PR, 765 PR  
Environmental Management, 29 PR, 249 PR, 346 PR, 506 PR, 572 PR, 746 PR,  
876 PR  
Marine Fisheries, 84 PR, 255 PR  
Wildlife Resources and Water Safety, 175 PR, 268 PR, 446 PR, 575 PR

**PUBLIC EDUCATION**

Elementary and Secondary, 348 PR

**REVENUE**

Corporate Income Franchise Tax, 470 FR, 632 FR  
Departmental Rules, 806 FR  
Individual Income Tax, 107 FR, 806 FR  
Intangible Tax, 930 FR  
Motor Fuels Tax, 108 FR  
Sales and Use Tax, 924 FR

**SECRETARY OF STATE**

Securities Division, 931 FR

**STATE PERSONNEL**

Employee Benefits, 183 PR, 408 PR  
Office of State Personnel, 96 PR, 465 PR, 801 PR

**STATE TREASURER**

Departmental Rules, 161 PR  
Educational Facilities Finance Agency, 349 PR, 475 FR  
Investment Program, 177 PR

**STATEMENTS OF ORGANIZATION**

Statements of Organization, 295 SO

**TRANSPORTATION**

Division of Highways, 410 FR, 471 FR, 936 FR  
Motor Vehicles, 109 FR, 632 FR, 937 FR

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