NORTH CAROLINA REGISTER

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NOVEMBER 1, 1995

This issue contains documents officially filed through October 18, 1995.

Office of Administrative Hearings
Rules Division
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NORTH CAROLINA REGISTER

Publication Schedule

(July 1995 - November 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing *15 days from notice*	* End of Required Comment Period *30 days from notice*	Last Day to Submit to RRC	** Earliest Effective Date
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95
10:13	10/02/95	09/11/95	09/18/95	10/17/95	11/01/95	11/20/95	01/01/96
10:14	10/16/95	09/25/95	10/02/95	10/31/95	11/15/95	11/20/95	01/01/96
10:15	11/01/95	10/11/95	10/18/95	11/16/95	12/01/95	12/20/95	02/01/96
10:16	11/15/95	10/24/95	10/31/95	11/30/95	12/15/95	12/20/95	02/01/96

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule below, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.

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

PUBLIC NOTICE OF RULE-MAKING
NORTH CAROLINA INDUSTRIAL COMMISSION

NOTICE IS HEREBY GIVEN that, pursuant to the rule-making authority vested in it by N.C.G.S. § 97-26 and § 143-300, the North Carolina Industrial Commission will consider adopting (1) a Revised Medical Fee Schedule, (2) Revised Rules for Rehabilitation Services, (3) Utilization Review Rules, and (4) Managed Care Rules, all under the Workers' Compensation Act, to become effective November 30, 1995. The Commission solicits the comments of all interested persons, firms, and organizations. Copies of all four of the above may be obtained by any interested person by addressing a request to the address below.

The Commission requests written comments on all four of the above. In addition, there will be a public hearing held on the 16th day and 17th days of November, at 10:00 a.m., in Room 2149, the Utilities Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, N.C., during which the Commission will hear the verbal comments of persons scheduled to speak. Those desiring to make an oral presentation, not to exceed 15 minutes in length, should submit a request on or before November 14, 1995. Speakers at the public hearing are encouraged to prepare a written summary of remarks for the use of the Commission.

WRITTEN COMMENTS, REQUESTS FOR COPIES OF ANY OR ALL OF THE FOUR AND REQUESTS FOR ORAL PRESENTATIONS SHOULD BE ADDRESSED TO COMMISSIONER THOMAS J. BOLCH AT 430 NORTH SALISBURY STREET, RALEIGH, NC 27611. WRITTEN COMMENTS WILL BE RECEIVED BY THE COMMISSION UP TO AND INCLUDING NOVEMBER 30, 1995.

This 17th day of October, 1995.

J. Howard Bunn, Jr., Chairman
North Carolina Industrial Commission

City of Greenville
North Carolina
City Attorney's Office
P.O. Box 7207
Greenville, NC 27835-7207

Ms. Elizabeth Johnson
Acting Chief
Voting Section, Civil Rights Division
U.S. Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

September 28, 1995

RE: Preclearance of Annexation/City of Greenville, N.C.

Dear Ms. Johnson:

In your letter of August 22, 1995, you advised us that the nine annexations submitted to your office by our office on June 23, 1995 had been precleared pursuant to Section 5 of the Voting Rights Act of 1965. As described in your letter, the ordinance numbers were "94-19, 25, 26, 36, 38, 41, and 45-47," suggesting that all of the ordinances had a prefix number of "94." In fact, only Ordinance #94-19 had that prefix; the remainder of the ordinances submitted for preclearance had a prefix of "95." This apparent oversight has resulted in some confusion in our City Clerk's office and in the office of the local Board of Elections.

Accordingly, please confirm that the ordinance numbers for the annexations that received preclearance, as advised in your letter of August 22, 1995, are as follows:

- Ordinance No. 94-19 (Lot 4, Block A, Park Place and a portion of Hemby Lane)
- Ordinance No. 95-25 (Thomas F. Taft property)
- Ordinance No. 95-26 (South Square, Phase 3, Lots 1-2)
- Ordinance No. 95-36 (Windsor Subdivision, Section 10, Lot 430)
- Ordinance No. 95-38 (Portion of Thomas F. Taft property)
- Ordinance No. 95-41 (Covengton Downe Subdivision, Lot 24, Block A)
- Ordinance No. 95-45 (G. Randy Bailey property)
- Ordinance No. 95-46 (Willow Run)
- Ordinance No. 95-47 (Windsor Subdivision, Section 9)

If you need any further information or have any questions, please do not hesitate to call me.

With best wishes, I am

Sincerely yours,

Robert W. Oast, Jr.
City Attorney

City of Greenville
North Carolina
City Attorney's Office
P.O. Box 7207
Greenville, NC 27835-7207

Ms. Elizabeth Johnson
Acting Chief
Voting Section, Civil Rights Division
U.S. Department of Justice
P.O. Box 66128
Washington, D.C. 20035-6128

September 29, 1995

RE: Preclearance of Annexation/City of Greenville, N.C.

Dear Ms. Johnson:

This is a follow-up to my letter to you of yesterday, September 28, 1995, wherein I requested clarification regarding ordinance numbers for 9 annexations with respect to which you had advised us of preclearance under Section 5 of the Voting Rights Act in a letter dated August 22, 1995. In yesterday's letter, I advised you that only Ordinance #94-19 had the "94" prefix, and that the remaining 8 ordinances should have had a prefix of "95." That information is still correct with respect to all of the ordinances except 94-19.

In my letter to you of June 21, 1995 (copy enclosed), I listed Ordinance #94-19 as one of those with respect to which the City was requesting preclearance. A review of the ordinances actually submitted for preclearance indicates that Ordinance #94-19 should be Ordinance #95-19. A certified copy of that ordinance is enclosed for your use. All of the other ordinance numbers in that submission are correct, but clarification of your August 22, 1995 letter with respect to those ordinance numbers is still necessary.

I apologize if I have added confusion to this already confusing matter. If you have any questions or need any further information, please give me a call.

With best wishes, I am

Sincerely yours,

Robert W. Oast, Jr.
City Attorney

U.S. Department of Justice

Civil Rights Division

DLP:GS:VNN:tlb
DJ 166-012-3
95-1826

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

October 10, 1995

Robert W. Oast, Jr. Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. Oast:

This refers to your September 28 and 29, 1995, letters concerning the submission under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of nine annexations (ordinance Nos. 95-19, 25, 26, 36, 38, 41, and 45 to 47) and their designation to districts of the City of Greenville in Pitt County, North Carolina.

We have reviewed our records and it appears that our August 22, 1995, letter contained a typographical error in that it stated the incorrect year. Please be advised that our records show that on August 22, 1995, Section 5 preclearance was granted to the above-referenced changes. We apologize for any inconvenience we may have caused you in this matter.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

By:

Elizabeth Johnson
Acting Chief, Voting Section

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend rules cited as 2 NCAC 48A .1702; 52B .0207, .0212, .0302; 52C .0105 and adopt 2 NCAC 48C .0029.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on December 7, 1995 at Gov. James B. Hunt, Jr. Horse Complex (Restaurant), 4601 Trinity Rd., Raleigh, NC 27607.*

Reason for Proposed Action:
2 NCAC 48A .1702 - To add the Mile-a-Minute plant to the official list of noxious weeds, in order to provide for the regulation and control.
2 NCAC 48C .0029 - To require the variety to be stated on the label for certain kinds of seed, in order to protect buyers of seed.
2 NCAC 52B .0207 - To establish requirements for importation of "sporting swine" into North Carolina, in order to prevent the introduction and spread of swine diseases and to modify pseudorabies program requirements for importation of all breeding swine.
2 NCAC 52B .0212 - To add the Brushtail Possum to the list of animals for which a permit is requested prior to importation, in order to prevent the introduction and spread of animal diseases.
2 NCAC 52B .0302 - To require "sporting swine" offered for sale within the state to originate from a validated brucellosis-free herd, in order to prevent the spread of brucellosis in swine.
2 NCAC 52C .0105 - To require "sporting swine" offered for sale within the state to originate from a qualified pseudorabies-negative herd, in order to prevent the spread of pseudorabies among swine and to modify pseudorabies program requirements for movement of all feeding and breeding swine within the state.

Comment Procedures: *Interested persons may present their statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1700 - STATE NOXIOUS WEEDS

.1702 NOXIOUS WEEDS

(a) Class A Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class A Noxious Weeds:

(1) All weeds listed in 7 C.F.R. 360.200 which is hereby incorporated by reference including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twelve dollars ($12.00);
(2) Elodea, African -- Lagarosiphon spp. (all species);
(3) Fern, Water -- Salvinia spp. (all except S. rotundifolia);
(4) Mile-a-Minute -- Polygonum perfoliatum;
~~(4)~~ (5) Stonecrop, Swamp -- Crassula helmsii;
~~(5)~~ (6) Water-chestnut -- Trapa spp.

(b) Class B Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class B Noxious Weeds:

(1) Betony, Florida--Stachys floridana Shuttlew.;
(2) Fieldcress, Yellow--Rorippa sylvestris (L.) Bess.;
(3) Lythrum -- Any Lythrum species not native to North Carolina;
(4) Puncturevine--Tribulus terrestris L.;
(5) Thistle, Canada--Cirsium arvense (L.) Scop.;
(6) Thistle, Musk--Carduus nutans L.;
(7) Thistle, Plumeless--Carduus acanthoides L.;
(8) Watermilfoil, Eurasian -- Myriophyllum spicatum L.;
(9) Waterprimrose, Uruguay -- Ludwigia uruguayensis (Camb.) Hara.

(c) Class C Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class C Noxious Weeds: none.

Statutory Authority G.S. 106-420.

SUBCHAPTER 48C - SEEDS

.0029 VARIETY LABELING

The variety name shall be stated on the seed analysis label for the following kinds of seed:

(1) cotton;
(2) field corn;
(3) peanuts;
(4) soybeans;
(5) tobacco; and
(6) wheat.

Statutory Authority G.S. 106-277.15.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

.0207 IMPORTATION REQUIREMENTS: SWINE

(a) All swine imported into the state, except by special permit or for immediate slaughter, shall be accompanied by an official health certificate issued by a state, federal, or accredited veterinarian stating that they are free from any signs of an infectious or communicable disease and are not known to have been exposed to same. The health certificate shall contain the ear tag number of each animal or other identification acceptable to the State Veterinarian. Swine imported for feeding or breeding purposes shall be moved in clean and disinfected trucks or other conveyances.

(b) Breeding swine shall originate from a "Validated Brucellosis-Free" herd or a "Validated Brucellosis-Free" State and originate from a "Qualified Pseudorabies-Negative" ~~herd~~ herd, Qualified-Negative Gene-Altered Vaccinated Herd (QNV) or Pseudorabies Stage IV or V (Free) State ~~as defined in Title 9, Parts 78.1 and 85 of the Code of Federal Regulations. Parts 78.1 and 85 of Title 9 of the Code of Federal Regulations are hereby adopted by reference, including subsequent amendments. Copies of the Code of Federal Regulations may be obtained from the Government Printing Office, Washington, D.C., at a cost determined by that office~~.

(c) All feeder swine imported into the state shall be accompanied by an official health certificate issued by a state, federal or accredited veterinarian stating that:

(1) No pseudorabies vaccine has been used in the herd of origin, unless the herd is a pseudorabies ~~Controlled Vaccinated herd as defined in Title 9, Part 85.1 of the Code of Federal Regulations, or a pseudorabies~~ monitored vaccinated herd; and

(2) The swine were tested and found negative for pseudorabies within 30 days prior to importation; or

(3) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or

(4) The swine originated from a Qualified Pseudorabies Negative Herd ~~as defined in Title 9, Part 85 of the Code of Federal Regulations~~; or

(5) The swine originated from a monitored feeder pig herd. ~~For the purposes of this Rule, in order to qualify as a monitored feeder pig herd, testing must have been performed in accordance with the following standards:~~

~~(A) In herds of ten or fewer breeding swine, all breeding swine must test negative within 12 months prior to importation.~~

~~(B) In herds of 11 to 35 breeding swine, ten randomly selected breeding animals, (to include gilts, sows and boars) must test negative within 12 months prior to importation.~~

~~(C) In herds of more than 35 breeding swine, either 30 or 30 percent of the total herd, whichever is less, randomly selected breeding gilts, sows and boars must test negative within 12 months prior to importation.~~

~~(D) All breeding gilts, sows and boars in a herd shall be subject to random selection for testing.~~

~~(E) Testing must be done by use of an official pseudorabies test, as defined in Title 9, Part 85 of the Code of Federal Regulations.~~

(d) Healthy swine for feeding purposes may move directly from a farm of origin in a contiguous state on which they have been located for not less than 30 days to a livestock market or stockyard in North Carolina that has been state-federal approved for handling feeder swine, without the health certificate required herein, provided such swine are accompanied by proof of the pseudorabies status of the herd of origin acceptable to the State Veterinarian. Such swine shall be inspected by a state or federal inspector or approved accredited veterinarian prior to sale at the market.

(e) Healthy swine may be shipped into the state for immediate slaughter without a health certificate provided they go directly to a slaughtering establishment approved by the State Veterinarian, or to a state-federal approved livestock market or stockyard for sale to an approved slaughtering establishment for immediate slaughter only.

~~(f) As used in Paragraph (c)(1) of this Rule, a "monitored vaccinated herd" means a herd in which all breeding swine over six months of age have been officially vaccinated by an accredited veterinarian with a vaccine the titers of which can be distinguished from pseudorabies field infections and the herd has passed an official random sample test or complete herd test during the preceding 12 months. (From proposed Pseudorabies Eradication Uniform Methods and Rules of the United States Department of Agriculture.)~~

(f) Sporting swine:

(1) For purposes of this Rule:

(A) "Sporting swine" means any domestic or feral swine intended for hunting purposes and includes the progeny of these swine whether or not the progeny are intended for hunting purposes;

(B) "Feral swine" means any swine that have lived any part of its life free roaming.

(2) No person shall import sporting swine into North Carolina unless:

(A) The swine have not been fed garbage within their lifetime; and the herd of origin is validated brucellosis free and qualified pseudorabies negative; and

(B) The swine have not been members of a herd of swine known to be infected with brucellosis or pseudorabies within the previous 12 months; and

(C) The individual animals six months of age or over have a negative brucellosis and pseudorabies test within 30 days of movement; and

(D) The swine have not been a part of a feral swine population or been exposed to swine

captured from a feral swine population within the previous 12 months; and

(E) The swine are accompanied by an official health certificate or certificate of veterinary inspection identifying each animal by ear tag, breed, age, sex, the state of origin, and certifying that the swine meet the import requirements of North Carolina.

Note: Violation of this Rule is a misdemeanor under G.S. 106-307.6, which provides for a five hundred dollar ($500.00) fine, six months' imprisonment, or both.

Statutory Authority G.S. 106-307.5; 106-316.1; 106-317; 106-318.

.0212 IMPORTATION REQUIREMENTS: WILD ANIMALS

(a) A person shall obtain a permit from the State Veterinarian before importing any of the following animals into this State:

(1) Skunk;
(2) Fox;
(3) Raccoon;
(4) Ringtail;
(5) Bobcat;
(6) Coyote;
(7) ~~Marten.~~ Marten;
(8) Brushtail Possum (Trichosurus vulpecula).

(b) Permits for the importation into this State of any of the animals listed in (a) of this Rule shall be issued only if the animal(s) will be used in a research institute ~~institute,~~ or for public display or organized entertainment as in zoos or circuses.

(c) Llamas, all cervidae, ~~bison~~ bison, and all other bovidae other than domestic cattle may be imported into the State if accompanied by an official health certificate issued by an accredited veterinarian which states that:

(1) all animals six months of age or older have tested negative for brucellosis within 30 days prior to importation; and
(2) all animals six months of age or older have tested negative for tuberculosis within 60 days prior to importation pursuant to the guidelines of the United States Department of Agriculture Veterinary Services Notice dated December 31, 1990, which states "the cervical test for cervidae is the intradermic injection of 0.1 ml. of U. S. Department of Agriculture (USDA) contract PPD Bovis tuberculin in the midcervical region with reading by observation and palpation at 72 hours, plus or minus 6 hours"; and
(3) the herd of origin has had no brucellosis or tuberculosis diagnosed within the past 12 months.

(d) Other wild and semi-wild animals, under domestication or in custody may be imported into this ~~state~~ State, provided that a report of the number of animals by species is made to the State Veterinarian within 96 hours after entry into the ~~state,~~ State and that an immediate opportunity for examination to determine the health status of such animals is afforded the State Veterinarian or his authorized representative.

Statutory Authority G.S. 106-317; 106-400.

SECTION .0300 - BRUCELLOSIS REGULATIONS

.0302 BRUCELLOSIS REQUIREMENTS FOR SALE OF CATTLE AND SWINE

(a) All cattle offered for public sale must test negative for brucellosis within 30 days preceding the date of sale except those cattle listed as follows:

(1) cattle sold for immediate slaughter;
(2) native heifers and bulls less than 18 months of age;
(3) steers and spayed heifers;
(4) officially brucellosis vaccinated heifers of the dairy breeds under 20 months of age (provided that all officially brucellosis vaccinated heifers of any breed that are parturient or post parturient must be tested and negative for brucellosis);
(5) officially brucellosis vaccinated heifers of the beef breeds under 24 months of age (provided that all officially brucellosis vaccinated heifers of any breed that are parturient or post parturient must be tested and negative for brucellosis);
(6) cattle originating directly from a certified brucellosis-free herd;
(7) heifers under 12 months of age purchased for feeding purposes; at the discretion of the State Veterinarian, buyers of feeder heifers under 12 months of age may be required, before they remove such cattle from place of purchase, to sign a statement of intent to feed those cattle not tested for brucellosis in isolation from breeding animals. Willful failure of a buyer of such cattle to sign a statement of intent when requested by the State Veterinarian or his authorized representative or willful failure to comply with such a signed statement of intent is a violation of this Section.

(b) All swine sold or offered for sale for breeding purposes must originate directly from a validated brucellosis-free herd unless they originate from a state classified as swine-brucellosis free.

(c) Sporting swine:

(1) For the purpose of this Rule:
(A) "Sporting swine" means any domestic or feral swine intended for hunting purposes and includes the progeny of these swine whether or not the progeny are intended for hunting purposes;
(B) "Feral swine" means any swine that have lived

any part of its life free roaming.

(2) All sporting swine sold or offered for sale must originate directly from a validated brucellosis-free herd.

Statutory Authority G.S. 106-389; 106-396.

SUBCHAPTER 52C - CONTROL OF LIVESTOCK DISEASES: MISCELLANEOUS PROVISIONS

SECTION .0100 - DISEASED AND DEAD ANIMALS

.0105 PSEUDORABIES STATUS AND TESTING

(a) Feeding and breeding swine may not be transported on any public road or held in any public place unless accompanied by a written permit from the State Veterinarian or proof satisfactory to the State Veterinarian that:

(1) No pseudorabies vaccine has been used in the herd of origin, unless the herd is a pseudorabies ~~Controlled Vaccinated herd as defined in Title 9, Part 85.1 of the Code of Federal Regulations, or a pseudorabies~~ monitored vaccinated herd or unless the use of vaccine has been approved under the North Carolina Pseudorabies Program; and

(2) The swine were tested and found negative for pseudorabies within 30 days prior to movement; or

(3) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or

(4) The swine originated from a Qualified Pseudorabies Negative Herd as defined in Title 9, Part 85 of the Code of Federal Regulations; or

(5) The swine originated from a monitored feeder pig herd; or ~~herd. For the purposes of this Rule, in order to qualify as a monitored feeder pig herd, testing must have been performed in accordance with the following standards:~~

~~(A) In herds of ten or fewer breeding swine, all breeding swine must test negative within 12 months prior to movement.~~

~~(B) In herds of 11 to 35 breeding swine, ten randomly selected breeding animals, (to include gilts, sows and boars) must test negative within 12 months prior to movement.~~

~~(C) In herds of more than 35 breeding swine, either 30 or 30 percent of the total herd, whichever is less, randomly selected breeding gilts, sows and boars must test negative within 12 months prior to movement.~~

~~(D) All breeding gilts, sows and boars in a herd shall be subject to random selection for testing.~~

~~(E) Testing must be done by use of an official pseudorabies test, as defined in Title 9, Part 85 of the Code of Federal Regulations; or~~

(6) The swine are being transported or held in accordance with the North Carolina Pseudorabies Program.

(b) The State Veterinarian or his representative is authorized to test swine for pseudorabies in accordance with G.S. 106-400.1.

(c) Swine transported on a public road or held in a public place in violation of this Rule are subject to quarantine and may be transported or held only by written permit from the State Veterinarian or his representative.

~~(d) As used in Paragraph (a)(1) hereof, a "monitored vaccinated herd" means a herd in which all breeding swine over six months of age have been officially vaccinated by an accredited veterinarian with a vaccine the titers of which can be distinguished from pseudorabies field infections and the herd has passed an official random sample test or complete herd test during the preceding 12 months. (From proposed Pseudorabies Eradication Uniform Methods and Rules of the United States Department of Agriculture.)~~

(d) Sporting swine:

(1) For the purpose of this Rule:

(A) "Sporting swine" means any domestic or feral swine intended for hunting purposes and includes the progeny of these swine whether or not the progeny are intended for hunting purposes;

(B) "Feral swine" means any swine that have lived any part of its life free roaming.

(2) All sporting swine sold or offered for sale must originate directly from a qualified pseudorabies-negative herd.

Note: Violation of this regulation is a misdemeanor under G.S. 106-22(3), and is punishable by fine or imprisonment of not more than two years, or both.

Statutory Authority G.S. 106-22(3); 106-400.1.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services intends to adopt rules cited as 10 NCAC 14C .1015 - .1018, .1149 - .1160, amend rules cited as 10 NCAC 14C .1001 - .1002, .1004 - .1006, .1010 - .1014, .1101 - .1102, .1114, .1123, .1133 - .1137, .1140, .1148; 14D .0006 and repeal rules cited as 10 NCAC 14C .1003, .1008, .1103 - .1105, .1107, .1110 - .1111, .1115 - .1121, .1125 - .1131, .1138 - .1139, .1141 - .1147.

Proposed Effective Date: *February 1, 1996.*

Instructions on How to Demand a Public Hearing *(must be requested in writing within 15 days of notice): Any*

individual who wishes to demand a public hearing should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919-733-4774) within 15 days of this Notice.

Reason for Proposed Action: *The statewide implementation of the Pioneer Funding System and the Division's move away from categorical funding sources has resulted in the necessity for a complete rules revision regarding accounting procedures for area programs and contract agencies.*

Comment Procedures: *Any interested person may submit written comments and state the Rules to which the comments are addressed. These comments will be accepted through December 1, 1995.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14C - GENERAL RULES

SECTION .1000 - ACCOUNTING STANDARDS FOR ALL RECIPIENTS OF FUNDS ADMINISTERED BY THE DIVISION

.1001 EFFECT OF THIS SECTION

The requirements of this Section shall apply to all area programs and their subrecipient agencies receiving funds administered by the Division and discussed in Section .1100 of this Subchapter.

Statutory Authority G.S. 122C-147.1.

.1002 MEMORANDUM OF AGREEMENT AND ANNUAL SERVICE PLAN

(a) ~~An annual plan and budget shall be required from area programs before any state or federal funds administered by the Division may be allocated to an area program. Such annual plan and budget shall be in accordance with Chapter 159 of the General Statutes.~~ The area program shall develop and maintain their annual budget in accordance with G.S. 159.

(b) ~~The annual plan and budget of an area program shall be approved by the area board and signed by the area board chairman.~~ The area program shall prepare and submit to the Division the annual service plan and Memorandum of Agreement in accordance with G.S. 122C-143.2. Detailed instructions are issued annually by the Division.

Statutory Authority G.S. 122C-112; 122C-143.2; 122C-144.1.

.1003 BUDGET FORM

~~(a) The annual budget shall be on a standard form available from the fiscal services section of the Division.~~

~~(b) The standard form shall require information on the estimated expenditures and revenue of the area programs. On an annual basis the Division Director will issue instructions which specify the required information.~~

Statutory Authority G.S. 143B-10.

.1004 REPORTS REQUIRED

~~(a) All programs receiving funds administered by the Division shall submit quarterly reports of receipts and expenditures to the Division.~~

~~(b) Such quarterly reports shall be submitted on a standard form available from the fiscal services section of the Division. Other formats may be used if approved by the Division.~~

~~(c) Such standard form or format shall require a statement of receipts and expenditures by major types of funds received and expended during the quarter reported on and during the fiscal year to date. The amount of such receipts or expenditures shall be compared to the annual budget and the amount of unrealized receipts and unexpended expenditure line items shall be indicated.~~

~~(d) Such standard forms or format shall be signed by the area director and fiscal officer.~~

~~(e) Quarterly reports are to be filed no later than the 15th of the month following the quarter being reported upon. Exceptions may be made to this date for justifiable reasons.~~

The Secretary may require reports in accordance with G.S. 122C-144.1.

Statutory Authority G.S. 122C-112; 122C-144.1.

.1005 ANNUAL AUDIT REPORT

Each program receiving funds administered by the Division shall submit an annual audit ~~audited financial statements~~ in accordance with requirements of ~~G.S. 122C-132, 122C-143,~~ G.S. 159-34 and the Local Government Commission. ~~Commission by the date indicated on the approved audit contract or the date indicated on the amended audit contract.~~

Statutory Authority G.S. 122C-112; 122C-144.1; 159-34.

.1006 BUDGET REVISIONS

~~(a) No revision of the budget as described in this Section or transfer of funds from a cost center stated on the budget to another cost center shall be made without the prior approval of the area board. The area board may authorize the area program budget officer to transfer moneys from one line item of expenditure to another within the same cost center as listed on the approved budget ordinance subject to written limitations and procedures the area board prescribes. All such transfers shall be reported to the area board at its next regular meeting and shall be entered in the minutes. An information copy of all locally approved budget revisions shall be forwarded to the appropriate regional office of the Division to the attention of the regional accountant. Area~~

~~programs shall verify that any transfer of funds is in compliance with the Division's accounting rules in this Section and Section .1100 of this Subchapter and Rule .0006 in 10 NCAC 14D and G.S. 122C-143. The following budget revisions shall be approved by the regional office:~~

~~(1) any budget revision within a cost center or between cost centers which would cause division funds to be transferred from one disability area to another or from one categorical fund to another; and~~

~~(2) any budget revision which changes client services as approved in the annual plan and budget.~~

~~(b) The Division shall monitor for budgetary compliance of expenditures at the cost center total level.~~

~~(c) The area program budget revisions shall be on a form prescribed by the Division.~~

~~(d) Approved revisions or transfers shall be reflected in the next quarterly report of the area program. If the revision affects funds for Title XX of the Social Security Act, 42 U.S.C. 1397 through 1397(f), the next monthly request for reimbursement shall reflect the revision. Care shall be taken to assure that budget revisions are made timely for Title XX because the Division will not honor monthly request for payments for which the approved budget does not agree with request for payment.~~

~~(e) The need for each budget revision shall be justified briefly and explicitly on the same form as the budget revision, if space permits. If space does not permit, a separate form shall be attached.~~

~~(f) Budget revisions which reduce salaries and wages and fringe benefits because of vacant positions shall include in the justification a statement explaining how the current cost for which the lapsed salaries are to be used are to be supported in subsequent years. Lapsed salaries and wages shall not be transferred to other line items solely to expend the budget, to stockpile commodities or to replace existing equipment unless the existing equipment can no longer meet the program needs for which it was purchased.~~

~~(g) Area programs which contract with private or public service providers on any basis other than a unit cost basis, fixed rate basis, or fee for service basis shall utilize a policy for budget revisions no less stringent than the revision policy that the Division applies to the area program. The area board shall at its discretion allow the area director to approve budget revisions from contractors. It shall be necessary for the area board to incorporate in the minutes of a board meeting that the area director has authority to approve budget revisions from contractors.~~

~~(h) The Division shall not participate in any expenditures not in accordance with an approved budget.~~

~~(i) The area program shall consult with the appropriate regional office of the Division for any needed clarification or assistance.~~

Revisions to the budget must be in accordance with G.S. 159-15.

Statutory Authority G.S. 159-15.

.1008 INVOICES

~~Invoices used to bill for services rendered by area programs shall be on a standard form. Such form invoice shall require such information as name and address of purchaser, invoice date and number, description of services rendered and amount of invoice.~~

Statutory Authority G.S. 122C-112; 122C-147.

.1010 CONTRACT REQUIREMENTS FOR AREA PROGRAMS

(a) This Rule applies to all contracts between an area program (hereafter referred to as "contractor") and contract providers (hereafter referred to as "contractees"). For purposes of this Rule, contractees include:

(1) an individual with whom a contract is made for professional services, including consultants and guest speakers; and

(2) an ~~agency~~ agency, other than another area program, with whom a contract is made for the provision of services to one or more clients.

(b) The basis for the relationship between the contractor and the for-profit or non-profit contractee is the written contract. All mutual understandings and expectations shall be clearly stated in the contract. ~~Contracts between a contractor and a profit or non-profit contractee,~~ All contracts for provision of services to clients, shall contain, at a minimum, the following provisions as indicated in this ~~Rule. Minimum requirements for all contracts shall be:~~ Rule, except that Subparagraphs (b)(11) and (b) (18) of this Rule shall not apply to contracts with individuals:

(1) names of the contracting parties;

(2) beginning and ending dates of the contract period; however, no contract shall extend beyond the fiscal ~~year;~~ years, except as allowed by G.S. 159;

(3) detailed description of the services to be provided and the expectations of the parties;

(4) amount and method of payment;

(5) address and social security number or IRS identification number of contractee;

(6) the following statement when a contract period is greater than 30 days: "This contract may be terminated at any time upon mutual consent of both parties or 30 days after one of the contracting parties gives notice of termination;"

(7) a statement which indicates that the contract may be terminated immediately with cause upon written notice to the other party; the cause shall be documented in writing to the other party detailing the grounds for termination; and if applicable, the contract may contain a provision indicating method of payment of liquidated damages upon such termination;

(8) a clause which indicates that the contractor (area) is held harmless from acts committed by the contractee;

(9) signature of each party to the contract; ~~and~~

(10) a pre-audit statement in accordance with G.S. ~~159-28.~~ 159-28;

~~(c) Additional requirements when contracting with a profit or non-profit contractee shall be as follows:~~

(11) ~~(1)~~ ~~either a Division approved unit cost basis or the total cost basis (line item budget) shall be utilized;~~ a statement specifying the procedure for budget revisions, if applicable, and provisions for fund balance; ~~and a statement which includes:~~

(12) ~~(A)~~ the procedure for resolving disagreement between the contracting parties;

(13) ~~(B) for total cost contracts,~~ for equipment purchased with non unit cost reimbursement funds, such as start up or special purpose funding, title to assets purchased under the contract in whole or in part rests with the contractor so long as that party continues to provide the services which were supported by the contract; if such services are discontinued, disposition of the assets shall occur as approved by the Division;

(14) ~~(C)~~ client records of the contractee shall be accessible for review for the purpose of monitoring services rendered, financial audits of third party payors, research and evaluation;

(15) ~~(D)~~ upon request, the contractee shall provide data about individual clients for research and study to the contractor;

(16) ~~(E)~~ the contractor requirement to provide to the contractee all pertinent rules, regulations, standards and other information distributed by the Division necessary for the performance of the contractor under the terms of the contract;

(17) ~~(F)~~ the contractor requirement to monitor the contract to assure compliance with rules of the Commission, the Secretary and G.S. 122C-142;

(18) ~~(G)~~ a copy of the independent audit referenced in Subparagraph ~~(c)(4)~~ (b)(20) of this Rule, if required, shall be forwarded to the Office of the State Auditor at 300 North Salisbury Street, Raleigh, North Carolina 27603-5903.

(19) ~~(2)~~ provisions which outline the responsibility of the contractee for the adoption, assessment, collection and disposition of fees in accordance with G.S. 122C-146;

(20) ~~(3)~~ a requirement that the contractee shall make available to the contractor its accounting records for the purpose of audit by State authorities and that the party will, when required by general statute or in accordance with APSM 75-1, Section 4.2, have an annual audit by an independent certified public accountant.

(c) Agreements with another area program for provision of services to clients shall be incorporated into the annual Memorandum of Agreement referenced in Rule .1002 of this Section.

Statutory Authority G.S. 122C-112; 122C-141; 122C-142; 122C-146; 159-40; 143-6.1.

.1011 FUND ROUTING

Except as authorized by the General Assembly:

(1) ~~(a)~~ all ~~All community~~ ~~related state and federal~~ funds allocated by the Division for the ~~operation~~ provision of community ~~adult~~ mental health, ~~child mental health, mental retardation, alcohol and drug abuse programs~~ developmental disability and substance abuse services shall be allocated to ~~through~~ the area program. ~~program unless otherwise required by the grantor of such funds to the Division.~~

(2) ~~(b) Programs providing mental health, mental retardation and substance abuse services which serve more than one catchment area and are not under a local mental health authority may receive community funds directly from the Division.~~ the Division may allocate and contract directly for the provision of non-treatment activities including but not limited to administration, training and prevention.

Statutory Authority G.S. 122C-112; 122C-147.1;122C-131.

.1012 DENIAL, DELAY OR REDUCTION OF PAYMENTS

~~The flow of funds under any of the funding programs discussed in Section .1100 of this Subchapter shall, as determined by the Division Director, be delayed or canceled to programs which do not timely make all reports required by this Section.~~ The Division may delay, reduce or deny payments to area programs in accordance with G.S. 122C-151.

Statutory Authority G.S. 122C-151.

.1013 RECOVERY OF DIVISION FUNDS IN NON-COMPLIANCE SITUATIONS

(a) The Division shall review all non-compliance situations occurring in area programs to determine if division funds were involved in the non-compliance situations. Non-compliance situations are those situations or actions that occur which are not in accordance with division, department, state, and federal rules, policies, regulations, or statutes.

(b) The ~~basis for determining if division funds were involved in the out of compliance situation shall be the~~ Division's effective rate of participation, ~~if any, in the situation.~~ shall be determined in accordance with Section 20 of Volume IV of the Pioneer Funding System Operating

Manual.

~~(1) The effective rate of division participation for area matching supported cost shall be determined on an individual cost center basis by dividing the area matching funds allocated for the year by the total budgeted expenditures included in that cost center.~~

~~(2) The effective rate of division participation for the division's categorical funds shall be determined by dividing the categorical fund per cost center involved by the total budgeted expenditures in the cost center or cost centers involved.~~

(c) Division participation in non-compliance situations shall be recovered through receipt of a check or by reducing the current year's ~~allocation of~~ payment of allocated division funds otherwise due the area program. ~~The Regional Director shall notify the Director of the area program of the proposed reduction and the reasons for the reduction on a standard form to be provided by the fiscal services section of the Division. Three completed copies of this form shall be sent to the Division's chief of fiscal services by the Regional Director so that necessary accounting entries to reflect the reduction can be recorded in the Division's accounting records if no appeal is filed in accordance with (f) of this Rule. If the Division's allocation for the fiscal year has already been drawn down when the non-compliance situation becomes known, the~~ The area program shall reimburse the Division within 60 days of being invoiced or notified of the required payback, unless notification of appeal is rendered by the Area Authority.

~~(d) If, for the fiscal year in which the non-compliance situation occurred, the effective participation rate at the end of the fiscal year based on actual annual expenditures is different than the rate used at the time of the reduction of division funds, an adjustment shall be made to reflect the increased amount due to the Division or to credit the amount overpaid by the area program against any amount due. If no amount is due from the area program which can be credited with the overpayment, the Division shall refund the overpayment from available funds within the operating budget pending any necessary approval required by the Division of State Budget.~~

~~(e) Any non-compliance amount determined at the end of the fiscal year in the Division's tentative settlement report shall be handled in a manner consistent with (b)(1) and (b)(2) of this Rule.~~

(d) ~~(f)~~ If the Director of the area program disagrees with the non-compliance decision, ~~then~~ within 60 days of receipt of the notification of non-compliance, the Director of the area program ~~shall~~ may send to the Division Director a request for appeal pursuant to G.S. 122C-145, ~~122C-147~~ and 10 NCAC 1K .0900 (DHR Administrative Standards).

(e) ~~(g)~~ Pending the final agency decision on the appeal of the non-compliance decision, the Division shall not withdraw or reduce the amount of funds due the area program.

Statutory Authority G.S. 122C-112; 122C-147.

.1014 EXPENDITURE OF DIVISION FUNDS SETTLED ON AN EXPENDITURE BASIS

(a) The ~~Division shall allow~~ area programs ~~to~~ may budget division ~~categorical~~ funds within cost centers that also include, but are not limited to, local funds, ~~area matching funds,~~ federal funds or other division ~~categorical~~ funds. When area programs elect to budget division ~~categorical~~ funds within a cost center that is settled on an expenditure basis with ~~such~~ other funds, funds shall be considered to have been expended in the following order: ~~the Division shall consider the Division categorical funds to be expended under the following criteria:~~

~~(1) For area program operated services:~~

(1) ~~(A)~~ special grants from non-divisional sources that are for reimbursement of the same expenditures as those for which divisional categorical funds are appropriated (examples are grants from ~~R.J. Reynolds~~, the Department of Public Instruction or Division of Youth Services - Community-Based Alternative Funds);

(2) ~~(B) block grant funds~~ federal funds from the Division; and

(3) ~~(C)~~ state ~~categorical~~ funds from the Division. Revenue from non-divisional sources ~~and block grant funds~~ shall be deducted from total cost center expenditures for the purpose of determining the net cost upon which the state ~~categorical~~ share is based. Client-earned income, such as payments received from patients or third parties (insurance, Medicare, Medicaid), which is received but not expended shall be retained by the area program. ~~or the contract program and be used to further the objectives of the legislation establishing the state categorical funding. When client earned income results in an area program's fund balance being in excess of 15 percent of its annual operating budget, the amount in excess of 15 percent shall be handled in accordance with the Division's rule on fund balances, Rule .1125 of this Subchapter.~~

~~(2) For contracted programs:~~

~~(A) The area program shall establish an expenditure and fund balance policy.~~

~~(B) For contracted services, each contract shall detail how the expenditure and fund balance policy will apply to the contracted service.~~

~~(C) If the area program contracts with a provider that also provides non area program contractual services, the contracted provider shall be required to identify the fund balance for the area program contracted service only.~~

(b) ~~Expenditures for Social Services Block Grant total cost programs shall continue to be budgeted and expended in accordance with applicable Title XX matching formula and eligibility criteria.~~ Settlement of Willie M. and Thomas S. funds shall be in accordance with Rules .1136 and .1148 of this Section, respectively.

~~(c) State and Social Services Block Grant adult developmental activity program funding shall, unless a total cost method of reimbursement is authorized by the Division, be based upon a unit cost rate determined by cost studies conducted by division staff. The reimbursement rate shall be based upon actual net cost (total cost less other sources of support) or the statewide maximum rate, whichever is less.~~

~~(d) State subsidy payments for developmental disabilities day care and developmental disabilities community residential service shall continue to be reimbursed on a statewide rate.~~

~~(e) Block grant funds shall be the first dollar expended after special grants from non divisional sources so long as these funds do not supplant local or state funds. For the purpose of determining whether block grant funds are being used to supplant local or state funds within a current year, the prior year expenditure data shall be used. All revenues resulting from the block grant funded project shall be used by the service which produced the revenue. If existing services cannot be expanded or new services started, the revenues shall be used to reduce the amount of block grant.~~

Statutory Authority G.S. 122C-112; 122C-147.

.1015 FUND BALANCE: COMPUTATION FOR AREA PROGRAMS

(a) In order for the Division to have input into the actions regarding fund balances in area programs, the following shall take place after the certified public accountant's audit report is rendered and the tentative settlement report prepared:

(1) The fund balance set forth within the annual audit of area programs shall be verified by the Division.

(2) Since single county area programs are considered a department of the county for budgetary and financial reporting, separate fund balances for the single county area programs are not required. In order to assure that single county area programs are in compliance with the G.S. 122C-146 which states that fees received for services shall not reduce or replace the budgeted commitment of local tax revenue, the Division shall review the utilization of county general funds and the disposition of fees received for service each year.

(3) To determine the unrestricted fund balance for a multi-county area program or single county area program which maintains a separate fund balance and the percent that it represents to the operating budget, the Division shall use the following format:

Current Assets Per Audit Report		$
Less: Current Liabilities Per Audit Report		( )
Fund Balance		$
Less: Reserve for Encumbrances		( )
Reserve for Patients Accounts Receivable		
Less: Allowance for Doubtful Accounts Patient Accounts Receivable	( )	( )
Reserve for Accounts Receivable from Governmental Entities		( )
Reserve for Inventory		( )
Reserve for DWI Fees		( )
Reserve for Drug Education School Fees		( )
Reserve for Restricted Donations		( )
Fund Balance Restriction Previously Approved by DMH/DD/SAS		( )
Willie "M"		( )
Thomas S.		( )
Other(List)		( )
Unrestricted Fund Balance		$
Currently approved budget including expansion		$
Percent Unrestricted Fund Balance to Current Annual Budget		percent

(4) If the unrestricted fund balance is not in excess of 15 percent of the current annual budget, no action is to take place.

(5) If the unrestricted fund balance is over 15 percent of the current annual budget, the Division shall recoup in an amount equal to the fund balance in excess of 15 percent in accordance with Tentative Settlement Report procedures per APSM 75-1, Section 4.3. The area program may request permission from the Division Director to restrict fund balance in excess of the 15 percent limitation for specific purposes.

(b) The amount of reduction of financial support by the division to area programs as referenced in Subparagraph (a)(5) of this Rule may be decreased and/or delayed if there are extenuating circumstances which, in the opinion of the Division Director, warrant relaxation of this policy. Any action taken in regard to this Paragraph shall be documented in writing.

Statutory Authority G.S. 122C-112(a)(6); 122C-144; 122C-146; 122C-147; 143B-10; 159-8.

.1016 DISPOSITION OF EQUIPMENT - NON UCR

(a) Equipment costing five thousand dollars ($5,000) or more purchased with non-UCR Division funds by an area program or contract provider shall be used for Division funded client services. Except for Willie M and Thomas S. funded purchases, equipment purchased with Division funds may be transferred to other Division funded services if no longer needed by the original service. Willie M and Thomas S. purchased equipment shall be used only for Willie M or Thomas S. clients or disposed of in accordance with Rule .1136 or .1148 of this Subchapter.

(b) Except as stated in Paragraph (c) of this Rule, should transfer of equipment to Division funded services not be possible, the Division shall be contacted by the area program or through the area program for a contract provider for disposition instructions. The Division will recover the Division's share of the fair market value. The Division's share will be established by the following methods in order of preference.

(1) Through inventory records which establish the percent of funding for the equipment.

(2) The Division's percent of participation for the area program for the year of purchase.

(3) The Division's percent of participation for the area program for the current year.

(c) Equipment which is fully depreciated and no longer has any useful value may be disposed of in accordance with area program policy.

(d) The area program will have a written procedure stating the equipment disposition policy for contract providers and include or reference this provision in all contracts between the area program and the contract provider.

Statutory Authority G.S. 122C-147.

.1017 START UP FUNDING

(a) The Division may provide funding outside of UCR for initial purchases of equipment, supplies and operational expenditures for the establishment of a program, service or facility.

(b) Requests for start up shall be made by the area program, or through the area program in the case of a contract provider, in whose catchment area the new program, service or facility is being established. Requests shall be made in writing to the Division Director or designee and shall include a line item budget and justification. Requests may include expenses for normal operation such as staff, utilities and rent but such request may not exceed 60 days without specific written authorization. Approvals will be granted based on availability of funds and merit of request.

Statutory Authority G.S. 122C-147.

.1018 AREA AUTHORITY FINANCIAL FAILURE DEFINED

(a) An area authority is in imminent danger of failing financially if the Division determines at any time that one or more of the following conditions are met:

(1) The projected annual expenditures of the area authority exceed the sum of the projected annual revenues and fund balance of the authority and the governing board of the authority has not demonstrated an ability or willingness to take appropriate action to correct the imbalance; or

(2) The area authority has not complied with the reporting requirements of G.S. 122C-124, as set forth in the annual Memorandum of Agreement between the Division and the area authority.

(b) An area authority is in imminent danger of failing to provide direct service to clients if it is in imminent danger of failing financially as defined in this Rule.

Statutory Authority G.S. 122C-125.

SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

.1101 METHOD OF PAYMENT

~~(a) Grants described in this Section shall be made for the fiscal year.~~

~~(b) An advance of 1/12 of the total annual allocation of grants shall be made to the area program at the beginning of the fiscal year. Advancements of more than 1/12 may be made if justified and authorized by the Division. Applications for advancements of more than 1/12 shall be made in writing.~~

~~(c) Funding subsequent to the advancement shall be made on a monthly or quarterly basis.~~

Payment will be based on earnings, monthly advancement or other basis as authorized by the Division and stated in the Memorandum of Agreement.

Statutory Authority G.S. 143B-10.

.1102 REQUEST FOR FUNDS

A monthly ~~or quarterly~~ request for funds administered by the Division and paid on a basis other than unit cost earnings ~~and already allocated to the area program and described in this Section~~ shall be on a standard ~~form~~ format available from the fiscal services section of the Division. ~~Such standard forms shall require information on type of payment requested (whether advance or on a reimbursement basis),~~

~~the basis of the report (whether cash or accrued expenditures), the grantee identifying number, the month covered, name of grantee organization, the name of the payee if different from grantee, computation of the amount requested, the annual budget amount and the name and signature of the authorized official submitting the request.~~ Request shall be submitted to the Fiscal Office as directed by the Division Director.

Statutory Authority G.S. 143B-10.

.1103 AREA MATCHING FUNDS

~~(a) Eligibility. The Division shall make available to area programs area matching funds appropriated to the Division under the authorization of G.S. 122C-149. To be eligible for such funds an area program shall meet the requirements of the standards in 10 NCAC 18M regarding required services and shall have an approved annual plan.~~

~~(b) Match Basis. Area matching funds shall be granted to area programs on a matching basis. The amount of the match shall be as determined by the Division's ability to fund formula for each program, but shall be no less than one for one (50 percent) or more than nine for one (90 percent) subject to available state appropriations.~~

~~(c) Matching Monies. Local monies that are eligible for matching with state monies under G.S. 122C-149 include, but are not limited to the county and city general fund, voluntary contributions, patient fees, insurance receipts, Medicare, federal and local share of Medicaid, ABC five cents on the bottle, and ABC seven percent profits. Local monies expended for rental or purchase of office or facility space, and for renovation of buildings shall not be eligible for matching funds. But local monies expended for purchase of motor vehicles when the end result would be a cost reduction or for renting equipment when such equipment is clearly more justifiably rented than purchased may be eligible for matching with area matching funds.~~

~~(d) Application. Application for area matching funds may be made by submitting an annual plan and budget to the appropriate regional office.~~

~~(e) Allocation Among Regional Offices. Area matching funds shall be allocated annually by the Director of the Division among the regional offices.~~

~~(f) Allocation of Funds.~~

~~(1) Each Regional Director at the discretion of the Division Director shall allocate among the eligible programs of his region the area matching funds allocated to his region.~~

~~(2) Priority for allocating funds will be determined each year by the Division Director in accordance with approved annual plans.~~

Statutory Authority G.S. 122C-112; 122C-149; 143B-10.

.1104 FUNDING GROUP HOMES FOR EMOTIONALLY DISTURBED CHILDREN

~~(a) Pursuant to G.S. 122C-150, the Division shall administer a program of grants to area programs to be called funds for group homes for emotionally disturbed children.~~

~~(b) Such grants shall be used to support group homes for emotionally disturbed children.~~

~~(c) Funds for group homes for emotionally disturbed children shall be administered to area programs as direct grants and do not require local matching.~~

~~(d) Programs may spend funds for group homes for emotionally disturbed children for the following:~~

~~(1) to rent or lease facilities;~~

~~(2) furniture or specialized equipment for residents;~~

~~(3) transportation of residents;~~

~~(4) other necessary operating expenses as approved by the Division; and~~

~~(5) the purchase, construction or alteration, improvement or repair of a facility by the area program or a non-profit board with division approval. The program shall meet the requirements of the following:~~

~~(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.~~

~~(B) The Group Home Purchase/Construction Program.~~

~~(i) The Division may participate in the down payment and lump sum purchase or construction of a group home in whole or part contingent upon the availability of state funds.~~

~~(ii) The area program or non profit board shall secure two property appraisals for review and approval by the Division prior to purchase.~~

~~(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.~~

~~(C) A request for initial renovation of a newly acquired facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1,000) shall be approved by the area program.~~

~~(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars ($5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.~~

~~(E) Each request as outlined in (d)(5)(B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase,~~

construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(F) If the group home is operated by a non profit board, the area program shall sign a legally binding contract with the private non-profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (d)(5) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.

(G) If a facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alternation, improvement or rehabilitation. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the Division, area program or other funding entity.

(e) Fund Balance.

(1) The Division may allow group homes for emotionally disturbed children to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.

(2) The 15 percent fund balance shall be generated entirely by non-state funds.

(3) The Division may decrease state appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the state appropriation is required in order to continue operations at another home.

(4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.

(5) Except for the restricted donations and the 15 percent fund balance, funds for group homes for emotionally disturbed children shall be expended last.

(6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.

(f) To apply for funds for group homes for emotionally disturbed children, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(g) Funds for group homes for emotionally disturbed children shall be allocated among the regions of the Division by the Division Director.

(h) Based on the approved annual plan and budget request submitted and availability of funds, allocations of funds for group homes for emotionally disturbed children to area programs within each region shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-147; 122C-150; 143B-10.

.1105 FUNDING EARLY INTERVENTION FOR THE EMOTIONALLY DISTURBED

(a) In furtherance of G.S. 122C-150 the Division shall maintain a program of grants to programs for the establishment of local programs of consultation, training, diagnosis, and treatment of emotionally disturbed children, ages birth to seven years and to the families of such children. The focus of these programs shall be:

(1) to improve the quality of child care environments through the training of day care workers, nursery school teachers, parents, and others involved in child care;

(2) to identify, through screening and diagnosis, those children with emotional and other developmental problems; and

(3) to provide remedial programs either through consultation or through specialized therapeutic preschool programs to those children and their families identified as being in need.

(b) Funds for early intervention for the emotionally disturbed shall be administered to area programs as direct grants and shall require no local matching.

(c) Funds for the early intervention for the emotionally disturbed may be utilized for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(d) To apply for funds for early intervention for the emotionally disturbed an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.

(e) Funds for early intervention for the emotionally disturbed shall be allocated by the Director of the Division among the regional offices.

(f) Based on the annual plan and budget submitted and availability of funds, allocation of funds for early intervention for the emotionally disturbed to area programs within

each region shall be made by the Regional Director with the concurrence of the Division Director.

Statutory Authority G.S. 122C-112; 122C-150; 143B-10.

.1107 COMMUNITY SUBSTANCE ABUSE FUNDS

(a) The Division shall administer a program of grants to area programs to be called Community Substance Abuse Funds. These funds shall be administered as direct grants not requiring local match.

(b) Programs operated by an area program or contract programs of the area program are eligible for funding of the following expenditures:

(1) staffing;
(2) travel;
(3) supplies;
(4) administrative and program equipment;
(5) rent or lease of a residential facility;
(6) other necessary program needs as approved by the Division; and
(7) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(c) Community Substance Abuse Funds may be used for the purchase, construction or alteration, improvement or repair of a residential facility by the area program or a nonprofit board under contract with the area program with division approval. The program shall meet the following requirements:

(1) The Residential Facility Mortgage Payment Program. The Division may participate in the mortgage payment program in part or total contingent upon the availability of state funds.
(2) The Residential Facility Purchase/Construction Program.
(A) The Division may participate in the down payment and lump sum purchase or construction of a residential facility in whole or part contingent upon the availability of state funds.
(B) The area program or nonprofit board shall secure two property appraisals for review and approval by the Division prior to purchase.
(C) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.
(3) A request for initial renovation of a newly acquired facility of five thousand dollars ($5000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1000) shall be approved by the area program.
(4) A request for alteration or improvement of an existing facility in excess of five thousand dollars ($5000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.
(5) A request for alteration or improvement of an existing facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office for approval.
(6) Each request as outlined in (c) (2) and (4) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.
(7) If the residential facility is operated by a nonprofit board, the area program shall sign a legally binding contract with the private nonprofit agency for either the mortgage payments to be made or the purchase/construction program as indicated in (c) and (1) and (2) of this Rule. A copy of the appropriate contract shall be obtained from the Fiscal Services Branch of the central office of the Division.
(8) If a facility owned by an area program or its private nonprofit contract agency was purchased, altered, improved or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private nonprofit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. If an area program or its contract program wishes to retain a facility that was purchased, altered, improved or rehabilitated using funds for Community Substance Abuse Funds, the area program or its contract program shall pay to the Division 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 contribution made by the Division in the purchase alteration, improvement or rehabilitation of the facility. This provision may be waived by the Division Director upon written request of the program. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement or rehabilitation by the Division, area program or other funding entity.

(d) Fund Balance. The Division may allow area pro-

grams or contract programs to maintain a fund balance of no more than 15 percent of the current annual budget in accordance with Rule .1125 of this Section.

(e) For an area program to apply for community substance abuse funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(f) Based on the annual plan and budget submitted and availability of these funds, allocations shall be made yearly among area programs by the Director of the Division or his designee.

Statutory Authority G.S. 122C-112; 122C-147; 143B-10.

.1110 SOUTH CENTRAL REGIONAL ALCOHOLISM PROGRAM FUNDS

(a) In furtherance of the authorization of G.S. 122C-181, adopted pursuant to G.S. 150B-14(c), the Division shall administer a program of grants to be known as south central regional alcoholism program funds.

(b) South central regional alcoholism program funds shall be made available to the south central region by the Division for alcohol programs in area programs to help compensate for that region's not having an alcoholic rehabilitation center. These funds shall be used to supplement the existing alcoholism programs and to provide seed money where an alcohol program does not exist.

(c) South central regional alcoholism program funds shall be administered to area programs as direct grants not requiring local matching.

(d) South central regional alcoholism program funds may be utilized for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life. If approved on an individual basis, purchases of equipment as well as payment of minor renovation expenses shall be allowable uses of south central regional alcoholism program funds.

(e) To apply for south central regional alcoholism program funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.

(f) Based on the annual plan and budget submitted and availability of funds, allocation of south central regional alcoholism program funds to area programs is made by the south central Regional Director with the concurrence of the Division Director.

Statutory Authority G.S. 122C-112; 122C-181; 143B-10.

.1111 DRUG ABUSE MATCHING FUNDS

(a) Under G.S. 122C-147 the Division shall administer a program of grants to area programs to provide funds for services relative to the treatment and prevention of drug abuse.

(b) Drug abuse matching monies shall be administered to area programs on a match basis. The match ratio for each area program shall be in accordance with Rule .1103(b) of this Section.

(c) Local monies that are eligible for matching with state drug abuse matching funds shall include, but shall not be limited to, the county and city general funds, contributions, patient and drug fees, and insurance and Medicaid receipts.

(d) Subject to the availability of state drug abuse matching funds the Division Director or his designee may approve the use of these funds to provide treatment services to incarcerated clients provided that no more than 25 percent of the clients being served by the program may be incarcerated. Although incarcerated, the following clients are excluded from the 25 percent limitation:

(1) clients who have been admitted to treatment and are serving on the first 30 days of their sentence;

(2) clients who have 60 days remaining to serve prior to release from incarceration; and

(3) clients incarcerated in local jails and juvenile detention facilities.

(e) Local expenditures for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life shall be eligible for matching with drug abuse matching funds. Approval of expenditures for rent and equipment may be made on an individual basis by the Division Director or his designee.

(f) When costs of personnel are shared by more than one drug grant, a time distribution record shall be maintained for each staff member performing services charged to separate grants.

(g) To apply for drug abuse matching funds an application for such funds shall be submitted by the area program simultaneously to the appropriate Regional Director and to the Deputy Director for substance abuse. An annual plan and budget for such funds shall also be included in the area program's total annual plan and budget package.

(h) The Regional Directors shall recommend to the Deputy Director for substance abuse the allocation of drug abuse matching funds to eligible area programs within their regions.

(i) Based on the annual plan and budget submitted and availability of funds, allocation of drug abuse funds to area programs shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112; 122C-113; 122C-147; 122C-150; 143B-10.

.1114 EARLY INTERVENTION - STATE AND FEDERAL FUNDS

(a) The Division shall administer a program of grants to area programs to be called funds for early intervention for children with mental retardation or other developmental disabilities.

(b) Such grants shall be used to provide for the establish-

~~ment of local multidisciplinary teams for the provision of program consultation, family support and family centered training for preschool children, (defined as those who have not reached their fifth birthday on or before October 15 of the school year) within the following guidelines:~~

~~(1) Children served shall be mentally retarded, developmentally disabled, developmentally delayed or have atypical development or be at risk for one of these conditions.~~

~~(2) Priority shall be given to those children under three years of age.~~

~~(c) To apply for funds for early intervention, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.~~

~~(d) Funds for early intervention shall be allocated among the regions of the Division by the Division Director.~~

~~(e) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for early intervention to area programs shall be approved by the Division Director or his designee.~~

(a) The Division shall administer a program of grants to area programs for early intervention services for children and their families, in accordance with Part H of the Individuals with Disabilities Education Act (IDEA).

(b) Funds may be used for any periodic or day/night service that is identified as needed in the Individualized Family Service Plan (IFSP) within the following guidelines:

(1) children served shall be those with developmental delays, atypical development or those at risk for these conditions as defined in 10 NCAC 14K .0103.

(2) with the federal early intervention funds, children served shall be from birth through two years of age and their families.

(3) with state early intervention funds, children served shall be from birth through two years of age except that:

(A) services may continue until the start of the next school year for children who turn three during the course of the school year, and

(B) three and four year olds may be served during the summer and during the school year in before/after school programs.

(4) funds shall be used to supplement and increase services for these children and may not be used to supplant other federal, other state or local funds.

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-150; U.S.C. 1471 Part H IDEA.

.1115 FUNDING GROUP HOMES FOR DEVELOPMENTALLY DISABLED ADULTS

~~(a) Pursuant to G.S. 122C-141, the Division shall administer a program of grants to area programs to be called funds for group homes for developmentally disabled adults.~~

~~(b) Such grants shall be used to support group homes for developmentally disabled adults.~~

~~(c) Adults in whose behalf funds are administered to programs shall be:~~

~~(1) 18 years of age and older; and~~

~~(2) residents of North Carolina.~~

~~(d) To be eligible for funds for group homes for developmentally disabled adults, the community shall provide residents with a total array of services and programs to meet their various needs and levels of capability and not just 24 hour care. These programs shall promote a complete life for these individuals in a community setting.~~

~~(e) Funds for group homes for developmentally disabled adults shall be administered to area programs as direct grants and do not require local matching.~~

~~(f) Programs may spend funds for group homes for developmentally disabled adults for the following:~~

~~(1) renting or leasing facilities;~~

~~(2) furniture or specialized equipment for residents;~~

~~(3) transportation of residents;~~

~~(4) other necessary operating expenses as approved by the Division; and~~

~~(5) the purchase, construction 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:~~

~~(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program contingent upon the availability of State funds.~~

~~(B) The Group Home Purchase/Construction Program.~~

~~(i) The Division may participate in the down payment or lump sum purchase or construction of a group home in whole or part contingent upon the availability of State funds.~~

~~(ii) The area program or non profit board shall secure two property appraisals for review and approval by the Division prior to purchase.~~

~~(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.~~

~~(C) A request for initial renovation of a newly acquired facility of five thousand dollars~~

($5,000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1,000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars ($5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) Each request as outlined in Parts (f)(5)(B), (C) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction or alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(F) If the group home is operated by a non-profit board, the area program shall sign a contract with the private non-profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (f)(5) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.

(G) If a facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients, the facility may be sold at the current fair market value or retained, and the area program or its private non-profit contract agency shall reimburse the Division according to the following requirements:

(i) The current fair market value, acceptable to the Division, shall be determined by two independent appraisals submitted and used as guidance.

(ii) Reimbursement shall be a pro rata share of the accepted value, based on the contribution made by the Division in the purchase, construction or alteration, improvement or repair of the facility.

(iii) 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;

(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 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 facility may be sold at the current fair market value or retained, and the private non-profit agency shall reimburse the Division according to the following requirements:

(i) The current fair market value, acceptable to the Division, shall be determined by two independent appraisals submitted and used as guidance.

(ii) Reimbursement shall be a pro rata share of the accepted value, 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 group home.

(g) Fund Balance.

(1) The Division may allow group homes for developmentally disabled adults to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.

(2) The 15 percent fund balance shall be generated entirely by non State funds.

(3) The Division may decrease State appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the State appropriation is required in order to continue operations at another home.

(4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.

(5) Except for the restricted donations and the 15 percent fund balance, funds for group homes for developmentally disabled adults shall be expended last.

(6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.

(h) To apply for funds for group homes for developmentally disabled adults, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to

the appropriate regional office of the Division.

(i) Funds for group homes for developmentally disabled adults shall be allocated among the regions of the Division by the Division Director.

(j) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for group homes for developmentally disabled adults to area programs within each region shall be made by the Division Director or his designee.

(k) The monthly rent for clients residing in HUD financed group homes is determined according to the criteria set forth in HUD Handbook 4350.3, "Occupancy Requirements of Subsidized Multi Family Housing Programs" (which may be obtained from the Department of Housing and Urban Development, 2306 West Meadowview Road, Greensboro, N. C. 24701) and hereby incorporated by reference, including any subsequent amendments and editions. Should the rent for these residents exceed one hundred and fifty dollars ($150) per month, a room and board rate higher than the established maximum rate, in accordance with the provisions of 10 NCAC 47A .0201, shall be charged. The full rent shall be payable to the project owner of the home. Responsibilities and formula for payment of this amount are as follows:

(1) The area program or private non profit agency operating the home shall pay out of its operating budget, the first one hundred and fifty dollars ($150) of the HUD determined rent and 20% of any amount that exceeds the one hundred and fifty dollars ($150).

(2) The remaining 80% of the amount that exceeds the one hundred and fifty dollars ($150) shall be paid by the resident or any other party who assumes responsibility.

Statutory Authority G.S. 122C-112(a)(6), (11); 122C-141; 122C-147.

.1116 FUNDS FOR MENTAL RETARDATION COMPLEXES

(a) Identification. Pursuant to G.S. 122C-112 the Division shall administer a program of grants to Kendall Center in Greensboro and Mecklenburg Center for Human Development in Charlotte to be called funds for mental retardation complexes.

(b) Use of Funds. Such grants shall be used to provide day care, residential care, and other services to mentally retarded children and adults.

(c) The matching requirements of funds for mental retardation complexes and the type of expenditures eligible to be supported by funds for mental retardation complexes are the same as those for area matching funds set forth in Rule .1103(b) and (c) of this Section.

Statutory Authority G.S. 122C-51; 122C-112; 143B-10.

.1117 GRANT-IN-AID FOR ADULT DEVELOPMENTAL ACTIVITY PROGRAMS

(a) The Division shall administer a program of grants to area programs to be called the grant in aid for adult developmental activity programs.

(b) Such grant in aid funds shall be used to support clients who are:

(1) substantially mentally retarded or severely physically disabled persons as defined in 10 NCAC 14K .0103 except that clients with a primary diagnosis of other than substantial mental retardation or severe physical disability may be eligible for funding provided:

(A) they have been in an ADAP continuously from a date prior to January 1, 1975 and are currently receiving ADAP grant in aid; and

(B) that all other ADAP standards and regulations such as annual re-evaluation and referral to the Division of Vocational Rehabilitation Services shall apply equally to this client population; or

(2) otherwise substantially developmentally disabled which means those individuals functioning at either Level I or Level II as defined in "Pioneer Funding System Operations Manual, Volume III, Level of Eligibility, Section 4, Child and Adult Developmental Disability", adopted pursuant to G.S. 150B-14(c);

(3) 16 years of age and older;

(4) residents of North Carolina; and

(5) eligible for ADAP grant-in-aid regardless of financial resources with the exception of a client whose work earnings exceed one half the federal statutory minimum wage over a consecutive 90-day period. With prior approval of the appropriate area director or designee, clients who are participating in a supported employment program authorized by the Division may have earnings in excess of one half the minimum wage. Eligibility for clients in non-supported employment settings whose earnings have exceeded over one half the minimum wage for over 90 consecutive days may be extended for up to one calendar year if supported employment options are not available locally and the client is ineligible for other services from the Division of Vocational Rehabilitation, or if the client's social, behavioral or vocational skill deficits preclude participation in supported employment options and results in ineligibility for other vocational rehabilitation services. The eligibility extension shall occur through the existing client recertification process carried out by the designated area program qualified developmental disabilities professional (QDDP) as referenced in 10 NCAC 18M .0800. Requests for the extension shall be based on a joint case review involving a representative of the involved ADAP,

the local VR unit and the area program. The request shall identify the specific skill deficits precluding eligibility for supported employment or other vocational rehabilitation services and include plans for these deficits. The certification extension may be reapplied for a maximum of two times. The same criteria and procedures shall be followed in each instance of reapplication as are required for the initial extension.

(c) Grant-in-aid for adult developmental activity programs shall be administered to area programs up to a standard rate per month, as approved by the General Assembly or Division Director, or both, except programs may receive federal grant-in-aid funds on a total cost basis with the Division Director's approval in accordance with Section 26 of the "Area Program Budgeting and Procedures Manual" (division publication APSM 75-1) as published June 27, 1984, which is adopted by reference. Copies of Section 26 of the "Area Program Budgeting and Procedures Manual" may be inspected at the Raleigh office of the Division or copies may be obtained from the Publications Office of the Division at a charge which covers printing and postage.

(d) Funding of new adult developmental activity programs shall be limited to the areas (county or community or both) specified in division publication APSR 120-1, "Development of New Adult Developmental Activity Programs," as published July 1, 1981, which is adopted by reference. Copies of this publication may be inspected or obtained as specified in (c) of this Rule.

(e) To apply for ADAP grant-in-aid funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(f) Approval of release of ADAP grant-in-aid funds shall be made by the Division Director or his designee. These adoptions by reference are in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-141.

.1118 SPECIALIZED COMMUNITY-RESIDENTIAL CARE SUBSIDY

(a) The Division shall administer a program of grants to area programs to be called specialized community residential care.

(b) These funds shall be used to provide for the purchase of residential services for moderately, severely, and profoundly retarded clients in specialized community residential programs.

(c) Specialized community residential care subsidy shall be administered to area programs up to a standard rate per month as approved by the General Assembly, Division Director or both.

(d) Clients in whose behalf funds are administered to programs shall be:

(1) moderately, severely, or profoundly retarded including infants at high risk for mental retardation, for whom a diagnostic label of mental retardation is inappropriate prior to three years of age, as certified by a licensed physician, and for whom a less restrictive program is not available;

(2) between the ages of birth and 21; and

(3) residents of North Carolina, except for clients receiving residential care subsidy who are otherwise eligible and whose residency status changes to non-state residency after admission. Clients with such a change in residency status may be included for funding for up to one year provided a plan for transfer of the client to the new residency site or for alternative funding is established and pursued and this plan is approved and reviewed quarterly by the Regional Director and area director or their respective designees.

Clients not meeting the provisions of (d)(1) and (2) of this Rule may receive funding upon special approval of the Division Director.

(e) To apply for specialized community residential care subsidy funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(f) Disbursement of specialized community residential care subsidy funds shall be made after approval of the plan and budget by the Regional Director.

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-141.

.1119 MENTAL RETARDATION COMMUNITY SERVICE FUNDS

(a) Pursuant to G.S. 122C-112, the Division shall administer a program of grants to be called mental retardation community service funds. These funds shall be allocated to the eastern region in the amount of at least five hundred thousand dollars ($500,000) and to other regions based upon the availability of funds.

(b) Mental retardation community service funds may be used to support mental retardation services including, but not limited to, developmental day care for children and activity programs for adults.

(c) Mental retardation community service funds shall be administered to area programs as direct grants requiring no local matching.

(d) To apply for mental retardation community service funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(e) Mental retardation community service funds may be utilized for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the

value of the facility or extend its useful life.

(f) Funds appropriated for mental retardation community service shall be allocated to area programs of the appropriate region by the Division Director or his designee.

Statutory Authority G.S. 122C-112; 122C-147; 122C-151.

.1120 COMMUNITY DEMONSTRATION PROJECT FUNDS

(a) Pursuant to G.S. 122C-112, the Division shall administer a program of grants to be called community demonstration project funds.

(b) Such funds shall be used for the development and demonstration of new and innovative community services for mentally retarded persons.

(c) Community demonstration projects funds shall be administered to area programs as direct grants requiring no local matching.

(d) To apply for community demonstration project funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.

(e) Community demonstration project funds shall be allocated among the regions of the Division by the Division Director or his designee.

(f) Community demonstration project funds may be utilized for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(g) Based on the annual plan and budget submitted and availability of funds, allocation of community demonstration project funds to area programs shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112; 122C-147; 122C-150; 143B-10.

.1121 SOCIAL SERVICE (TITLE XX) BLOCK GRANT FUNDS

(a) The Division shall administer a program of services and training from funds provided by the United States Department of Health and Human Services under the authority of Title XX of the Social Security Act, 42 U.S.C. 1397-1397f.

(b) Service funds shall be used to provide allowable services to meet specific needs of individuals who are emotionally disturbed, mentally retarded, or substance abusers and who have been certified eligible by the appropriate area program. Training funds shall be used to provide training activities related to the provision of Title XX fundable services.

(c) Programs shall be operated by the Division, an area program or through contractual arrangement with an area program.

(d) Allocation of funds to area programs shall be on an annual basis and shall be based on the needs of eligible clients as documented in the area program's approved annual plan of work and budget request.

(e) Division staff shall provide administrative support necessary for program development and technical assistance to insure compliance with federal and state laws and regulations.

(f) Reimbursement shall be made in accordance with Sections 5 and 26 of the "Area Program Budgeting and Procedures Manual" (division publication APSM 75-1), adopted pursuant to G.S. 150B-14(c).

(g) Area programs shall send reimbursement forms to the controller's office of the Division by the 10th day of the month following service.

Statutory Authority G.S. 122C-147; 122C-150; 42 U.S.C. Section 1397-1397f.

.1123 AREA MENTAL HEALTH CENTER CONSTRUCTION PROJECT

(a) The Division shall administer a program of direct grants from state funds to area programs for the construction of comprehensive area programs or components of such programs which shall be known as comprehensive area programs construction project grants. Before such grants can be awarded a certificate of need shall be obtained by the grantee.

(b) Such grants may be used for the following:

(1) Architect's fees for the preparation of drawings and specifications for the project;

(2) Fees for preparation of contour maps and soil investigation;

(3) Costs of advertisement for construction bids;

(4) Construction contracts including general, plumbing, electrical, elevator, air conditioning and ventilating and any sub-contract or separate contract relative to the construction;

(5) Items of movable equipment when approved by the Division;

(6) Costs of advertisement for bids for movable equipment;

(7) The cost of change orders relating to construction or equipment when such change orders are approved by the Division of Facility Services of the Department of Human Resources and the Division of Mental Health, Mental Retardation and Substance Abuse Services.

(8) The cost of landscaping including related architectural service, seeding, sprigging or sodding of the site and the planting of trees and shrubs as would be normally considered a part of the general construction contract. The cost of landscaping recreational areas such as courts and outdoor patient areas for therapeutic effects of the environment in the mental health center may be paid from division funds upon prior approval from the Division of Mental Health, Mental Retardation and Substance Abuse Services and

the Division of Facility Services. In order to obtain approval, the grantee must submit a written proposal fully justifying the fully justifying the therapeutic effort of the landscaping.

(c) Such grants shall not be used for the following:

(1) purchase of site;

(2) attorney fees for title search, preparation of deeds and other such closing costs;

(3) surveyor's fee for survey of lot for purposes of deed preparation;

(4) construction or equipment not approved by the Division;

(5) landscaping in excess of that included in the general contract or that which is inconsistent with stipulations regarding landscaping contained within this Rule; and

(6) stationery, printing, secretarial services, postage, travel, and other incidentals in connection with the project.

(d) Application for such finds shall be upon a standard form which shall require the following information:

(1) name of applicant;

(2) address of applicant;

(3) the name and type of the proposed facility and its proposed address;

(4) the type of construction whether new, an expansion of existing facility, remodeling or other;

(5) the type of ownership of the project, whether public or private non-profit;

(6) the type of operational control of the project, whether public or private non-profit;

(7) the name, address and telephone number of the applicant's representative;

(8) the name, address, and telephone number of the project architect;

(9) a statement of the need for the facility;

(10) data on the occupancy of the proposed facility;

(11) description of programs to be conducted in the facility;

(12) information on the financial resources available to the facility;

(13) the total development cost;

(14) information on whether title to the site will be vested in the applicant, the agency to operate the facility, or otherwise;

(15) whether the applicant has title in fee simple or a leasehold, or otherwise, and if the applicant has only a leasehold, information on the nature of the lease;

(16) a copy of the abstract of title prepared by an attorney;

(17) a copy of the site survey, soil investigation reports and land appraisals, where applicable;

(18) where applicable, a certification from an architect of the feasibility of improving existing structures;

(19) a copy of the plot plan;

(20) target dates for completion of schematic, preliminary, and final drawings; and

(21) an estimated construction budget.

(e) Such standard form application shall also require assurances of the following:

(1) that the applicant possesses legal authority to apply for and receive the grant or loan, and to finance and construct the proposed facility; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing board, authorizing the filing of the application, including all understanding and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required;

(2) that sufficient funds will be available to meet the non-state share of the costs of constructing the facility, and that sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes for which constructed;

(3) that approval by the Division of the final working drawings and specifications will be obtained before the project is advertised or otherwise placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved drawings and specifications; that it will submit to the Secretary of Human Resources or his designee for prior approval changes that materially alter the scope or costs of the project, use of space or functional layout; that it will not enter into a construction contract or contracts for the project or a part thereof until the conditions of the construction grant or local program have been met;

(4) that except as otherwise provided by state or local law, all contracting for construction (including the purchase and installation of built in equipment) shall be on a lump sum fixed price basis, and contracts will be awarded on the basis of competitive bidding with award of the contract to the lowest responsive and responsible bidder (The provision for exceptions based on state and local law will not be invoked to give local contractors or suppliers a percentage preference over non local contractors bidding for the same contract. Such practices are precluded by this assurance.);

(5) that it will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved drawings and specifications; that it will furnish progress reports and such other informa-

tion as the Secretary of Human Resources or his designee may require;

(6) that an assurance of compliance with Title VI of the Civil Rights Act of 1964 applying to the facility described in this application was filed or is attached to the application;

(7) that it will maintain grant or loan accounting records (identifiable by grant or loan number), including all records relating to the receipt and expenditure of state grant or loan funds and to the expenditure of the non-state share of the cost of a project for three years after the completion of the project if an audit is conducted by or on behalf of the Department of Human Resources within that period, or in the case where no audit is performed for five years; except that should audit questions arise with respect to the grant or loan, the records will be maintained until all such questions are resolved (Representatives of the state government shall have access to all reasonable times to the grantee's records and to work whenever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection.);

(8) that the facility will be operated and maintained in accordance with the requirements of applicable state and local agencies for the maintenance and operation of such facilities;

(9) that the applicant will require the facility to be designed to comply with the "Illustrated Handbook to the Handicapped Section" adopted by the North Carolina Department of Insurance in 1974 and available from the Engineering and Building Codes Division of the Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611 at a nominal cost. (The applicant shall be responsible for conducting inspections to insure compliance with these specifications by the contractor.);

(10) that the applicant will cause work on the project to be commenced within a reasonable time after receipt of notification from the Department of Human Resources that funds have been awarded, and that the project will be prosecuted to completion with reasonable diligence; and

(11) that any state funds received pursuant to a grant or loan will be used solely for defraying the development cost of the proposed project.

(f) Such standard form application shall also require assurances of the following:

(1) That the building will conform to all applicable requirements of the appropriate state plan and the regulations pertaining thereto;

(2) That all portions and services of the entire facility for the construction of which, or in connection with which, aid is sought, will be made available without discrimination on account of creed, and no professionally qualified person will be discriminated against on account of creed with respect to the privilege of professional practice in the facility;

(3) That the facility will furnish an area service and either will furnish below cost or without charge a reasonable volume of services to persons unable to pay for such services, or will supply an attached justification for not furnishing below cost or without charge a reasonable volume of services to persons unable to pay therefor;

(4) The facility will be used for the purposes for which it is constructed for not less than 20 years after the completion of the construction; and

(5) That the services to be provided by the facility, alone or in conjunction with other facilities owned or operated by the applicant, will be made available for a program providing principally for persons residing in a particular area or areas in or near which such facility is to be situated, at least the essential elements of comprehensive mental health services i.e., continuous services, periodic services, day/night services (including at least day care services), emergency services provided 24 hours per day, and consultation and education services available to area agencies and professional personnel.

(g) After award of a grant fiscal records shall be consolidated and maintained by the treasurer of the project in a central location accessible to auditors and inspectors of the Department of Human Resources.

(h) After award of a grant the name and address of the treasurer of the project shall be submitted to the Division as soon as a treasurer is appointed.

(i) After award of a grant records shall be designed and maintained to reflect the purpose for which each expenditure is made.

(j) After award of a grant records of the applicant shall reflect all transactions between the sponsor and contractors and vendors and between the sponsor and the Division.

(k) After award of a grant an accounting system shall be organized so as to facilitate auditing and preparation of reports.

(l) After award of a grant the sponsor shall maintain a record of deposits and disbursements on a standard form supplied by the Division.

(m) After award of a grant a special bank account shall be established and maintained for the use of the project exclusively into which the local share of costs shall be deposited. State and federal funds, if any, shall also be deposited into the account as they are received. Checks for all items of project costs shall be drawn on this account and a copy of the canceled checks and the invoices for which the checks were drawn shall be filed in chronological order.

(n) After award of a grant, payment inspections shall be made by the Division of facility services of the Department of Human Resources when approximately 10 percent, 25

~~percent, 50 percent, 75 percent and 95 percent of the construction and equipment acquisition and installation is complete. Grant funds shall be disbursed after such inspections such that the total amount of funds disbursed to the project will be that percentage of the total amount of funds granted to the project equal to the percentage of construction which is actually finished. Final payment shall be made after all construction is complete and all equipment is delivered and an audit of the project records is completed.~~

~~(c) After award of a grant the project treasurer shall maintain records which will reflect the amount of North Carolina sales and use tax paid by each contractor and sub contractor. Such tax information shall be required to be supplied by the contractor with each payment request.~~

(a) When capital funds are specifically appropriated by the General Assembly, the Division shall allocate funds for area program capital projects. Such allocations shall be in accordance with the language and intent of the appropriation. Instructions for capital applications and payment of funds shall be issued by the division subsequent to any such specific appropriation.

(b) An area program may request to use state non-UCR funds, Willie M. or Thomas S. funds, or to transfer state operating funds outside the regular, Willie M. and Thomas S. unit cost reimbursement systems for capital costs for itself or its non-profit contract agency, in accordance with G.S. 122C-147. In accordance with G.S. 122C-147, such requests are limited to 24-hour and day facilities, except that Willie M. funds may also be used for other necessary facilities. The following procedures shall be followed:

(1) Approval for purchase, lump sum down payment or periodic payments on a real property mortgage in the name of a private, non-profit corporation, alteration, improvement or rehabilitation of real estate costing under five thousand dollars ($5,000) is delegated to the area director.

(2) Approval for purchase, lump sum down payment or periodic payments on a real property mortgage in the name of a private, non-profit corporation alteration, improvement or rehabilitation of real estate costing five thousand dollars ($5,000) or over shall be based upon submission of an application by the area program to the Division Director or designee. Such application shall be in a format prescribed by the Division and may include the following:

(A) name of applicant;

(B) address of applicant;

(C) the name and type of proposed or existing facility and its location;

(D) the purpose of request, whether new construction, purchase of an existing structure, alteration, improvement or rehabilitation of an existing facility;

(E) a statement of the need for the facility or alteration, improvement or rehabilitation;

(F) description of the programs conducted or to be conducted in the facility;

(G) target date for project completion;

(H) an estimated construction budget and projected revenue sources;

(I) a statement indicating whether or not additional Division funds will be required for operating costs. If this question is answered yes, the application shall indicate the estimated additional operating funds required and the proposed funding source; and

(J) the name and telephone number of the area program representative designated as contact for the application; and

(K) two property appraisals completed by licensed property appraisers for costs associated with the purchase of an existing building, lump sum down payments and period payments on the mortgage of real property.

(3) Funds approved for capital projects under Paragraph (b) of this Rule shall be paid in the following manner:

(A) Funds approved under Subparagraph (b)(1) of this Rule shall be requested by the area program using regular fund request procedures as funds are needed.

(B) Funds approved under Subparagraph (b)(2) of this Rule shall be requested in the following manner:

(i) if funds are to be utilized for the purchase of a facility, the necessary funds may be requested within 30 days from when they are needed via a written request from the Area Director to the Division Director or designee. The request shall specify the amount of funds needed and the projected closing date of the purchase.

(ii) if funds are to be utilized for the construction of a new facility or renovation, rehabilitation or alteration of an existing facility, funds will be disbursed based upon written requests from the Area Director to the Division Director or designee certifying project completion at the following intervals: 10%, 25%, 50%, 75% and 100%. Upon receipt of such billings, the Division shall issue payment consistent with the percentage completed.

(4) All aspects of any capital project shall be completed in accordance with all applicable federal, State and local regulations. Such compliance shall include, but not be limited to, G.S. 159 requirements, Division of Facility Services licensure regulations, local building ordinances, etc.

(5) The area program shall maintain a perpetual inventory of all facilities purchased, constructed, altered, renovated or rehabilitation in accordance

with this Rule. This inventory shall document the history cost of the facility plus subsequent improvements and the percentage of Division participation in the total cost.

(6) Should the facility cease to be used for the purpose of serving clients of the Division, or, more specifically for the purpose of serving Willie M. or Thomas S. clients if the purchase, construction, rehabilitation, alteration or improvement was funded from those specific funding sources, the Division shall be contacted immediately for disposition instructions. If the Division so directs, the facility shall be sold at the current fair market value in accordance with G.S. 153A-176 and G.S. 160A-266. After the sale, the Division shall be reimbursed the Division's pro-rata share of the proceeds from the sale based on the percent of contribution made by the Division for the purchase, construction, alteration, improvement or rehabilitation of the sold facility. If an area program or its contract provider wishes to maintain ownership of a facility that was constructed, purchased, altered, improved or rehabilitated using Division funds, the area program or non-profit contract provider may, if authorized by the Division, pay to the Division the Division's pro-rata share of the current fair market value of the facility as determined by two independent appraisals acceptable to the Division.

Statutory Authority G.S. 122C-112; 122C-113.

.1125 FUND BALANCE: AREA PROGRAMS/ CONTRACT PROGRAMS

~~(a) In order for the Division to have input into the actions regarding fund balances in area programs and contract programs as provided for in Rule .1014 of this Subchapter, the following shall take place after the certified public accountant's audit report is rendered and the tentative settlement report prepared:~~

~~(1) The fund balance set forth within the annual audit of area programs and contract programs shall be verified by the Division.~~

~~(2) Since single county area programs are considered a department of the county for budgetary and financial reporting, separate fund balances for the single county area programs are not required. In order to assure that single county area programs are in compliance with G.S. 122C-146 which states that fees received for services shall not reduce or replace the budgeted commitment of local tax revenue, the Division shall review the utilization of county general funds and the disposition of fees received for service each year. This review shall occur after the annual audit report for the county has been rendered.~~

~~(3) To determine the unrestricted fund balance and the percent that it represents to the operating budget, the Division shall use the following format:~~

~~Current Assets Per Audit Report $~~
~~Less: Liabilities Per Audit Report ( )~~
~~Fund Balance $~~
~~Less: Reserve for Encumbrances ( )~~
~~Reserve for Patients Accounts Receivable~~
~~Less: Allowance for Doubtful Accounts Patient Accounts Receivable ( )( )~~
~~Reserve for Accounts Receivable from Governmental Entities ( )~~
~~Reserve for Inventory ( )~~
~~Reserve for DWI Fees ( )~~
~~Reserve for Drug Education School Fees ( )~~
~~Reserve for Restricted Donations ( )~~
~~Fund Balance Restriction Previously Approved by DMH/MR/SAS (Prior to February 1, 1986.) ( )~~
~~Other(List) ( )~~

~~Unrestricted Fund Balance $~~

~~Annual approved budget plus approved budget revisions as of September 30 $~~

~~Percent Unrestricted Fund Balance to Current Annual Budget percent~~

~~(4) If the unrestricted fund balance is not in excess of 15 percent of the current annual budget, no action is to take place.~~

~~(5) If the unrestricted fund balance is over 15 percent of the current annual budget, the Division shall reduce its allocation of division funds in the year subsequent to the year in which the excess occurred.~~

~~(b) The amount of reduction of financial support by the division to area programs and contract programs as referenced in (a) (5) of this Rule may be decreased and/or delayed if there are extenuating circumstances which, in the opinion of the Division Director, warrant relaxation of this policy. Any action taken in regard to (b) of this Rule shall be documented in writing.~~

Statutory Authority G.S. 122C-112(a)(6); 122C-144; 122C-146; 122C-147; 143B-10; 159-8.

.1126 FUNDING GROUP HOMES FOR MENTALLY RETARDED CHILDREN

~~(a) Pursuant to G.S. 122C-147, the Division shall administer a program of grants to area programs to be called funds for group homes for mentally retarded children.~~

~~(b) Such grants shall be used to support group homes for~~

mentally retarded children.

(c) To be eligible for funds for group homes for mentally retarded children, the community shall provide residents with a total array of services and programs to meet their various needs and levels of capability and not just 24 hour care. These programs shall promote a complete life for these individuals in a community setting.

(d) Funds for group homes for mentally retarded children shall be administered to area programs as direct grants and do not require local matching.

(e) Programs operated by an area program or non profit programs subcontracting through the area program are eligible for funding of the following expenditures:

(1) staffing for client services;

(2) travel;

(3) supplies;

(4) administrative and program equipment;

(5) rent or lease of a facility;

(6) other program needs as approved by the Division; and

(7) the purchase, construction or alteration, improvement or repair of a facility by the area program or a non profit board with division approval. The program shall meet the requirements of the following:

(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.

(B) The Group Home Purchase/Construction Program.

(i) The Division may participate in the down payment or lump sum purchase or construction of a group home in whole or part contingent upon the availability of state funds.

(ii) The area program or non profit board shall secure two property appraisals for review and approval by the Division prior to purchase.

(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.

(C) A request for initial renovation of a newly acquired facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1,000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars, ($5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) Each request as outlined in (e)(7)(B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(F) If the group home is operated by a non profit board, the area program shall sign a legally binding contract with the private non profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (e)(7) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.

(G) If a facility owned by an area program or its private non profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the Division, area program or other funding entity.

(f) Fund Balance.

(1) The Division may allow group homes for mentally retarded children to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.

(2) The 15 percent fund balance shall be generated entirely by non state funds.

(3) The Division may decrease state appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the state appropriation is required in order to continue operations at another home.

(4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.

(5) Except for the restricted donations and the 15 percent fund balance, funds for group homes for mentally retarded children shall be expended last.

(6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.

(g) To apply for funds for group homes for mentally retarded children, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(h) Funds for group homes for mentally retarded children shall be allocated among the regions of the Division by the Division Director.

(i) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for group homes for mentally retarded children to area programs within each region shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); 122C-147.

.1127 GROUP HOMES FOR MR/BEHAVIORALLY DISORDERED PERSONS

(a) The Division shall administer a program of grants to programs to be called funds for group homes for mentally retarded and behaviorally disordered persons.

(b) Such grants shall be used to support group homes for mentally retarded and behaviorally disordered persons.

(c) To be eligible for funds for group homes for mentally retarded and behaviorally disordered persons, the area program shall provide a total array of services and programs to meet the active treatment and behavioral programming needs of each client on a 24 hour daily basis. These programs shall attempt to increase socially acceptable behaviors and decrease inappropriate behaviors to the extent that clients may enter a more normalized setting following termination from the specialized group home placement.

(d) Funds for group homes for mentally retarded and behaviorally disordered persons shall be administered to area programs as direct grants and do not require local matching.

(e) Programs may spend funds for group homes for mentally retarded and behaviorally disordered persons for the following:

(1) to rent or lease facilities;

(2) furniture or specialized equipment for residents;

(3) transportation of residents;

(4) other necessary operating expenses as approved by the Division; and

(5) the purchase, construction, alteration, improvement or repair of a facility by the area program or a non profit board with division approval. The program shall meet the following requirements:

(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.

(B) The Group Home Purchase/Construction Program.

(i) The Division may participate in the down payment or lump sum purchase or construction of a group home in whole or part contingent upon the availability of state funds.

(ii) The area program or non profit board shall secure two property appraisals for review and approval by the Division prior to purchase.

(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.

(C) A request for initial renovation of a newly acquired facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1,000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars ($5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) Each request as outlined in (e)(5)(B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(F) If the group home is operated by a non profit board, the area program shall sign a legally binding contract with the private non profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (e)(5) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.

(G) If a facility owned by an area program or its private non profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used

in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement or rehabilitation by the Division, area program or other funding entity.

(f) Fund Balance.

(1) The Division may allow group homes for mentally retarded and behaviorally disordered persons to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.

(2) The 15 percent fund balance shall be generated entirely by non-state funds.

(3) The Division may decrease state appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the state appropriation is required in order to continue operations at another home.

(4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.

(5) Except for the restricted donations and the 15 percent fund balance, funds for group homes for mentally retarded and behaviorally disordered persons shall be expended last.

(6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.

(g) To apply for funds for group homes for mentally retarded or behaviorally disordered persons, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(h) Funds for group homes for mentally retarded or behaviorally disordered persons shall be allocated among the regions of the Division by the Division Director.

(i) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for group homes for mentally retarded or behaviorally disordered persons to area programs within each region shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); 122C-147.

.1128 APARTMENT LIVING FOR MENTALLY RETARDED ADULTS

(a) Pursuant to G.S. 122C, the Division shall administer a program of grants to programs to be called apartment living for mentally retarded adults.

(b) Such grants shall be used to support apartment living for mentally retarded adults.

(c) Adults in whose behalf funds are administered to programs shall be:

(1) 18 years of age or older; and

(2) residents of North Carolina.

(d) Funds for apartment living for mentally retarded adults shall be administered to programs as direct grants and do not require local matching.

(e) Programs may spend funds for apartment living for mentally retarded adults for the following:

(1) rental or leasing of facilities;

(2) furniture or specialized equipment for residents;

(3) transportation of residents;

(4) operational expenses to include but not be limited to: food, utilities, housekeeping supplies, insurance and bond, professional services;

(5) staff salaries;

(6) staff training;

(7) resident dental and medical needs;

(8) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life;

(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.

(10) other necessary operating expenses as approved by the Division.

(f) To apply for funds for apartment living for mentally retarded adults, an annual plan and budget for such funds shall be included in the appropriate program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(g) Funds for apartment living for mentally retarded adults shall be allocated among the regions of the Division by the Division Director.

(h) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for apartment living for mentally retarded adults to programs within each region shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); 122C-147.

.1129 SUBSTITUTE FAMILY CARE

(a) Pursuant to G.S. 122C-112, and 122C-147, the Division shall administer subsidy reimbursements to area programs to be called substitute family care.

(b) Such subsidy reimbursements shall be used to provide for the establishment of nurturing and developmentally stimulating foster care for mentally retarded children placed by county departments of social services. The focus of substitute family care programs shall extend beyond room and board into the provision of a home like environment that provides developmental training.

(c) Persons in whose behalf funds are reimbursed shall be:

(1) residents of North Carolina;

(2) in licensed foster homes approved by county departments of social services;

(3) between the ages of birth and 18, unless otherwise approved by the county department of social services.

(d) To apply for substitute family care subsidy reimbursement, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.

(e) Substitute family care subsidy reimbursements shall be allocated among the regions of the Division by the Division Director or his designee.

(f) Based on the annual plan and budget submitted and availability of funds, allocation of substitute family care subsidy reimbursements to area programs shall be approved by the Division Director or his designee.

Statutory Authority G.S. 122C-112; 122C-147.

.1130 RESPITE CARE

(a) Pursuant to G.S. 122C-147, the Division shall administer a program of grants to area programs to be called respite funds. Respite funds shall be administered as direct grants not requiring match. Respite services shall be provided on a planned or emergency basis for a period of up to thirty days, to establish respite care services for families of mentally retarded individuals.

(b) Programs operated by an area program or non profit programs subcontracting through the area program are eligible for funding of the following expenditures:

(1) staffing for client services;

(2) travel;

(3) supplies;

(4) administrative and program equipment;

(5) other program needs as approved by the Division;

(6) rent or lease of facility;

(7) other necessary operating expenses as approved by the Division; and

(8) the purchase, construction, alteration, improvement or repair of a facility by the area program or a non profit board with division approval. The program shall meet the requirements of the following:

(A) The Group Home Mortgage Payment Program. The Division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.

(B) The Group Home Purchase/Construction Program.

(i) The Division may participate in the down payment or lump sum purchase or construction of a group home in whole or part contingent upon the availability of state funds.

(ii) The area program or non profit board shall secure two property appraisals to the appropriate regional office for review and approval by the Division prior to purchase.

(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.

(C) A request for initial renovation of a newly acquired facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office of the Division for

approval. Initial minor repairs to facilities of less than one thousand dollars ($1,000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing facility in excess of five thousand dollars ($5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) Each request as outlined in (b)(8)(B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(F) If the group home is operated by a non-profit board, the area program shall sign a legally binding contract with the private non-profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (A) and (B) of (b)(8) of this Rule. A copy of the appropriate contract shall be obtained from the controller's office of the central office of the Division.

(G) If a facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the Division, area program or other funding entity.

(c) Fund Balance.

(1) The Division may allow group homes for residential non-profit respite programs to maintain a fund balance of no more than 15 percent of the current annual budget for the group home.

(2) The 15 percent fund balance shall be generated entirely by non-state funds.

(3) The Division may decrease state appropriation to a group home, thereby necessitating the group home to utilize its fund balance, if the state appropriation is required in order to continue operations at another home.

(4) The 15 percent fund balance allowed shall be in addition to the amount the Division would allow to remain in the fund balance due to restricted donations.

(5) Except for the restricted donations and the 15 percent fund balance, funds for residential non profit respite program shall be expended last.

(6) An allowance for a fund balance for group homes that are operated by an area program is made in Rule .1125 of this Section.

(d) Respite funds shall be allocated among the regions of the Division by the Division Director or his designee.

(e) To apply for respite funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package submitted to the regional office of the Division.

(f) Based on the approved annual plan and budget request submitted and availability of funds, allocation of respite funds to area programs shall be approved by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); 122C-147.

.1131 FUNDS FOR COMMUNITY ALCOHOL PROGRAMS IN WESTERN N.C.

(a) In furtherance of G.S. 122C-112 and 122C-147, the Division shall administer a program for the chronic alcoholics of western North Carolina.

(b) These special appropriated legislative funds shall be used to develop a long term treatment program for chronic alcoholics of the western region. Such a program is eligible for funding of the following expenditures:

(1) staffing for client services;

(2) travel;

(3) supplies;

(4) administrative and program equipment;

(5) other program needs as approved by the Division; and

(6) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life. These special appropriated funds shall not be used for purchase or construction of real property.

(c) These special appropriated legislative funds shall be administered by the appropriate region to match federal and local funds of the program for the chronic alcoholics.

(d) For a program to apply for these special appropriated legislative funds, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(e) Allocations shall be made by the Director of the Division or his designee.

Statutory Authority G.S. 122C-112; 122C-147.

.1133 FUNDING ALCOHOL AND DRUG EDUCATION TRAFFIC SCHOOLS

(a) Pursuant to G.S. 20-179.2 the Department of Human Resources shall have the authority to approve programs, budgets and contracts with public and private governmental and non-governmental bodies for alcohol and drug education traffic schools operated by an area program or operated by a contractor through a contract with an area program.

(b) Fees paid by persons enrolling in an alcohol and drug education traffic school established pursuant to G.S. 20-179.2 shall be used to support the schools except as indicated in (e) of this Rule. Other funds to support the schools may come from multiple sources such as, but not limited to, county general funds, state appropriations, federal appropriations, and receipts for services (patient fees). This Rule is established to set accounting requirements for the fees received pursuant to G.S. 20-179.2.

(c) Fees received pursuant to G.S. 20-179.2 shall be limited to purchases of the following:

(1) to rent or lease space to conduct alcohol and drug education traffic school classes if sufficient space is not available in area program facilities;

(2) personnel and support costs necessary to assure a systematic and timely processing of referrals to alcohol and drug education traffic schools;

(3) supplies and materials necessary for the efficient and timely operation, evaluation and administration of alcohol and drug education traffic schools and for developing and maintaining an efficient liaison process with the judicial system, interested community groups, the Division of Motor Vehicles and the Department of Human Resources;

(4) non-administrative equipment necessary for the operation of alcohol and drug education traffic schools;

(5) administrative equipment for alcohol and drug education traffic school personnel employed full-time and a pro-rated amount for personnel assigned less than one hundred percent of the time to traffic schools;

(6) renovations that do not result in the acquisition of real property by the area program;

(7) travel;

(8) area program administrative costs that can be documented as chargeable to the schools; and

(9) other necessary operating expenses as approved by the Division.

(d) Fees received pursuant to G.S. 20-179.2 shall not be used for acquisition of real property by the area program.

(e) Fees received pursuant to G.S. 20-179.2 shall be used to support the operation, evaluation and administration of the alcohol and drug education traffic schools to the extent that the schools are fully accredited by the Division. Any excess fees received pursuant to G.S. 20-179.2 are to be used to continue or to expand alcohol and drug services.

(f) Fees received pursuant to G.S. 20-179.2 shall not be used in any manner to match state or division funds or to be included in any computation for state or division formula funded allocations.

(g) Fees received pursuant to G.S. 20-179.2 shall be consistently identified as such. All such fees remaining at the end of the area program's fiscal year shall retain their identity and the fund balance of the area program shall be so restricted as to assure continued use of the fees for the alcohol and drug education traffic schools or to continue or to expand other alcohol and drug abuse services.

(h) Area programs shall maintain records which indicate which individuals have paid for the traffic schools.

(i) Pursuant to G.S. 20-179.2, area programs shall receive fees from either the person convicted or from the judiciary. The individual enrolled in the school shall pay the fee to the area program providing the school, except that if the clerk of court in the county in which the person is convicted agrees to collect the fees, the clerk shall collect all fees for persons convicted in that county. The clerk shall pay the fees collected to the area program serving the catchment area in which the clerk is located regardless of where the defendant attends the school.

(j) Area programs receiving fees from the judiciary for individuals who will be enrolled in schools operated by other area programs shall transfer 80 percent of the fees received from the judiciary for those individuals to the area programs enrolling the individuals upon receipt of an invoice. The 80 percent shall be transferred to the area program providing the school regardless of whether the individual attends the school.

(k) Area programs receiving fees directly from an individual who has been convicted in a county outside the area program's catchment area shall transfer 15 percent of the fees collected to the area program which serves the county where the individual was convicted upon receipt of an invoice from the area program serving the county where the conviction occurred. Any area program not desiring to collect the 15 percent from another area program is not required to invoice that program. A decision not to collect the 15 percent shall be approved by the area board and documented in the board minutes. An area program that does not desire to invoice another area program shall honor invoices presented to it from other area programs that desire to collect the 15 percent.

(l) Five percent of all fees received by the area program pursuant to G.S. 20-179.2 shall be forwarded to the Department of Human Resources on a monthly basis. The area program that initially receives the fees from the persons paying the fees or from the judiciary system shall be responsible for transferring the 5 percent to the Department. Checks shall be made payable to and sent to: Division of Mental Health, ~~Mental Retardation~~ Developmental Disabilities and Substance Abuse Services, Fiscal Services Section, ~~Controller's Office,~~ Suite ~~1103~~ 612, 325 North Salisbury Street, Raleigh, North Carolina ~~27611~~ 27603-5906.

(m) The amount of fees transferred to another area program or to the Division as indicated in (j) through (l) of this Rule shall be recorded in the accounting records to ~~account number 97~~ TRANSFER OF DUI FEES. Under no circumstances shall the transfer of fees be recorded as an operating expense in which the Division would participate.

~~(n) In order to secure approval of the program and budget supported by fees received pursuant to G.S. 20-179.2, the area program shall include the programmatic and budgetary data in the annual plan of work submitted to the Division each fiscal year.~~

Statutory Authority G.S. 20-179.2; 122C-143; 143B-10.

.1134 FUNDS FOR MULTIDISCIPLINARY EVALUATIONS: GUARDIANSHIP

(a) To the extent state funds are available, the division shall provide reimbursement for court-ordered multidisciplinary evaluations of indigent persons in guardianship procedures under G.S. ~~35-1.16~~ 35A-116. The cost of the evaluation shall be borne by the respondent unless the respondent is indigent.

(b) Area programs, other local agencies and private practitioners are eligible for reimbursement.

(c) To obtain reimbursement the area program, other local agencies or private practitioners shall submit to the ~~appropriate regional office~~ Division Fiscal Office the following:

(1) ~~four~~ two copies of an itemized invoice which reflects the following:
  (A) name of respondent evaluated,
  (B) name of the evaluator for each respondent,
  (C) amount of time in hours or portion thereof required for each evaluation and report preparation,
  (D) rate per hour for each evaluation, and
  (E) dollar amount for each evaluation.

(2) ~~three copies~~ one copy of the individual court order. The ~~copies of the~~ court order shall be attached to the invoice ~~required in (c)(1) of this Rule so that three of the four copies of the invoice have a copy of the court order attached~~.

(d) Determining Rate Per Hour.

(1) For area programs, the rate per hour required on the invoice under Part (c)(1)(D) of this Rule shall be the usual and customary charges of the area program before adjustment to the sliding fee scale.

(2) For providers other than area programs the rate per hour shall be the usual and customary charge or their Medicaid reimbursement rate whichever is less.

~~(e) The regional office shall review the invoices and court orders to determine that all requirements in (c) of this Rule have been met. If the invoices are in order and the regional office has uncommitted multidisciplinary evaluation funds, the invoices shall be initialed for approval by the Regional Director or regional accountant and forwarded to the fiscal services section of the Division for payment.~~

(e) ~~(f)~~ The procedures in this Rule apply only to reimbursement for evaluations to determine the necessity of appointing a guardian for an individual and do not apply to reimbursement for any treatment determined to be necessary as a result of the evaluation.

Statutory Authority G.S. 122C147.1; 143B-10.

.1135 FUNDS FOR FORENSIC SCREENING: CAPACITY TO PROCEED TO TRIAL

(a) To the extent state funds are available, the division shall provide reimbursement for court-ordered screening and evaluation of persons to determine their capacity to proceed to trial.

(b) The screening or evaluation shall be performed by a qualified mental health professional or a qualified substance abuse professional who is registered with the Division as a forensic evaluator or a person deemed a medical expert by the court.

(c) Only area programs are eligible for reimbursement.

(d) To obtain reimbursement the area program shall submit to the ~~appropriate regional office~~ Division Fiscal Office the following:

(1) ~~four~~ two copies of an itemized invoice which reflects the following:
  (A) name of respondent screened or evaluated;
  (B) name of certified forensic evaluator for each respondent;
  (C) amount of time in hours or portion thereof required for each screening examination or evaluation;
  (D) rate per hour for each examination or evaluation; and
  (E) dollar amount for each examination or evaluation.

(2) ~~three copies~~ one copy of the individual court order. The ~~copies of the~~ court order shall be attached to the invoice ~~required in (d)(1) of this Rule so that three of the four copies of the invoice have a copy of the court order attached~~.

(e) The rate per hour for each forensic evaluator required on the invoice under (d)(1)(D) of this Rule shall be the usual and customary charges of the area program before adjustment to the sliding fee scale. The amount invoiced to the division shall not exceed the rate approved by the Division.

~~(f) The regional office shall review the invoices and court orders to determine that all requirements in (d) of this Rule have been met. If the invoices are in order and the regional office has uncommitted forensic screening or evaluation funds, the invoices shall be initialed for approval by the Regional Director or his designee and forwarded to the fiscal services section of the Division for payment.~~

(f) ~~(g)~~ The procedures of this Rule apply only to reimbursement for screening examinations or evaluations to determine the capacity of an individual to proceed to trial

and do not apply to reimbursement for any treatment determined to be necessary as a result of the evaluation.

Statutory Authority G.S. 122C-147.1; 143B-10.

.1136 FUNDS FOR ASSAULTIVE CHILDREN

(a) In furtherance of the Appropriation Bill of the 1981 Session Laws, Chapter 859 and Chapter 1032, the Division shall administer ~~a program of grants for the establishment and operation of local programs~~ funds to provide treatment to children under the age of 18 who suffer from emotional, mental, or neurological handicaps accompanied by violent or assaultive behavior and who have been certified as Willie M. class members in the case of Willie M., et. al. vs. Hunt et. al. The focus of these programs may include, but are not limited to, residential treatment programs and independent living arrangements.

(b) Programs operated by an area program or a private program contracted by the area program may spend funds for assaultive children for the following:

(1) staffing;
(2) travel;
(3) supplies;
(4) utilities;
(5) administrative and program equipment;
(6) administrative cost which can be clearly documented through direct assignment or a Division-approved cost allocation method;
(7) transportation of clients;
(8) other program ~~needs~~ costs as approved by the Division; and
(9) purchase, construction, alteration, improvement, or repair of a facility owned by the area program or county or non-profit contract agency according to the ~~following provisions:~~ provisions of Rule .1123 of this Section.

~~(A) A request for initial renovation of a newly acquired facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1,000) shall be approved by the area program.~~

~~(B) A request for alteration or improvement of an existing facility in excess of five thousand dollars ($5,000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.~~

~~(C) A request for construction of a new facility or purchase of an existing facility shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.~~

~~(D) Each request as outlined in (b)(9)(B) and (C) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.~~

~~(E) Upon approval by the Division of Facility Services the area program may proceed with the completion of the project and shall meet the provisions of G.S. 143-129 and G.S. 143-131.~~

~~(F) For construction, alteration or repair projects the Division of Facility Services shall conduct on-site inspections when the project is 33 percent complete and 67 percent complete and a final inspection when the project is 100 percent complete. Funds up to 45 percent of the cost shall be advanced to an area program upon a written assurance from the area director that the requirements of G.S. 143-129 and G.S. 143-131 have been met. An additional 30 percent shall be advanced after the first inspection and the remaining 25 percent shall be paid after final inspection.~~

~~(G) Prior to the purchase of an existing facility the area program shall submit two property appraisals to the appropriate regional office for review and approval. The Division of Facility Services shall conduct an on-site inspection of the facility. Following the inspection and approval of the purchase by the Division of Mental Health, Mental Retardation and Substance Abuse Services, Division funds shall be transferred to the area program.~~

~~(H) When the expenditure of division funds for construction, alteration, repair or purchase of a facility is fifty thousand dollars ($50,000) or more the area board shall obtain written assurance from the owner of the facility that the facility shall remain available for Mental Health, Mental Retardation and Substance Abuse Services.~~

~~(I) If a facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using funds for assaultive children and later ceases to the used by the area program or its private non-profit contract agency for services for members of the Willie M. class, the facility shall 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 proceeds of the sale based on the percent of contribution made by the Division~~

~~in the purchase, alteration, improvement or rehabilitation of the facility. If an area program or its private non-profit contract agency wishes to retain a facility that was purchased, altered, improved, or rehabilitated using funds for assaultive children, the area program or its private non-profit contract agency shall pay to the Division 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, alteration, improvement, or rehabilitation of the facility. The contributions made by all parties shall be maintained individually on a perpetual basis in the ledger or group of accounts in which the details relating to the general fixed assets of the area program or its private non-profit contract agency are maintained.~~

(c) Funds provided by the Division to support the services provided to a Willie M. program shall be discontinued if the program fails to serve any Willie M. clients for a period of 45 consecutive days unless an extension of time is approved in writing by the Division Director.

(d) Funds for assaultive children shall not be used in specific programs to serve children who are not Willie M. class members if any class member who is in that zone and who is appropriate for the specific program being funded remains unserved. The zones within the state shall be determined by the Division. Funds shall not be expended for any program that does not serve Willie M. class members. Funds shall not be used to start or operate a service in its entirety which serves a disproportionately small number of Willie M. clients. The Division shall negotiate the minimum number of Willie M. children who shall be served in each program and shall specify that number in the grant award notice.

(e) Funds for assaultive children may be used to support the cost of treatment for members of the Willie M. class who attain the age of eighteen if the member continues to be in need of such treatment and will benefit from continued placement or involvement in the program. However, such support shall not be in excess of six months following the class member's 18th birthday or the end of the fiscal year in which the class member reaches 18 years of age, whichever comes later.

(f) ~~To apply for funds administered under this Rule, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.~~ The annual budget for programs serving Willie M. clients shall be submitted in accordance with the Willie M. Unit Cost Reimbursement Plan for the fiscal year.

(g) The annual budget for programs serving Willie M. clients shall be budgeted into separate cost centers. Such cost centers shall include all sources of revenue which support the direct cost of services for Willie M. clients. Funds expended for services to Willie M. clients such as outpatient visits, emergency services, or case management services may be budgeted within the area program cost center which provides that service if the area program maintains sufficient statistical data to indicate the service provided to the Willie M. client and the cost of the service.

(h) The area program shall provide financial and statistical reports regarding funds for assaultive children to the Division according to instructions of the Division.

(i) The limitation on the number of inpatient days as contained in 10 NCAC 14D .0006(a)(1)(C); USE OF DIVISION FUNDS FOR INPATIENT SERVICES; shall not apply to Funds for Assaultive Children.

Statutory Authority G.S. 122C-147; 122C-150.

.1137 FUNDING DRUG EDUCATION SCHOOLS

(a) Pursuant to G.S. 90-96.01 the Department of Human Resources shall have the authority to approve programs, budgets and contracts with public and private governmental and nongovernmental bodies for drug education schools operated by an area program or operated by a contractor through a contract with an area program.

(b) Fees paid by persons enrolling in a drug education school established pursuant to G.S. 90-96.01 shall be used to support the schools except as indicated in Paragraph (e) of this Rule. Other funds to support the schools may come from multiple sources such as, but not limited to, county general funds, state appropriations, federal appropriations, and receipts for services (patient fees). This Rule is established to set accounting requirements for the fees received pursuant to G.S. 90-96.01.

(c) Fees received pursuant to G.S. 90-96.01 shall be limited to purchases of the following:

(1) to rent or lease space to conduct drug education school classes if sufficient space is not available in area program facilities;

(2) personnel and support costs necessary to assure a systematic and timely processing of referrals to drug education schools;

(3) supplies and materials necessary for the efficient and timely operation, evaluation and administration of drug education schools and for developing and maintaining an efficient liaison process with the judicial system, interested community groups, and the Department of Human Resources;

(4) non-administrative equipment necessary for the operation of drug education schools;

(5) administrative equipment for drug education school personnel employed full-time and a pro-rated amount for personnel assigned less than 100 percent of the time to drug education schools;

(6) renovations that do not result in the acquisition of real property by the area program;

(7) travel required for the effective operation of the drug education schools;

(8) area program administrative costs that can be documented as chargeable to the schools; and

(9) other necessary operating expenses as approved by the Division.

(d) Fees received pursuant to G.S. 90-96.01 shall not be used for acquisition of real property by the area program.

(e) Fees received pursuant to G.S. 90-96.01 shall be used to support the operation, evaluation and administration of the drug education schools to the extent that the schools are fully accredited by the Division. Any excess fees received pursuant to G.S. 90-96.01 are to be used to continue or to expand alcohol and drug services.

(f) Fees received pursuant to G.S. 90-96.01 shall not be used in any manner to match state or division funds or to be included in any computation for state or division formula funded allocations.

(g) Fees received pursuant to G.S. 90-96.01 shall be consistently identified as such. All such fees remaining at the end of the area program's fiscal year shall retain their identity and the fund balance of the area program shall be so restricted as to assure continued use of the fees for the drug education schools or to continue or to expand other alcohol and drug abuse services.

(h) Area programs shall maintain records which indicate which individuals have paid for the drug education schools.

(i) Pursuant to G.S. 90-96.01, area programs shall receive fees from either the person enrolled in the class or from the judiciary. The individual enrolled in the school shall pay the fee to the area program providing the school, except that if the clerk of court in the county in which the person is sentenced agrees to collect the fees, the clerk shall collect all fees for persons sentenced in that county. The clerk shall pay the fees collected to the area program serving the catchment area in which the clerk is located regardless of where the person attends the school.

(j) Area programs receiving fees from the judiciary for individuals who will be enrolled in schools operated by other area programs shall transfer 80 percent of the fees received from the judiciary for those individuals to the area programs enrolling the individuals upon receipt of an invoice. The 80 percent shall be transferred to the area program providing the school regardless of whether the individual attends the school.

(k) Area programs receiving fees directly from an individual who has been sentenced in a county outside the area program's catchment area shall transfer 15 percent of the fees collected to the area program which serves the county where the individual was sentenced upon receipt of an invoice from the area program serving the county where the sentencing occurred. Any area program not desiring to collect the 15 percent from another area program is not required to invoice that program. A decision not to collect the 15 percent shall be approved by the area board and documented in the board minutes. An area program that does not desire to invoice another area program shall honor invoices presented to it from other area programs that desire to collect the 15 percent.

(l) Five percent of all fees received by the area program pursuant to G.S. 90-96.01 shall be forwarded to the ~~Department of Human Resources~~ Division of MH/DD/SAS on a monthly basis. The check for 5 percent of the fees received shall be accompanied by a transmittal indicating from whom the fees were received. The area program that initially receives the fees from the persons paying the fees or from the judiciary system shall be responsible for transferring the 5 percent to the ~~Department~~ Division. Checks shall be made payable to and sent to: Division of Mental Health, Developmental Disabilities ~~Mental Retardation~~ and Substance Abuse Services, Fiscal Services Section, ~~Controller's Office,~~ Suite ~~1103~~ 612, 325 North Salisbury Street, Raleigh, North Carolina 27603-5906 ~~27611~~.

(m) The amount of fees transferred to another area program or to the division as indicated in (j) through (l) of this Rule shall be recorded in the accounting records ~~to an account number designated by the Division in its uniform chart of accounts~~ as transfer of DES Fees. Under no circumstances shall the transfer of fees be recorded as an operating expense in which the Division would participate.

(n) In order to secure approval of the program and budget supported by fees received pursuant to G.S. 90-96.01, the area program shall include the programmatic and budgetary data in the annual plan of work submitted to the Division each fiscal year.

Statutory Authority G.S. 90-96.01; 122C-132; 122C-143.

.1138 COMMUNITY SUPPORT SERVICES FOR CHRONICALLY MENTALLY ILL

~~(a) The Division shall maintain a program of grants to area programs for the purpose of providing community based support services for chronically mentally ill adults and elderly individuals served by area programs and their contract agencies. The grants are:~~

~~(1) funds for community support day/night programs for the chronically mentally ill, and~~

~~(2) funds for community based support services for the chronically mentally ill.~~

~~(b) This Paragraph applies to the funds referenced in (a)(1) of this Rule. Not less than three hundred seventy four thousand dollars ($374,000) annually plus applicable inflation and salary increase funds appropriated by the Legislature shall be spent to operate community support day/night programs in area programs which had a program operating prior to fiscal year 1981 82 (Mountainhouse - Blue Ridge Area Program; Sunshine House - New River Area Program; Piedmont Pioneer House - Gaston/Lincoln Area Program) in an amount not to exceed twenty thousand dollars ($20,000) plus applicable inflation and salary increase funds per program per year. Funds may also be administered to new programs, but support for each new program shall not exceed fifty thousand dollars ($50,000) per year plus applicable inflation and salary increase funds.~~

If the programs funded with these grants are day/night programs they shall meet the standards for Community Support Programs for Adults and Elderly Individuals Who Are Chronically Mentally Ill as codified in 10 NCAC 18P Section .0500. These funds may not be used for support of inpatient services. Programs operated by an area program or contract programs of the area program are eligible for funding of the following expenditures:

(1) staffing;
(2) travel;
(3) supplies;
(4) administrative and program equipment;
(5) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life (these funds shall not be used for purchase of real property); and
(6) other program needs as approved by the Division.

(c) Funds for community based support services for the chronically mentally ill not referenced in (b) of this Rule may be used to provide an array of services for the chronically mentally ill including, but not limited to, case management, emergency services, inpatient services, residential services and community support day/night programs as described in (b) of this Rule. Programs receiving funds for community based support services shall meet the applicable standards for the particular service as codified in 10 NCAC 18I through 18Q. These funds shall be administered to area programs on a per capita basis utilizing the most current population data available from Office of State Budget and Management. These funds shall be expended as follows:

(1) Programs operated by an area program or contract programs of the area program are eligible for funding of the following expenditures:
(A) staffing;
(B) travel;
(C) supplies;
(D) administrative and program equipment;
(E) other program needs as approved by the Division; and
(F) repairs and maintenance of facilities, other than residential facilities which are governed by (c)(2) of this Rule, which represent normal upkeep and do not materially increase the value of the facility or extend its useful life. Except for residential facilities as provided for in (c) (2) of this Rule, these funds shall not be used for purchase of real property.

(2) Funds for community based support services for the chronically mentally ill may be used for the purchase, construction, alteration, improvement or repair of a residential facility by the area program or a non profit board with division approval. The program shall meet the requirements of the following:

(A) The Residential Facility Mortgage Payment Program. The Division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.
(B) The Residential Facility Purchase/Construction Program.
(i) The Division may participate in the down payment or lump sum purchase or construction of a residential facility in whole or part contingent upon the availability of state funds.
(ii) The area program or non profit board shall secure two property appraisals for review and approval by the Division prior to purchase.
(iii) If a new construction grant is requested, the area program shall submit two construction bid contracts from two building contractors to the appropriate regional office for review and approval prior to construction bid letting.
(C) A request for initial renovation of a newly acquired residential facility of five thousand dollars ($5000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to residential facilities of less than one thousand dollars ($1000) shall be approved by the area program.
(D) A request for alteration or improvement of an existing residential facility in excess of five thousand dollars ($5000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.
(E) A request for alteration or improvement of an existing facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office for approval.
(F) Each request as outlined in (c) (2) (B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.
(G) If the residential facility is operated by a non profit board, the area program shall sign a legally binding contract with the private non profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (c) (2) (A) and (B) of this Rule. A copy of the appropri-

ate contract shall be obtained from the Fiscal Services Branch of the central office of the Division.

(H) If a residential facility owned by an area program or its private non profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. If an area program or its non profit contract program wishes to retain a facility that was purchased, altered, improved or rehabilitated using funds for Community Support Services for Chronically Mentally Ill, the area program or its contract program shall pay to the Division 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 contribution made by the Division in the purchase, alteration, improvement or rehabilitation of the facility. This provision may be waived by the Division Director upon written request of the program. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the Division, area program or other funding entity.

(d) Fund Balance. An allowance for a fund balance for area programs or contract programs for both types of community support funds is made in Rule .1125 of this Section.

(e) Application for an allocation of both types of community support funds shall be as follows:

(1) To apply for funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(2) Funds shall be allocated by the Director of the Division among the regional offices.

(3) Based on the annual plan and budget submitted and availability of funds, allocation of funds for area programs within each region shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); S.L. 1981 C. 1007; 122C-143; 122C-147; 122C-150.

.1139 FUNDS FOR TREATMENT ALTERNATIVES TO STREET CRIME

(a) In furtherance of an appropriation received from the North Carolina Legislature, the Division shall administer a program of grants to Guilford Area Program and Wake Area Program to reduce drug related crime and criminal recidivism among substance abusing offenders by providing a mechanism for referral of appropriate offenders to community based treatment programs. The grants shall be called Funds for Treatment Alternatives to Street Crime.

(b) Funds for Treatment Alternatives to Street Crime shall be administered to area programs on a match basis. The match ratio shall be no less than 20 percent local funds and no more than 80 percent Funds for Treatment Alternatives to Street Crime.

(c) Programs operated by an area program or a private program contracted by the area program may expend Funds for Treatment Alternatives to Street Crime for the following:

(1) staffing;

(2) travel;

(3) supplies;

(4) utilities;

(5) administrative and program equipment;

(6) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life; and

(7) other program needs as approved by the Division.

(d) Funds for Treatment Alternatives to Street Crime shall not be used for the purchase of real property.

(e) To apply for funds administered under this Rule, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

Statutory Authority G.S. 122C-132; 122C-143; 122C-147.

.1140 COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANT

(a) The Division shall administer a grant program for the federal ~~Alcohol/Drug and~~ Community Mental Health Services Block Grant which is made available to the Division under the authority of Public Law ~~97-35~~ 102-321.

(b) The appropriate portion of funds ~~in the block grant~~ which are made available to the Division for ~~alcohol, drug and~~ Community mental health services shall be ~~used to make grants to eligible programs for the provision of comprehensive services. In accordance with federal law, area programs receiving grants under the Community Mental Health Centers Act as of October 1, 1981 shall continue to be funded until such time as the grant would have expired if the Community Mental Health Centers Act had been continued. The annual allocation for the continu-~~

ing mental health grantees shall be at a level proportionate to the reduction in the federal appropriation. made available to eligible programs. The purpose of these funds is to provide comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance who meet the UCR criteria for Level 1 or Level 2.

(e) Required Services. To be eligible to receive block Grant funds, an area program shall provide the following services:

(1) outpatient services, including specialized outpatient services for children, the elderly, individuals who are chronically mentally ill, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(2) 24 hour a day emergency care services;

(3) day treatment or other partial hospitalization services;

(4) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission; and

(5) consultation and education services.

(c) The mental health services shall be provided within the limits of the capacity of the area program, to any individual residing or employed in the service area of the center, regardless of ability to pay for such services, in a manner which preserves human dignity and assures continuity and high quality care.

(d) Required Expenditures - Alcohol and Drug. On a statewide basis, block grant funds for alcohol and drug services shall be expended in accordance with the following:

(1) At least 35 percent of the funds for alcohol and drug services shall be expended for programs and activities related to alcoholism and alcohol abuse.

(2) At least 35 percent of the funds for alcohol and drug services shall be expended for programs and activities relating to drug abuse.

(3) At least 20 percent of the amount used for alcohol and drug abuse services shall be expended for prevention and early intervention programs designed to discourage the abuse of alcohol or drugs, or both.

The Division shall review proposed expenditures of all area programs and if the percentage requirements for services and prevention specified in (d)(1), (2), and (3) of this Rule are not met, the Division shall require changes in area program expenditure patterns to meet these federally mandated requirements.

(d) Funds shall not be expended for any of the following uses:

(1) to provide inpatient services,

(2) to make cash payments to clients,

(3) to purchase or improve land, purchase, construct or permanently improve any building or other facility, or purchase major medical equipment,

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds,

(5) to provide assistance to any entity other than a public or nonprofit private entity ,or

(6) to support any individual salary in excess of one hundred twenty five thousand dollars ($125,000).

(e) The Division Director shall allocate annually funds to the area programs. Non-Eligible Expenditures. Block grant funds shall not be used for the purchase of real property or to fund mental retardation or inpatient services. Inpatient services are defined as those services provided to the emotionally disabled, alcoholic, or drug abuser which are of a medical nature and are rendered in a hospital setting to which the consumer of the services has been admitted as a patient.

(f) Matching. Area programs shall be required to match block grants at the same ratio as they were required to match federal funds during the 1980-81 fiscal year which are now included in the block grant.

(g) Allocation Among Regional Offices. The Division Director shall allocate annually block grant funds among the regional offices of the Division. At the discretion of the Division Director, the Regional Director shall allocate the block grant funds among the eligible area programs of the region.

(f) (h) Block grant funds allocated shall be used to supplement and increase the level of state, local, and other non-federal funds and shall, in no event, supplant such state, local, and other non-federal funds. The Division shall monitor compliance by comparing total budgeted revenues for the current fiscal year with those budgeted for the prior fiscal year for each area program exclusive of block grant funds. If block grant funds are reduced, the area program may reduce its participation in a proportionate manner.

(i) To apply for block grant funds, an area program shall include an annual plan and budget for such funds in its total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

Statutory Authority G.S. 12C-141; 122C-143.1; 122C-143.2; 122C-144.1; 122C-147; 122C-147.1; 122C-147.2; P.L. 102-321.

.1141 CONTINUITY OF CARE

The area program and division shall follow the provisions of 10 NCAC 18V .0001 through .0008; CONTINUITY OF CARE; (division publication APSR 120-2) in planning and budgeting for continuity of care for persons coming under the provisions of General Statute 122C-63.

Statutory Authority G.S. 122C-132; 122C-147.

.1142 ALLOCATION OF OUTPATIENT COMMITMENT FUNDS

(a) Outpatient involuntary commitment consists of mental health treatment, less intensive than psychiatric hospitalization, that is ordered by the court pursuant to G.S. 122C-271. Outpatient treatment may include medication; individual or group therapy; day or partial day programming activities; services and training including educational and vocational activities; supervision of living arrangements; and any other services prescribed to alleviate the person's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may result in the necessity for commitment to an inpatient psychiatric facility.

(b) The Division shall allocate funds to each region on a per capita basis.

(c) The appropriate regional office of the division shall allocate funds to area programs based on an actual commitment basis, not to exceed the amount as approved by the Legislature per year per case. Area programs shall complete the "Outpatient Involuntary Commitment Reimbursement" form each month to receive reimbursement. Reimbursement shall be made as follows:

(1) Area programs shall be allocated 1/12 of the annual appropriated amount approved by the Legislature per year per case for each client under outpatient involuntary commitment.

(2) Area programs shall receive a full month's allocation for outpatient involuntary clients whose date of commitment is from the 1st through the 15th of any month. Area programs shall receive one half the monthly allocation for outpatient involuntary clients whose date of commitment occurs after the 15th of the month. If a client's involuntary commitment terminates from the 1st through the 15th of any month, the area program shall receive a half month's allocation. If a client's outpatient involuntary commitment terminates after the 15th of the month, the area program shall receive a full month's allocation.

(3) Monthly payments to the area program shall continue for the length of the client's outpatient commitment or until the annual appropriation for the program is fully depleted.

(4) Area programs shall forward a copy of the commitment order form AOC-SP-203 to the regional office to coincide with the time frame of the reimbursement request. Reimbursement will not be processed until the AOC-SP-203 form is received by the regional office.

(5) Reimbursement requests shall be submitted to the regional office for payment within 90 days after the month in which service is rendered. Reimbursement requests submitted after 90 days may be paid based upon availability of funds and division approval.

(d) Outpatient commitment funds shall be allocated to area programs in addition to other funds they receive.

(e) The Division shall conduct cost studies at fiscal year end to determine if the funds allocated to area programs exceed the actual cost of service.

Statutory Authority G.S. 122C-112(a)(6); 122C-147; 122C-271; S.L. 1983, c. 864.

.1143 SOUTH CENTRAL DEINSTITUTIONALIZATION PROGRAM FUNDS

(a) The Division shall administer a program of grants to be known as south central deinstitutionalization program funds.

(b) South central deinstitutionalization program funds shall be made available to the south central region by the Division to move the focus of services from large centralized institutions to small appropriate community based programs and services. The goal of these program funds is to serve, in a community based setting, acutely and chronically mentally ill persons currently in the community as well as those served at Dorothea Dix Hospital.

(c) South central deinstitutionalization program funds shall be administered to area programs as direct grants not requiring local match.

(d) South central deinstitutionalization program funds may be used for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(e) Application for south central deinstitutionalization program funds shall be made by submitting an annual plan and budget to the appropriate regional office.

(f) Based on the approved annual plan and budget request submitted and availability of funds, allocation of south central deinstitutionalization program funds to area programs shall be made by the south central Regional Director with the concurrence of the Division Director.

Statutory Authority G.S. 122C-112(a)(6); S.L. 1983, 761, Section 28.

.1144 REPLACEMENT OF LOST BLOCK GRANT FUNDS FOR MENTAL HEALTH

(a) The Division shall make available direct grants to area programs for the replacement of lost block grant funds for mental health under the authorization of G.S. 122C-150.

(b) These funds shall be made available to area programs to supplement a reduction of block grant funds for mental health.

(c) Replacement of lost block grant funds for mental health shall be administered to area programs as direct grants not requiring local match.

(d) Replacement of lost block grant funds for mental health may be used for repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(e) To apply for replacement of lost block grant funds for mental health, an annual plan and budget for such funds shall be included in the appropriate area program's total

annual plan and budget package when it is submitted to the regional office of the Division.

(f) Based on the approved annual plan and budget request submitted and availability of funds, allocation or replacement of lost block grant funds for mental health to area programs shall be made by the appropriate Regional Director with the concurrence of the Division Director.

Statutory Authority G.S. 122C-112; 122C-147; 122C-150.

.1145 DEVELOPMENTAL DAY CARE GRANTS-IN-AID

(a) The Division shall administer a program of grants to area programs to be called developmental day care grants-in-aid.

(b) Developmental day care grants in aid shall be administered to area programs up to a standard rate per month as approved by the General Assembly, Division Director or both, unless administered on a total cost basis with the Division Director's approval in accordance with Section 26 of the "Area Program Budgeting and Procedures Manual" (division publication APSM 75-1) adopted pursuant to G.S. 150B-14(c), as published June 27, 1984. Copies of Section 26 of the "Area Program Budgeting and Procedures Manual" may be inspected at the Raleigh office of the Division or copies may be obtained from the Publications Office of the Division at a charge which covers printing and postage.

(c) Children in whose behalf funds are administered to programs shall be:

(1) mentally retarded, otherwise developmentally disabled, developmentally delayed, or have atypical development or be infants or toddlers at high risk for any of these conditions, for whom a disability specific diagnosis is inappropriate; and

(2) between the ages of birth and 19; and

(3) residents of North Carolina.

(d) Children with moderate, severe, or profound mental retardation, substantial other developmental disabilities, or infants or toddlers with or at high risk for developmental delays, developmental disabilities, or atypical development shall be given first priority for available funds. Children determined to be substantially developmentally disabled shall be those functioning at either Level I or Level II as defined in "Pioneer Funding System Operating Manual, Volume III: Level of Eligibility, Section 4, Child Developmental Disability". Preschool children with mild mental retardation, other mild developmental disabilities, developmental delays or those with atypical development shall be given the next priority for available funds if they meet the eligibility requirement specified in (c) (3) of this Rule and if prior approval of the appropriate regional director or designee is obtained.

(e) To apply for developmental day care grant-in-aid funds an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(f) Funds for developmental day care shall be allocated among the regions of the Division by the Division Director.

(g) Disbursement of developmental day care grant-in-aid funds shall be made after approval of the plan and budget by the Regional Director.

Statutory Authority G.S. 122C-112(a)(6); 122C-131; 122C-147.

.1146 RESIDENTIAL FACILITIES FOR SEVERELY MENTALLY ILL ADULTS

(a) Pursuant to G.S. 122C-150, the Division shall administer a program of grants to area programs to be called funds for residential facilities for severely mentally ill adults.

(b) Such grants shall be used to support residential facilities for severely mentally ill adults.

(c) Funds for residential facilities for severely mentally ill adults shall be administered to area programs as direct grants and do not require local matching.

(d) Programs operated by an area program or contract programs of the area program may spend funds for residential facilities for severely mentally ill adults for the following:

(1) staffing;

(2) to rent or lease residential facilities;

(3) furniture or specialized equipment for residents;

(4) transportation of residents;

(5) other necessary operating expenses as approved by the Division; and

(6) repairs and maintenance of facilities which represent normal upkeep and do not materially increase the value of the facility or extend its useful life.

(e) Funds for residential facilities for severely mentally ill adults may be used for the purchase, construction, alteration, improvement or repair of a residential facility by the area program or a non-profit board under contract with the area program with division approval. The program shall meet the requirements of the following:

(1) In order to participate in a Federal Department of Housing and Urban Development (HUD) Section 202 project (12 U.S.C. §1701g) for the purchase, construction or alteration, improvement or repair of a facility, 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 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 require-

ments:

(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.

(2) Projects that involve the purchase, construction, alteration, improvement or repair of a residential facility with the exception of federal Housing and Urban Development (HUD) 202 projects shall meet the requirements of the following:

(A) The Residential Facility Mortgage Payment Program. The Division may participate in the mortgage payment program in part or in total dependent upon the availability of state funds.

(B) The Residential Facility Purchase/Construction Program.

(i) The Division may participate in the down payment or lump sum purchase or construction of a residential facility in whole or part contingent upon the availability of state funds.

(ii) The area program or non profit board shall secure two property appraisals for review and approval by the Division prior to purchase.

(iii) If a new construction grant is requested, the area program shall submit three construction bid contracts from three building contractors except as provided for by G.S. 143-132 to the appropriate regional office for review and approval prior to construction bid letting.

(C) A request for initial renovation of a newly acquired residential facility of five thousand dollars ($5000) or less shall be submitted to the appropriate regional office of the Division for approval. Initial minor repairs to facilities of less than one thousand dollars ($1000) shall be approved by the area program.

(D) A request for alteration or improvement of an existing residential facility in excess of five thousand dollars ($5000) shall be forwarded to the Division Director's office through the appropriate regional office of the Division for approval.

(E) A request for alteration or improvement of an existing facility of five thousand dollars ($5,000) or less shall be submitted to the appropriate regional office for approval.

(F) Each request as outlined in (e)(2)(B) and (D) of this Rule shall be accompanied by a narrative that explains the need for the purchase, construction, alteration, improvement or repair of the facility and a copy of the schematic drawings and specifications. If approved by the Division of Mental Health, Mental Retardation and Substance Abuse Services, these drawings and specifications shall be forwarded to the Division of Facility Services for review and approval.

(G) If the residential facility is operated by a non profit board, the area program shall sign a legally binding contract with the private non-profit agency for either the mortgage payments to be made or the purchase or construction program as indicated in (e)(2)(A) and (B) of this Rule. A copy of the appropriate contract shall be obtained from the Fiscal Services Branch of the central office of the Division.

(H) If a residential facility owned by an area program or its private non-profit contract agency was purchased, altered, improved, or rehabilitated using division funds and later ceases to be used in the delivery of services to clients by the area program or its private non-profit contract agency, the facility shall be sold at the current fair market value as determined by two independent appraisals acceptable to the Division. The Division shall be reimbursed a pro rata share of the proceeds of the sale based on the percent of contribution made by the Division in the purchase, alteration, improvement or rehabilitation. If an area program or its non-profit contract program wishes to retain a facility that was purchased, altered, improved or rehabilitated using funds for residential facilities for severely mentally ill adults the area program or its contract program shall pay to the Division 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 contribution made by the Division in the purchase, alteration, improvement

or rehabilitation of the facility. This provision may be waived by the Division Director upon written request of the program. The area program shall maintain records on a continuous basis which reflect the amount of contribution for purchase, alteration, improvement, or rehabilitation by the Division, area program or other funding entity.

(f) Immediately upon receipt of said funds or as soon thereafter as practical, an area program or private non-profit agency receiving state funds pursuant to this Rule shall cause to be recorded with the Register of Deeds of the county in which the residential facility is located a notice of claim in lieu (or continuing lien as applicable) on behalf of the state for all funds provided by the state through the Division.

(f) Fund balance. The Division may allow area programs or contract programs to maintain a fund balance of no more than 15 percent of the current annual budget in accordance with Rule .1125 of this Section.

(g) To apply for funds for residential facilities for severely mentally ill adults, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the appropriate regional office of the Division.

(h) Funds for residential facilities for severely mentally ill adults shall be allocated among the regions of the Division by the Division Director.

(i) Based on the approved annual plan and budget request submitted and availability of funds, allocation of funds for residential facilities for severely mentally ill adults to area programs within each region shall be made by the Division Director or his designee.

Statutory Authority G.S. 122C-112(a)(6); 122C-141; 122C-147; 122C-150; 143B-10.

.1147 EARLY INTERVENTION-FEDERAL-EHA

(a) The Division shall administer a program of grants to area programs called Early Intervention Federal Education of the Handicapped Act (EHA).

(b) Such funds shall be used to provide for the establishment of early intervention services. Early intervention services shall be provided through home or center based models, program consultation or through other specific activities specified in P.L. 99-457, Section 672(2) (A-G), which is adopted by reference according to G.S. 150B-14(c), within the following guidelines:

(1) Children served shall be those with developmental delays or atypical development or those at risk for these conditions as defined in 10 NCAC 14K .0103.

(2) Children served shall be from birth through two years of age.

(3) Funds shall be used to supplement and increase the level of State and local funds for these children and in no case supplant such State and local funds.

(c) To apply for funds for these services, an annual plan and budget for such funds shall be included in the appropriate area program's total annual plan and budget package when it is submitted to the regional office of the Division.

(d) Funds shall be allocated to the regions of the Division by the Division Director.

(e) Based on the annual plan and budget request submitted by the area programs and approved by the Division, funds will be made available for reimbursement of services.

Authority G.S. 122C-112(a)(6); 122C-131; 122C-150; 20 U.S.C. 1471.

.1148 THOMAS S. COMMUNITY SERVICES

(a) Funds appropriated to the Division for members of the Thomas S. Class as identified in the Thomas S., et al v. Britt, formerly Thomas S., et al v. Flaherty lawsuit, shall be expended only for programs serving Thomas S. Class members or for services for those clients who are:

(1) adults with mental retardation, or who have been treated as if they had mental retardation, who were admitted to a state psychiatric hospital on or after March 22, 1984, and who are included on the Division of Mental Health, Developmental Disabilities and Substance Abuse Services' official list of prospective class members including focus class members; or

(2) adults with mental retardation who:

(A) have a documented history of State psychiatric hospital admission regardless of admission date; or

(B) have never been admitted to a State psychiatric hospital but who have a documented history of behavior determined to be of danger to self or others that results in referrals for inpatient psychiatric treatment; and

(C) without funding support, have good probability of being admitted to a State psychiatric hospital. Expenditures for services to clients listed in Subparagraph (a)(2) of this Rule are limited by legislation and require specific approval by the Division.

(b) Programs operated by an area program or a program contracted by the area program or a provider under direct contract with the Division to provide may spend funds for Thomas S. Services funds for the following:

(1) facility rental;

(2) utilities;

(3) staffing;

(4) supplies;

(5) travel;

(6) rental and purchase of administrative and program equipment according to the following

provisions:

(A) equipment is defined as purchases costing five hundred dollars ($500) or more and having a useful life of at least one year;

(B) all equipment purchased with Thomas S. Service funds will be inventoried and identified as Thomas S. equipment and must be used for Thomas S. services;

(C) equipment may be held in the name of a contract provider with the stipulation that if the equipment ceases to be used to provide services to Thomas S. clients, ownership reverts to the contracting area program who must then contact the Division for disposition instructions;

(D) the Division must be notified whenever equipment purchased with Thomas S. Service funds ceases to be used to provide services to Thomas S. Clients for 45 consecutive days; and

(E) the disposition of equipment purchased with Thomas S. funds requires Division approval;

(7) administrative cost which can be clearly documented as Thomas S. administrative costs through direct assignment or Division approved cost allocation methodology;

(8) transportation of clients;

(9) other program costs;

(10) in accordance with G.S. 122C-147, the purchase, construction and alteration, improvement or rehabilitation of a facility owned by the area program or county for the provision of day/night and/or 24 hour services by an area program or non-profit contract agency; or mortgage payments for private non-profit agencies according to the following ~~provisions:~~ provisions of Rule .1123 of this Section; and

~~(A) prior to the purchase of an existing facility, the area program or contract agency through the area program, shall submit two property appraisals completed by licensed real estate appraisers to the Division for approval. Approved funding will be released by the Division after approval of the appraisals.~~

~~(B) application and approval for construction funding shall be made in accordance with Rule .1123 of this Section (Area Mental Health Center Construction Project);~~

~~(C) a request for renovations, alteration, improvement or rehabilitation of a facility of five thousand dollars ($5,000) or more shall be forwarded to the Division Director's Office for approval. Each request shall be accompanied by a narrative that explains the need for and description of the alteration, improvement or repair of the facility. Lesser amounts do not require Division approval; and~~

~~(D) if a facility owned by an area program or its non-profit contract agency was purchased, altered, improved or rehabilitated using Thomas S. Service funds of five thousand dollars ($5,000) or more ceases to be used by the area program or its contract provider for services to Thomas S. Clients for 45 consecutive days, the Division shall be contacted immediately for disposition instructions. If the Division so directs, the facility shall be sold at the current fair market value in accordance with General Statue 153A 176 and General Statute 160A 266. After the sale, the Division shall be reimbursed the Division's pro rata share of the proceeds from the sale based on the percent of contribution made by the Division for the purchase, alteration, improvement or rehabilitation of the sold facility. If an area program or its contract provider wishes to maintain ownership of a facility that was purchased, altered, improved, or rehabilitated using Thomas S. Service funds, the area program or non profit contract provider may, if authorized by the Division, pay to the Division the Division's pro rata share of the current fair market value of the facility as determined by two certified appraisers or two independent appraisals obtained through a licensed real estate agency. The contribution made by all parties shall be maintained individually on a perpetual basis in the ledger, or group of accounts in which the details relating to the general fixed assets of the area program or its non profit contract agency are maintained; and~~

(11) except as provided in Paragraph (a) of this Rule, Thomas S. Operating funds shall not be used to serve other than Thomas S clients.

(c) Funds provided by the Division for Thomas S. services shall not be used to purchase client personal possessions or clothing unless:

(1) a unique situation has been documented;

(2) this expenditure cannot be covered from another source.

(d) Start-up funds, defined as funding provided to establish or prepare a facility or program for the provision of services, are required to be settled on an expenditure basis, may be provided to an area program or contract ~~provider~~ providers, including contract providers under direct contract with the Division, in accordance with the following provisions:

(1) Expenditures for start-up may be approved in accordance with Paragraph (b) of this Rule with the following restrictions:

(A) vehicles are allowable expenditures if:

(i) no other method of transportation is available;

(ii) other methods are cost prohibitive; or

(iii) at least four Thomas S. Clients will receive transportation services from the vehicle.

(B) furnishings for residential and day services shall be limited to functional items and shall not include stereos, video cassette recorders, microwaves or similar items unless programmatic benefit is established;

(2) Requests for start-up funds shall be made by the area program, or through the area program in the case of a contract provider, in whose catchment area the new program or program component is being established and is not required to be client specific;

(3) Request for start-up funding shall be made in writing to the Division Director at least (90) days prior to need and shall include a line item budget and written justification; and

(4) Request for start-up funding may include expenses for normal operations such as staff, utilities and rent but is limited and may not exceed (60) days;

(e) Funds provided by the Division to support Thomas S. services, except as noted in Paragraph (d) of this Rule, shall be discontinued if the program fails to serve any Thomas S. clients for a period of 45 consecutive days. An extension of time is approved in writing by the Division Director.

(f) Funds shall be awarded to the area program by the Division based on need and the availability of funds. The annual budget for the programs serving Thomas S. clients shall be budgeted in a separate cost center. Such cost centers shall include all sources of revenue which support the costs of Thomas S. clients.

(g) Thomas S. Class members, as defined in Subparagraphs (a) (1) and (2) of this Rule, shall not be excluded from participating in programs or services for which they are eligible and which are funded from other sources.

(h) The area program and contract provider shall provide financial and client data regarding Thomas S. Services to the Division according to instructions from the Division.

Statutory Authority G.S. 122C-147; 122C-150.

.1149 PATH HOMELESS GRANT

(a) The Division shall administer a program of grants for children and adults to area programs called Path-Homeless Grant.

(b) These funds shall be used to provide comprehensive services for homeless individuals who have chronic mental illness. Path-Homeless Grant funds shall be used to develop community mental health and related services to provide treatment and support to homeless mentally ill adults and children consistent with the provisions of Public Law 100-77, Title VI, Subtitle B, Part C and within the following guidelines:

(1) Homelessness is defined as individuals who lack a fixed, regular and adequate residence;

(2) An individual who has a primary residence that is:

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or

(B) a facility that provides a temporary residence for individuals who would otherwise be institutionalized; or

(C) a public or private place not designated for, or ordinarily used as a regular sleeping accommodation for human beings;

(3) Homelessness does not include any individual imprisoned or otherwise detained under federal or state law.

(c) Eligible adults are individuals who are 18 years of age or older and who have long term, severe disabling mental illness. Long term severe mental illness is defined as a serious and persistent mental or emotional disorder, e.g., schizophrenia, severe depression, manic-depressive disorder, etc. that disrupts functional capacities for relationships and work or school. Persons with long term mental illness complicated by alcohol and or drug abuse problems and individuals who are both mentally ill and mentally retarded are also eligible recipients.

(d) Eligible children are individuals under the age of 18 who either:

(1) have an emotional disturbance of such severity as to significantly interfere with functioning within the family, school or community environment and to require intensive intervention by mental health or other related agencies; or

(2) are at high risk of severe emotional disturbance because of severe mental illness or substance abuse in the immediate family or excessive disruption of normal educational and developmental process; or

(3) are in addition to mental illness, also suffering from an added disability, such as neurological impairment, chemical dependency and or mental retardation.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-47; 122C-147.1; 122C-147.2; Public Law 100-77, Title IV, Subtitle B, Part C.

.1150 GOVERNOR'S SUBSTANCE ABUSE PREVENTION PROGRAM

(a) The Division shall administer a program of grants for children and adolescents to area programs called the Governor's Substance Abuse Prevention Program.

(b) These funds shall be used to provide targeted primary prevention, services to children and adolescents who are high risk for alcohol or other drug abuse.

(c) Eligible individuals are children who have reached the age of five but not 18 years of age who are not currently abusing substances but have a primary disability of sub-

stance abuse of Subparagraph (c)(2) of this Rule and a level of eligibility of Subparagraph (c)(4) of this Rule and have one or more of the following high risk factors:

(1) is a school drop out,
(2) has experienced repeated failure in school,
(3) has become pregnant,
(4) is economically disadvantaged,
(5) is the child of drug or alcohol abusers,
(6) is a victim of sexual, physical or psychological abuse,
(7) has committed a violent or delinquent act,
(8) has experienced mental health problems,
(9) has attempted suicide,
(10) has experienced long term physical pain due to injury, or
(11) is a juvenile in a detention facility within the state.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2; General Education Provision Act, Education Department; General Administrative Regulations in 34 Code of CFR, Part 74, Part 76 and Part 77; and the Drug Free Schools and Community Act of 1986 and its amendments.

.1151 CAROLINA ALTERNATIVES

(a) The Division may contract with area programs to implement a managed care program for mental health and substance abuse services for children pursuant to a waiver granted by the Secretary of the United States Department of Health and Human Services in accordance with Title XIX of the Social Security Act, known as the Carolina Alternatives program.

(b) Funding will be made available through monthly capitation payments received from the Division of Medical Assistance. Capitation receipts to the Division will be based on pre-established Universal Capitation Rates and current enrollment eligibility information. Division payments to area programs will be based upon pre-established area program specific capitation rates and current enrollment eligibility information.

(c) Funds are awarded and settled based on the provisions in the contract between the Division and the area program.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2; Social Security Act, Waiver under Sections 1915(b) and (b)(4).

.1152 CLOZAPINE

(a) The Division shall administer a program for the reimbursement of area programs for the purchase of the drug Clozaril for the treatment of eligible patients suffering from schizophrenia.

(b) Funds shall be used for the reimbursement for laboratory services, pharmacy dispensing fees and for the price of the drug identified as Clozapine or Clozaril in a manner prescribed by the Division.

(c) Eligible clients are individuals who have a diagnosis of schizophrenia and are:

(1) Medicaid eligible but have a spend down requirement (Division funds may be used during the spend down period and count toward the spend requirement);
(2) not Medicaid eligible but who meet the federal poverty threshold;
(3) discharged from a state psychiatric hospital on the drug Clozapine.

(d) Funds are paid and settled in a manner prescribed by the Division Director.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2.

.1153 COMMUNICABLE DISEASE RISK/ SERVICES TO INTRAVENOUS (IV) DRUG USERS

(a) The Division shall administer a program for substance abuse services to adolescents or adults who inject controlled substances; or have sexual contact with partners who inject controlled substances, including methadone; or have tested positive for Human Immunodeficiency Virus (HIV), Acquired Immune Deficiency Syndrome (AIDS), Hepatitis B, Hepatitis C, sexually transmitted diseases or tuberculosis; or who have engaged in high risk behaviors with identified substance abusers.

(b) Funds shall be used for the provision of services in accordance with the special conditions in the Memorandum of Agreement or Summary of Significant Federal Requirements.

(c) Funds are awarded, paid and settled in a manner prescribed by the Division Director.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2.

.1154 TREATMENT ALTERNATIVES FOR WOMEN

(a) The Division shall administer a program to provide comprehensive services to substance abusing pregnant women or substance abusing women with dependent children.

(b) Services may include primary medical, prenatal and pediatric care immunization, child care, transportation, gender specific substance abuse treatment and therapeutic intervention for children that address their developmental needs.

(c) Funds shall be used for the provision of services in accordance with the special conditions in the Memorandum of Agreement or Summary of Significant Federal Requirements.

(d) Funds are awarded, paid and settled in a manner prescribed by the Division Director.

Statutory Authority G.S. 122C-141; 122C-143.1; 12C-143.2;

122C-147; 122C-147.1; 122C-147.2.

.1155 UNIT COST REIMBURSEMENT (UCR) CHILD AND ADULT

(a) The Division shall administer a system of reimbursement of state, federal and other funds to area programs for eligible children and adult clients based on the provision of eligible mental health, developmental disabilities and substance abuse services. These payments exclude those services paid for under either the Willie M. or Thomas S. unit cost reimbursement systems.

(b) This system of funding shall be based on a consistently applied methodology which includes the following:

(1) the identification of service expense centers,
(2) the allocation of allowable costs,
(3) the determination of expected units of service,
(4) the calculation of a unit cost reimbursement rate,
(5) the identification and assignment of revenue
(6) the reporting of units of service and revenue,
(7) the reimbursement of funds, and
(8) settlement procedures.

(c) The procedures established for UCR are stated in the Pioneer Funding System Operating Manual, Volumes I through IV.

(d) Funds shall be used for the provision of services in accordance with the Memorandum of Agreement.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2; 122C-151.1.

.1156 SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT

(a) The Division shall administer a grant program for the federal Substance Abuse Prevention and Treatment Block Grant which is made available to the Division under the authority of Public Law 102-321 Subpart II.

(b) The appropriate portion of funds in the block grant which are made available to the Division for substance abuse treatment and prevention services shall be used to make grants to eligible programs for the provision of comprehensive services.

(c) To be eligible to receive block grant funds, an area program shall provide the following services:

(1) outpatient services, including specialized outpatient services for children and adults who have substance abuse disorders or who are at risk for substance abuse and residents of its service area;
(2) 24 hour-a-day emergency care services;
(3) day treatment or other partial hospitalization services;
(4) screening for patients being considered for admission to state facilities to determine the appropriateness of such admission;
(5) consultation, education, and primary prevention services;
(6) TB screening and referral in accordance with federal requirements; and
(7) Specialized substance abuse services for pregnant and parenting women and adolescents.

(d) On a statewide basis, block grant funds for alcohol and drug services shall be expended in accordance with the following:

(1) At least 35 percent of the funds for alcohol and drug services shall be expended for programs and activities related to alcoholism and alcohol abuse;
(2) At least 35 percent of the funds for alcohol and drug services shall be expended for programs and activities relating to drug abuse;
(3) At least 20 percent of the amount used for alcohol and drug abuse services shall be expended for primary prevention and early intervention programs designed to discourage the abuse of alcohol, tobacco and other drugs. In order to ensure compliance with this requirement, each area program must expend no less than 20 percent of its allocation of SAPT-BG funds on primary prevention activities as outlined in the Memorandum of Agreement and Summary of Significant Federal Requirements;
(4) The state must spend at least five percent of the annual SAPTBG amount to provide outreach intervention services for IV Drug Users using one of the following three models developed by NIDA:
    (A) Standard Intervention Model for Injecting Drug Users (NIDA);
    (B) Health Education Model;
    (C) Indigenous Leader Outreach Model;
    (Section 1924 - Requirements Regarding Tuberculosis and Human Immunodeficiency Virus)
(5) Treatment services designed for pregnant women and women with dependent children shall be increased at a rate not less than five percent for FY 1993. The base for FY 1993 shall be the FY 1992 alcohol and drug services block grant expenditures and State expenditures for pregnant women and women with dependent children and to this base shall be added the five percent of the FY 1993 grant amount for alcohol and drug treatment services. For FY 1994, the State shall spend five percent more than the FY 1993 total expenditure for pregnant women and women with dependent children. For grants beyond FY 1994, the State shall expend no less than the amount equal to the amount expended by the State for FY 1994. States shall report their methods to calculate their base for FY 1992 expenditures on treatment for pregnant women and women with children;
    (Section 1922 Set Aside for Women With Dependent Children)

The Division shall review expenditures and if the percentage

requirements for services and prevention specified in Subparagraphs (d)(1), (2), (3) and (4) of this Rule are not met, the Division shall require changes in area program expenditure patterns to meet these federally mandated requirements.

(e) Non-Eligible Expenditures Funds shall not be expended for any of the following purposes:

(1) to provide inpatient hospital services, unless a physician has certified that the clients primary diagnosis is substance abuse, the individual cannot be safely treated in a non-hospital setting, the daily rate charged does not exceed the rate charged by a comparable non-hospital service, and the service is medically necessary;

(2) to make cash payments to clients;

(3) to purchase or improve land, purchase, construct or permanently improve any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;

(5) to provide assistance to any entity other than a public or non-profit private entity;

(6) to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs; or

(7) to support any individual salary in excess of one hundred twenty five thousand dollars ($125,000).

(f) The Division Director shall allocate annually funds to the area programs. The funds shall be included in the Annual Service Plan and Memorandum of Agreement.

(g) Block grant funds allocated shall be used to supplement and increase the level of state, local, and other non-federal funds and shall, in no event, supplant such state, local, and other non-federal funds. The Division shall monitor compliance by comparing total budgeted revenues for the current fiscal year with those budgeted for the prior fiscal year for each area program exclusive of block grant funds. If block grant funds are reduced, the area program may reduce its participation in a proportionate manner.

Statutory Authority G.S. 122C-150; P.L. 102-321, Subpart II.

.1157 NON UNIT COST REIMBURSEMENT

(a) The Division may provide specific purpose funding with state, federal or other sources for activities authorized by the division and the granting agency and disburse these funds on a basis other than unit cost reimbursement.

(b) Funds shall be expended in accordance with the special conditions set forth in the Memorandum of Agreement between the area program and Division.

(c) Funds shall be settled on an expenditure basis in accordance with Rule .1014 of this Subchapter.

(d) Non Unit Cost Reimbursement shall be available for child, adult and other services.

(1) Unless more narrowly defined in the allocation letter, funds for children shall be for individuals under the age of 18 years.

(2) Unless otherwise defined in the allocation letter, funds for adults shall be for individuals 18 years of age and older.

(3) Funds which cannot be identified for services to children or adults shall be considered "other".

Statutory Authority G.S. 122C-147.

.1158 TRAUMATIC BRAIN INJURY

(a) The Division shall administer a program to provide periodic, day/night and 24 hour community based services to children and adults with traumatic brain injury.

(b) Eligible recipients are individuals who have a traumatic brain injury resulting from a sudden insult to the brain caused by external physical force and who have substantial functional limitations according to the DD Adult Eligibility Screening Inventory.

(c) Funds shall be used for the provision of services in accordance with the allocation letter and any special conditions in the Memorandum of Agreement or Summary of Significant Federal Requirements.

(d) Funds are awarded and paid in a manner prescribed by the Division Director.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2.

.1159 REVOLVING LOAN

(a) The Division may, upon authorization from the Office of Budget and Management, make available funds for loans to provide for the implementation of new community based programs and services.

(b) Authorization will be based on a minimum of written justification explaining the need for the loan; a detailed list of expenditures to be incurred; a detailed list of receipts to be received and a repayment plan approved by the Division.

(c) Funds shall be used only for expenditures authorized by the Division.

(d) Funds are awarded and paid in a manner prescribed by the Division Director.

Statutory Authority G.S. 122C-141; 122C-143.1; 122C-143.2; 122C-147; 122C-147.1; 122C-147.2.

.1160 DOMICILIARY CARE

(a) The Division shall administer a program of payments to area programs for services to clients residing in domiciliary care facilities, excluding DDA group homes.

(b) Such funds shall be used to make incentive payments for Medicaid covered services rendered to Medicaid eligible clients in domiciliary care facilities, including outpatient treatment (individual and group), evaluation, case consultation, day treatment, screening, case management and psycho social rehabilitation services to adults.

(c) The service must be provided by an area program, or under contract to an area program. The staff member providing the service must be privileged by the area program to provide the service and documented according to Client Service Record manual requirement.

(d) Eligible clients shall be an adult resident of a licensed Family Care Home or home for the Aged and Medicaid eligible.

(e) Funds are awarded and paid in a manner prescribed by the Division Director.

Statutory Authority G.S. 122C-112; 122C-143.1.

SUBCHAPTER 14D - POLICIES ON INPATIENT AND RELATED SERVICES

.0006 USE OF DIVISION FUNDS FOR INPATIENT SERVICES

(a) Inpatient funding for the purchase of services from local inpatient providers and medical doctors shall meet the following requirements:

(1) Program Requirements

(A) ~~The Division may allocate funds to~~ Division funds may be used by area programs for the purchase of community inpatient care with local providers. ~~The allocation of such funds shall be based on the area program's annual plan.~~ All patients to be served under the plan shall be accepted as patients of the area program. Such a patient is one who is assigned an area program client record number, has a master client record card and services rendered are documented in a client record in accordance with are program standards requirements in 10 NCAC 18A .0310 and .0311. Area authorities shall contract with a local inpatient provider accredited by the Joint Commission of Accreditation of Hospitals Organization or licensed by the Division of Facility Services and designated by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

~~(i) Area authorities shall contract with a local inpatient provider accredited by the Joint Commission on Accreditation of Hospitals or licensed by the Department of Human Resources or Division of Facility Services and designated by the Division of Mental Health, Mental Retardation and Substance Abuse Services.~~

~~(ii) Each area authority interested in applying for inpatient funds shall submit a proposal for approval to the regional office with their annual plan and budget. Included in the proposal shall be a proposed contract between the area authority and the local inpatient provider.~~

~~(B) Priority in allocating funds shall be given to those program which:~~

~~(i) have evidenced ability to decrease admissions to state regional facilities or which propose to decrease admissions to state regional facilities by providing community inpatient services;~~

~~(ii) have a written admission and discharge procedure that meets the requirements of the division standards for area programs;~~

~~(iii) have an operational plan to serve indigent and/or minority populations; or~~

~~(iv) show a readiness to develop an inpatient detoxification program for alcohol and drugs.~~

~~(C) The number of days required for inpatient hospitalization shall not exceed the standards as set by PSRO for appropriate length of stay. PSRO reports shall be made available upon request to the area programs and for Department of Human Resources program reviews and audits.~~

(B) ~~(D)~~ Non-residents of the State of North Carolina may receive inpatient care under the area program inpatient program only under emergency situations. An emergency situation would be where a person needs immediate hospitalization which cannot be delayed until he is transported to an appropriate inpatient facility within his resident state.

(C) ~~(E)~~ An area authority may contract with private psychiatrists or other medical doctors to provide professional services in inpatient settings. Such contracts shall be in accordance with Section 23n and Section 25 .1010 of APSM 75-1. ~~act as attending physicians for the local inpatient program when insufficient area program employed physicians are available to provide the required coverage. All contracts for inpatient services by physicians shall be in accordance with Section 23 of Area Program Budgeting and Procedures Manual of the Division (APSM 75-1), adopted pursuant to G.S. 150B 14(e).~~

(D) ~~(F)~~ Part-time consultant medical doctors employed by the area program for non-inpatient care may also be contracted to provide inpatient care. The area director shall assure that there will not be a conflict, such as dual payment, between the part-time physician's employment for outpatient care and ~~his or her participation~~ in the inpatient program. ~~In all cases, prior authorization shall be given by the division where the combined days of employment for consultants exceed two days per week.~~

(E) ~~(G)~~ ~~For patients treated by the provider,~~

~~reimbursement~~ Use of Division funds for inpatient services shall be limited to services for alcohol ~~and~~ and/or drug detoxification and for treatment of emotional disorders.

(2) Fiscal Requirements:

(A) A written contract between the area authority and the provider and/or ~~or~~ attending medical doctor shall be ~~negotiated and submitted to the division.~~ established in accordance with 10 NCAC 14C .1010. The contract shall contain, at a minimum, provisions which deal with such matters as payment for patient; responsibility for reimbursement; services to be provided; responsibility for patient admission; records; statistical information; posting of payments; and maintenance of patient care cost.

~~(B) Where division funds which require local matching funds are used to contract for local inpatient care, the following sources shall be accepted as local matching funds:~~

~~(i) first and third party reimbursement received by the inpatient facility for cost incurred for the treatment of area program patients; (First and third party services may be combined from several inpatient facilities within an area which is treating area program patients.); and~~

~~(ii) local funds derived by the area program and designated for reimbursement to community inpatient facilities for the cost of inpatient treatment (Local matchable funds are those funds appropriated by local governments, fees for services rendered, and other non-state and non-federal funds).~~

(B) ~~(3)~~ Requirement for Inpatient Facilities Reimbursement:

(i) ~~(A)~~ Reimbursement to the inpatient provider for alcohol ~~and~~ and/or drug detoxification or emotional disorders shall not exceed the lesser of the following:

(I) ~~(i)~~ the difference between any first ~~or~~ and/or third party payments or both collected and the approved all inclusive prospective medicaid reimbursement rate for the provider on an individual patient basis; or

(II) ~~(ii)~~ charges for inpatient services. The medicaid rate to be reimbursed shall be the effective rate at date of discharge. The inpatient provider shall follow usual collection procedures for each patient before billing the area program.

(ii) ~~(B)~~ A request for reimbursement for inpatient cost shall be submitted by the provider to the area program which will be the basis for reimbursement. ~~The area program shall use a form as prescribed by the division.~~

(C) ~~(4)~~ Requirements for Attending Physician Reimbursement:

(i) ~~(A)~~ Area authorities which elect to contract with medical doctors for the provision of inpatient services shall use one of the following two methods to reimburse the medical doctor for ~~his~~ his/her services:

(I) ~~(i)~~ The area program shall pay the medical doctor at his medicaid provider rate or usual and customary charge until a medicaid provider rate is established for all services rendered. Under this method, the ~~The~~ area program shall bill all first and third party payors for all services rendered and retain all receipts.

(II) ~~(ii)~~ The medical doctor shall bill all first and third party payors for ~~the area program patient or his insurance carrier or medicare and medicaid fiscal intermediary for~~ all services ~~rendered and if the medical doctor is unable to collect from the patient or his insurance carrier or medicare and medicaid fiscal intermediary the~~ rendered. The medical doctor shall request reimbursement from the area program for any unreimbursed care, up to his medicaid provider rate.

(ii) ~~(B)~~ Full-time medical doctors employed by the area program may be eligible for payment from inpatient funds according to the area policy for reimbursement of physicians providing on-call, extended duty and emergency call-back services. The area policy shall be included in the "other pay" provisions submitted to the State Personnel Director. These provisions are in addition to the regular pay plan submitted and may be submitted separately.

(b) The area program is not required to make a cost settlement with the local inpatient provider ~~for fiscal year 1982-83 and subsequent fiscal years~~.

Statutory Authority G.S.122C-112; 122c-147; 122c-148.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services proposes to develop rules in accordance with 1995 Session Laws Chapter 249 on the following subjects related to Eligible Assaultive and Violent Children: (1) Determination of eligibility and ensuring provision of services for eligible and assaultive children pursuant to G.S. 122C-

112(a)(14); (2) Prior notice pursuant to G.S. 122C-196; and (3) Administrative review by Review Officer pursuant to G.S. 122C-199. The agency will subsequently publish in the Register the text of the rules it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Proposed Effective Date: *May 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 16, 1995 at the Willie M. Services, 3509 Haworth Drive, 3rd Floor Conference Room, Raleigh, NC 27609.*

Reason for Proposed Action: *To adopt rules in accordance with G.S. 122C-112(a)(14) as set forth in the 1995 Session Laws Chapter 249 for determining eligibility, ensuring the provision of services, and providing for contested case hearings for eligible assaultive and violent children.*

Comment Procedures: *Please submit written comments to Charlotte F. Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS), 325 N. Salisbury Street, Albemarle Bldg., Suite 558, Raleigh, NC 27603-5906, FAX 919-733-8259. You may present oral or written comments at the November 16, 1995 public hearing; however, time limits may be imposed by the Hearing Officer. The deadline for written comments is November 15, 1995.*

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Human Resources/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26K .0006; and adopt rules 10 NCAC 50D .0101 - .0103, .0201, .0301 - .0302, .0401 - .0402, .0501 - .0503.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 1:30 p.m. on December 1, 1995 at the NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Building, Room 132, Raleigh, NC.*

Reason for Proposed Action:
10 NCAC 26K .0006 *- This rule clarifies when a provider may bill a patient who is a recipient of Medicaid.*
10 NCAC 50D .0101 - .0103, .0201, .0301 - .0302, .0401 - .0402, .0501 - .0503 *- These rules are necessary to implement Medicaid estate recovery. OBRA 1993 mandated estate recovery and enabling state legislation to effect this mandate was needed. G.S. 108A-70.5 was passed in July 1994 and authorizes estate recovery.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted by December 1, 1995, to Portia Rochelle, APA Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing. A fiscal note statement is available upon written request from the same address.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26K - TITLE XIX APPEALS PROCEDURES

.0006 PROVIDER BILLING OF PATIENTS WHO ARE MEDICAID RECIPIENTS

~~(a) Except as provided for in Paragraph (d) of this Rule, providers shall not bill Medicaid recipients for any Medicaid covered services provided to recipients unless the provider has specifically informed the recipient and the recipient has specifically understood he will be charged for the services.~~

~~(b) A provider may not bill a Medicaid recipient for Medicaid services for which it receives no reimbursement from the state agency because the provider failed to follow program regulations.~~

~~(c) A provider who accepts a patient as a Medicaid patient agrees to accept Medicaid payment plus any authorized co-payment and third party payment as payment in full, except that a provider may not deny services to any Medicaid patient on account of the individual's inability to pay the co-pay amount.~~

~~(d) Providers may bill the recipient when they are 65 years of age or older and qualify for Medicare benefits, but fail to supply their Medicare number as proof of coverage.~~

(a) A provider may refuse to accept a patient as a Medicaid patient and bill the patient as a private pay patient only if the provider informs the patient that the provider will not bill Medicaid for any services but will charge the patient for all services provided.

(b) Acceptance of a patient as a Medicaid patient by a provider includes, but is not limited to, entering the patient's Medicaid number or card into any sort of patient record or general record-keeping system, obtaining other proof of Medicaid eligibility, or filing a Medicaid claim for services provided to a patient. A patient must request acceptance as a Medicaid patient by:

(1) presenting the patient's Medicaid card or presenting a Medicaid number either orally or in writing; or

(2) stating either orally or in writing that the patient has Medicaid coverage; or

(3) requesting acceptance of Medicaid upon approval of a pending application or a review of continuing eligibility.

(c) Providers may bill a patient accepted as a Medicaid patient only in the following situations:

(1) for allowable co-payments or deductibles as specified under 10 NCAC 26C .0003; or

(2) before the service is provided the provider has informed the patient that the patient may be billed for a service that is not one covered by Medicaid regardless of the type of provider or is beyond the limits on Medicaid services as specified under 10 NCAC 26B, 10 NCAC 26C, and 10 NCAC 26D; or

(3) the patient is 65 years of age or older and qualifies for Medicare benefits, but has failed to supply a Medicare number as proof of coverage; or

(4) the patient is no longer eligible for Medicaid as defined in 10 NCAC 50B.

(d) When a provider files a Medicaid claim for services provided to a Medicaid patient, the provider may not bill the Medicaid patient for Medicaid services for which it receives no reimbursement from Medicaid when:

(1) the provider failed to follow program regulations; or

(2) the agency denied the claim on the basis of a lack of medical necessity; or

(3) the provider is attempting to bill the Medicaid patient beyond the situations stated in Paragraph (c) of this Rule.

(e) A provider who accepts a patient as a Medicaid patient agrees to accept Medicaid payment plus any authorized co-payment and third party payment as payment in full for all covered services provided, except that a provider may not deny services to any Medicaid patient on account of the individual's inability to pay co-payments as specified under 10 NCAC 26C .0003.

(f) When a provider accepts a private patient, bills the private patient personally for Medicaid services covered under Medicaid for Medicaid recipients, and the patient is later found to be retroactively eligible for Medicaid, the provider must:

(1) continue to bill the patient as a private pay patient on the condition that the provider follows Paragraph (a) of this Rule; or

(2) accept the patient as a Medicaid patient, bill all Medicaid covered services provided the patient to Medicaid, and conform to the requirements in Paragraphs (a), (b), and (c) of this Rule; or

(3) if a patient has received and paid for services and is then made retroactively eligible for Medicaid, the provider may file for reimbursement with Medicaid. Upon receipt of Medicaid reimbursement the provider must refund to the patient all money paid by the patient for the services covered by Medicaid.

Authority G.S. 108A-25(b); 108A-54; 150B-11; 42 C.F.R. 447.15.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50D - ESTATE RECOVERY

SECTION .0100 - RECIPIENTS SUBJECT TO ESTATE RECOVERY

.0101 NOTICE OF ESTATE RECOVERY

(a) An individual who applies or reapplies on or after October 1, 1994 under Medicaid disabled or aged categories shall be given a written notice at the time of application that a claim may be filed against their estate, if one exists, to recover Medicaid payments made on his behalf.

(b) Notice shall be on a form prescribed by the Division of Medical Assistance and shall explain:

(1) The types of Medicaid payments subject to estate recovery; and

(2) That recovery will not be claimed if the individual is survived by a legal spouse, child(ren) under age 21 or blind or disabled child(ren) of any age who became blind or disabled before age 21 and still live on the property of the individual.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

.0102 PERMANENTLY INSTITUTIONALIZED

Recovery shall apply to the estates of individuals under age 55 who seek Medicaid coverage for costs of care in a medical institution and who cannot reasonably be expected to be discharged to return home.

(1) For purposes of estate recovery, medical institution means licensed nursing facilities, intermediate care for the mentally retarded facilities, nursing facility level of care in hospitals, inpatient care in a general or psychiatric hospital or mental institution.

(2) A determination that an individual cannot reasonably be expected to be discharged to return home is made when the individual seeks placement in or has been admitted to a medical institution using the following evidence:

(a) Admission forms for level of care, physician written statement of discharge plans, or plans of care which indicate care needs are permanent or of indefinite duration, or

(b) Individual continues to be a resident of a medical institution at the end of a temporary stay predicted by his physician at the time of admission to be no longer than six months in duration.

(3) Notice of the determination that the individual is residing in a medical institution on a permanent or indefinite basis shall be given to the individual, or to his parent/guardian/responsible person if the individual is incompetent, within three work days after the determination.

(4) The individual or his parent/guardian/responsible person may request a reconsideration review of the determination under Section .0200 of this

Subchapter.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

.0103 AGE 55 AND OVER

(a) Recovery shall apply to the estates of individuals who on or after reaching age 55 seek Medicaid coverage for care in a medical institution or under a home and community based alternative program for individuals who would otherwise qualify for care in a medical institution.

(b) Written notice that the state may file a claim against their estate to recover the payments made by the Medicaid Program on their behalf shall be given to individuals at the time of approval of eligibility for care in a medical institution or approval for home and community based alternatives services.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0200 - RECONSIDERATION REVIEW

.0201 RECONSIDERATION REVIEW

(a) The recipient or his parent/guardian/responsible person acting on behalf of the recipient may request reconsideration of the determination that the individual cannot reasonably be expected to be discharged to return home based on relevant evidence stated in Rule .0101 of this Subchapter.

(b) A reconsideration review shall be requested in writing to the Division of Medical Assistance estate recovery administrator within 30 calendar days of the determination and written notice provided by the county department of social services.

(c) Within 30 calendar days of a written request for reconsideration of the determination of permanent institutionalization, the estate recovery administrator shall establish a reconsideration date and conduct a review of:

(1) All evidence considered by the county department of social services in making a determination of permanent institutionalization, and

(2) Information provided in writing or by telephone conference with the recipient or an individual acting on behalf of the recipient.

(d) The review shall be conducted in the Division of Medical Assistance offices and may include a telephone conference with the recipient or an individual acting on behalf of the recipient if oral testimony is requested.

(e) A decision shall be made and provided in writing to the recipient or an individual acting on behalf of the recipient within 15 calendar days of the date of the reconsideration review.

(f) If the recipient disagrees with the decision of the reconsideration review, he may appeal to the Office of Administrative Hearings (OAH) within 30 calendar days of receipt of the reconsideration review decision. If no appeal to OAH is filed, the reconsideration review decision is final.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0300 - MEDICAID PAYMENTS SUBJECT TO RECOVERY

.0301 PERMANENTLY INSTITUTIONALIZED

(a) Recovery shall be claimed for all Medicaid payments, including cost sharing charges for Medicare services and Medicare premiums, made on behalf of individuals for the period of time the individual received care in a medical institution, whether or not such periods were consecutive. The amount of recovery is limited to the amount of Medicaid payments for services and benefits described herein.

(b) No recovery will be claimed for any period of time the recipient was discharged from a medical institution and lived in the community for a period of 30 or more consecutive days.

(c) No recovery will be claimed if the recipient is survived by one or more of the relatives listed in Section .0100 of this Subchapter.

(d) No recovery will be claimed if the Division of Medical Assistance determines under provisions of Section .0500 of this Subchapter that it is not cost effective or if recovery would create undue hardship to a survivor.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

.0302 AGE 55 and OVER

(a) Recovery shall be claimed for Medicaid payments for the following services and benefits:

(1) Nursing facility level of care;

(2) Home and community based alternatives services;

(3) Hospital inpatient and outpatient care received during approved care under either Subparagraph (1) or (2) of this Paragraph;

(4) Prescription drugs received during approved care under either Subparagraph (1) or (2) of this Paragraph; and

(5) Medicare premiums paid during the time of approved care under either Subparagraph (1) or (2) of this Paragraph.

(b) The amount of recovery is limited to the amount of Medicaid payments and benefits described in Paragraph (a)(1)-(5) of this Rule.

(c) No recovery will be claimed if the recipient is survived by one or more relatives listed in Section .0100 of this Subchapter.

(d) No recovery will be claimed if the Division of Medical Assistance determines under provisions of Section .0500 of this Subchapter that it is not cost effective or if recovery would create undue hardship to a survivor.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0400 - FILING AND COLLECTION OF CLAIMS AGAINST ESTATE

.0401 FILING CLAIM AGAINST ESTATE

(a) Within 60 days after the date of a recipient's death, the Division of Medical Assistance or its fiscal agent shall produce a claim document summarizing all Medicaid payments subject to recovery as stated in Rules .0301 and .0302 of this Subchapter.

(b) The claim shall be mailed to the county department of social services from which the individual received Medicaid.

(c) Following a determination that the recipient is not survived by any of the relatives listed in Section .0100 of this Subchapter, the county department of social services shall file the claim by certified mail with the individual who has been named to administer the estate and shall send a copy to the clerk of court for his records.

(d) If an administrator of the decedent's estate has not been appointed at the time the claim is received in the county, within 30 calendar days the county shall request the name of the administrator from the clerk of court and shall file the claim directly with the clerk of court if no appointment has been made.

(e) At any time that the county department of social services determines that the decedent does not have an estate, it shall notify the Division of Medical Assistance to cease recovery efforts.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

.0402 COLLECTION OF CLAIMS

(a) Estate for purposes of recovery of Medicaid payments is defined under G.S. 28A-15-1.

(b) Unless the Division of Medical Assistance waives or reduces its claim, recovery under rules in Section .0500 of this Subchapter, recovery shall be claimed in full for the amount of the Medicaid claim to the extent that assets in the estate are sufficient to meet the state's claim as a fifth class creditor.

(c) All recoveries for Medicaid claims shall be remitted to the Division of Medical Assistance by the administrator of the decedent's estate, any individual or entity designated by the clerk of court or by the clerk of court.

(d) Amounts recovered shall be shared by the federal, state and county governments in proportion to the financial share of program costs borne by each at the time recovery is received.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

SECTION .0500 - WAIVER OF RECOVERY

.0501 RECOVERY NOT COST EFFECTIVE

Recovery is deemed to not be cost effective and is waived when:

(1) The amount of Medicaid payments for services and benefits subject to recovery is less than three thousand dollars ($3,000.00), or

(2) The assets in the estate are below five thousand dollars ($5,000.00).

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

.0502 UNDUE HARDSHIP

(a) Recovery is waived if enforcement of the claim will cause undue or substantial hardship to the surviving heirs of the decedent.

(b) Undue or substantial hardship is deemed to exist when:

(1) Real or personal property included in the estate is the sole source of income for a survivor and the net income derived is below 75 percent of the federal poverty level for the dependents of the survivor(s) claiming hardship, or

(2) Recovery would result in forced sale of the residence of a survivor who lived in the residence for at least 12 months immediately prior to and on the date of the decedent's death and who would be unable to obtain an alternate residence because the net income available to the survivor and his spouse is below 75 percent of the federal poverty level and assets in which the survivor or his spouse have an interest are valued below twelve thousand dollars ($12,000.00).

(c) Undue hardship does not include loss of a pre-existing standard of living nor the establishment of a source of maintenance that did not exist prior to the decedent's death.

(d) A claim of undue hardship to a survivor shall be made in writing to the Division of Medical Assistance estate recovery administrator within 90 days after the Medicaid claim has been filed with the administrator or clerk of court. The claim of hardship must describe the financial circumstances of the heir and the basis for his dependence on assets in
the decedent's estate.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

.0503 DETERMINATION OF UNDUE HARDSHIP

(a) The estate recovery administrator shall evaluate each claim of hardship within 60 calendar days of the request to make a determination to waive recovery of the claim in part or in full. In making this determination, the administrator may request documentation to support the survivor's claim of hardship including prior year's income tax returns, bank statements, wage and earnings files, real and personal property records, utility records, tax records, medical bills, or other documents offered by the survivor to support his claim.

(b) If documentation necessary to evaluate the claim of hardship is not provided or the survivor requests additional time to obtain the documentation, the administrator may extend the review for an additional 30 days.

(c) The claim of hardship shall be denied if the necessary documentation is not provided within the time frames stated

in Paragraphs (a) and (b) of this Rule.

(d) The administrator shall notify in writing the survivor claiming hardship, the administrator and the clerk of court of his decision within 10 calendar days after completing the review of the request and documentation supporting the claim of hardship.

(e) If the survivor disagrees with the decision, he may appeal to the Office of Administrative Hearings (OAH) within 30 calendar days of receipt of the decision. If no appeal to OAH is filed, the decision is final.

Authority G.S. 108A-70.5; 42 U.S.C. 1396p.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt rule cited as 10 NCAC 39D .0304; amend rules cited as 10 NCAC 47B .0404 - .0405 and 10 NCAC 49B .0102.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 am on December 6, 1995 at Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.*

Reasons for Proposed Actions:

10 NCAC 39D .0304 *- The adoption of this rule will allow counties more flexibility in scheduling JOBS participants for Work Experience hours above the maximum hours defined in 45 CFR 250.63. This will help in meeting the requirements of the JOBS program which includes the requirement to meet the Standard and AFDC-UP Participation Rates. The Alternative Work Experience Program is expected to have a positive impact on the participation rates; this will facilitate the receipt of enhanced federal funds.*

10 NCAC 47B .0404 - .0405 *- During the 1994 Session of the General Assembly, Medicaid Coverage for Elderly, Blind, and Disabled was passed which mandates that North Carolina become a 1634 State for purposes of Medicaid coverage for the aged, blind, and disabled. This means that those persons who receive Supplemental Security Income (SSI) because they are aged, blind, or disabled will automatically be eligible for Medicaid. The State/County Social Assistance to Adults Program (SA) is defined as a State supplemental payment program because the program basically provides cash supplements to SSI recipients. By complying with all the federal rules governing SSI, SA recipients remain automatically entitled to Medicaid. SA reserve and income policies changed as a result of the legislation. Therefore, the rules are proposed for amendment to comply with the changes.*

10 NCAC 49B .0102 *- The Department of Health and Human Services allows states to choose to provide AFDC for 18 year old children who are reasonably expected to graduate from school by the time they are age 19. Prior to August 1, 1995, North Carolina chose this option and has provided AFDC for this group of children. During its 1995 Session, the General Assembly passed legislation to remove this option from North Carolina's AFDC Program. Therefore, this rule is proposed for amendment to remove the provision.*

Comment Procedures: *Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Sharnese Ransome, Special Assistant, North Carolina Division of Social Services, 325 N. Salisbury Street, Raleigh, NC 27603, 919-733-3055.*

Fiscal Note: *10 NCAC 39D .0304 affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. 10 NCAC 47B .0404 - .0405 and 10 NCAC 49B .0102 do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 39 - EMPLOYMENT PROGRAMS

SUBCHAPTER 39D - JOB OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM

SECTION .0300 - JOBS PROGRAM COMPONENTS AND ACTIVITIES

.0304 ALTERNATIVE WORK EXPERIENCE

(a) The Alternative Work Experience Program is unpaid job training with clearly defined duties performed at a well-supervised public or private non-profit agency or organization. The agency or organization must serve a useful public purpose. Participants will gain valuable work experience, job skills, attitudes, and habits which will increase their employability.

(b) All JOBS participants are eligible to participate in the program.

(c) JOBS participants shall participate in the Alternative Work Experience Program for up to 30 hours per week and shall have no limit on the number of months to participate.

(d) A wide variety of job training assignments shall be used ranging from professional occupations to general labor. 45 CFR 250.63(k) is hereby incorporated by reference including all subsequent amendments and editions. Copies of this Rule may be obtained by contacting the North Carolina Division of Social Services, Employment Programs Section, 325 North Salisbury Street, Raleigh, North Carolina, 27603, 919/733-2873.

Authority G.S. 143B-153; 42 U.S.C. 682(a)(2).

CHAPTER 47 - STATE/COUNTY SPECIAL ASSISTANCE

SUBCHAPTER 47B - ELIGIBILITY DETERMINATION

SECTION .0400 - ELIGIBILITY FACTORS

.0404 RESERVE

Eligibility Requirement.

(1) ~~To determine eligibility, the income maintenance caseworker shall count only resources that are currently available to the applicant or recipient. For applications, only those resources that are available during any month prior to disposition are counted to determine eligibility for those months. A resource shall be considered available not only when it is actually available but also when the applicant or recipient has a legal interest in a resource and can make it available.~~ Eligibility shall be determined using the reserve rules governing the federal Supplemental Security Income Program (SSI).

(2) Mental Incompetence.

(A) When a representative alleges that an applicant or recipient is mentally incompetent (and the allegation can be supported by a physician's statement) and does not have a legal representative appointed to act in his behalf, the resources held solely by the applicant or recipient or held jointly shall be excluded in determining countable reserve provided the following two conditions are met:

(i) the petition to have an applicant or recipient declared incompetent is filed with the court within 30 calendar days from the date the applicant's or recipient's representative is informed of the requirement; and

(ii) the petition to have a legal guardian appointed is filed with the court within 30 calendar days of the date the applicant's or recipient's representative is informed of the requirement.

(B) The county department of social services shall petition the court for incompetency and appointment of a guardian if:

(i) the applicant or recipient has no representative willing to act in his behalf or the representative or guardian refuses to take the required action. The county shall petition the court to have the applicant or recipient declared incompetent and to have a guardian appointed within 30 calendar days from the date it learns of the representative's refusal; or

(ii) the applicant's or recipient's representative fails to take the required action within 30 calendar days of the date he was informed of the requirement. The county shall within 15 calendar days from this date, petition the court to have the applicant or recipient declared incompetent and to have a legal guardian appointed.

If the county department of social services is required to act under Subparagraph (B)(i) or (ii), the resources held solely by the applicant or recipient or held jointly shall be excluded in determining countable reserve.

(C) When the court rules that the applicant or recipient is competent, his resources shall be counted beginning the first day of the month following the month he is declared competent.

(D) When the court declares the applicant or recipient incompetent and appoints a guardian, the guardian must take appropriate action to dispose of or make exempt the resource within 30 calendar days of his appointment. If he does not, the county department of social services shall determine if the guardian is acting appropriately under the terms of the guardianship.

(E) If the guardian takes the appropriate action to dispose of or make exempt the resource, the resource shall be excluded until the clerk of court confirms the action taken by the guardian. The resource, if otherwise includible, shall be counted in reserve beginning the first day of the month following the month the action is confirmed by the clerk of court.

~~(2) The maximum reserve allowance for a special assistance applicant/recipient shall be the same amount as the Medicaid Aid to the Aged, Blind, and Disabled medically needy coverage group. The couple amount shall apply regardless of whether each spouse qualifies for Special Assistance in his own right. If the reserve level exceeds the amount allowed for the number in the budget unit, the case is ineligible.~~

~~(b) Individuals Whose Reserve is Counted.~~

~~(1) Unless the spouse is in another assistance unit, his reserve shall be counted unless the couple is separated or divorced. If the spouse is in another assistance unit, only the applicant or recipient's share shall be counted.~~

~~(2) Jointly Owned Resources.~~

~~(A) If a budget unit member owns resources jointly with another public assistance recipient, his share shall be counted as an available resource. The resource shall be divided equally unless the owners have a signed agreement specifying division.~~

~~(B) If a budget unit member owns resources jointly with a non-assistance recipient, and he can dispose of the resource without the consent of the other owner, his share shall be counted as an available resource.~~

~~(C) If a budget unit member owns resources jointly with a non-assistance recipient, and he cannot dispose of the resource without the consent of the other owner it shall be determined whether~~

the non-assistance recipient consents to the disposal of the resource.

(i) If he consents, the budget unit member's share of the resource shall be counted.

(ii) If he refuses, the budget unit member's share shall not be counted.

(c) Group I - reserve items counted:

(1) cash on hand;

(2) the current balance of savings accounts;

(3) that portion of a checking account other than the monthly income deposited to meet the family's needs;

(4) cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars ($1,500);

(5) equity (tax value less encumbrances) in non-essential motor vehicles;

(6) equity (tax value less encumbrances) in excess of one thousand dollars ($1,000) in an essential motor vehicle. The vehicle must be needed by a family member to:

(A) obtain medical treatment,

(B) obtain or retain employment,

(C) transport handicapped family members as needed, or

(D) go shopping;

(7) stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;

(8) promissory notes, if salable;

(9) revocable trust funds (revocable means the budget unit member has access to the trust);

(10) net proceeds from a business, including a farm, which has been discontinued; and

(11) equity (tax value less encumbrances) in real property not used as a home or producing an income.

(d) Group I - reserve items excluded:

(1) personal effects and household goods;

(2) personal property including but not limited to:

(A) a mobile home used as a homesite;

(B) a motorized mobile home;

(C) boats and trailers;

(D) campers; and

(E) farm or business equipment;

(3) equity (tax value less encumbrances) of one thousand dollars ($1,000) or less in an essential motor vehicle;

(4) income producing property; Only that portion of the property which is used to produce an income shall be excluded; The property shall continue to be excluded when it produces no income because of factors beyond the recipient's control;

(5) term life insurance;

(6) burial insurance and pre paid burial contracts;

(7) the cash value of life insurance policies when the total face value of all policies that accrue cash value does not exceed one thousand five hundred dollars ($1,500);

(8) relocation assistance payments received under Title XX of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(9) that portion of the monthly income deposited in a checking account to meet the family's needs;

(10) real property used as a home when the recipient's personal belongings remain in the home and he continues to state his intent to return or his dependents live in the home; Limited to a house plus contiguous property with tax value of twelve thousand dollars ($12,000) or less;

(11) life estate or remainder interests;

(12) heir property; Heir property is a descendant's undivided interest in real property owned in common with other descendants; and

(13) value of burial plots.

(e) Group II - reserve items counted:

(1) cash on hand;

(2) the current balance of savings accounts;

(3) that portion of a checking account other than the monthly income deposited to meet the family's needs;

(4) cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars ($1,500);

(5) tax value of non-essential personal property limited to:

(A) tax value in excess of one thousand two hundred dollars ($1,200) in all motor vehicles except for Paragraph (f) of this Rule;

(B) a mobile home not used as a homesite;

(C) boats, boat trailers, and boat motors;

(D) campers;

(E) farm or business equipment which is not used to produce an income; and

(F) motorized mobile homes;

(6) tax value of income producing personal property when equity is in excess of six thousand dollars ($6,000);

(7) tax value of income producing personal property which does not yield a net annual income of at least six percent of the property's equity;

(8) tax value of income producing real property not used as a home when the equity is in excess of six thousand dollars ($6,000);

(9) tax value of income producing real property not used as a home which does not yield a net annual income of at least six percent of the property's equity;

(10) tax value of real property not used as a home [limited to house and contiguous land with tax value of twelve thousand dollars ($12,000) or

less];
(11) stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
(12) promissory notes, if salable;
(13) revocable trust funds (revocable means the budget unit member has access to the trust);
(14) value of pre-paid revocable burial contracts;
(15) net proceeds from a business, including a farm, which has been discontinued;
(16) life estate interest, if salable;
(17) remainder interest, if salable; and
(18) amount of reverse mortgage remaining in the month following the month of receipt.

(f) Group II - reserve items excluded:
(1) personal effects and household goods;
(2) mobile home used as a homesite;
(3) one essential motor vehicle of any value which is:
(A) specially equipped for use by a handicapped individual; or
(B) used to obtain medical treatment; or
(C) used to obtain or retain employment;
(4) tax value of one thousand two hundred dollars ($1,200) or less from the value of other motor vehicles;
(5) income producing personal property when the equity does not exceed six thousand dollars ($6,000);
(6) income producing property when the annual yield is at least six percent of the equity;
(7) real property used as a home [limited to a house and contiguous land with tax value of twelve thousand dollars ($12,000) or less]. The applicant or recipient must have a written statement from a physician indicating that he is to return home within six months from the date of entry into the facility or his spouse and/or dependent children remain in the home;
(8) term life insurance;
(9) burial insurance;
(10) the cash value of life insurance policies when the total face value of all policies that accrue cash value does not exceed one thousand five hundred dollars ($1,500);
(11) relocation assistance payments received under Title XX of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
(12) that portion of the monthly income that is deposited in a checking account to meet the family's needs;
(13) non salable life estate;
(14) non salable remainder interest;
(15) heir property (heir property is a descendant's undivided interest in real property owned in common with other descendants);
(16) value of burial plots;
(17) irrevocable burial contract; and
(18) reverse mortgages in the month of receipt.

(g) Verification. Reserve items must be verified and documented in the applicant or recipient's case record.

Statutory Authority G.S. 108A-41; 108A-46; 143B-153.

.0405 INCOME

(a) Eligibility Requirement. To determine eligibility or amount of payment income shall be counted which is actually available to the applicant or recipient and that which the client can legally make available for his support and maintenance. Eligibility shall be determined using the income rules governing the federal Supplemental Security Income Program (SSI).

(b) Consideration of Available Income.
(1) Financial Responsibility of a Spouse. There is spouse for spouse financial responsibility in the Special Assistance program. Therefore, income that is available to one spouse is available to the other unless they are separated or divorced. Only the contributions from a spouse or ex-spouse are counted if:
(A) the couple is divorced;
(B) the couple separated prior to one or both entering a domiciliary care facility; or
(C) after entrance of one or both to a domiciliary care facility the couple state that they do not plan to maintain a home together if and when there is a return to private living arrangements.
(2) Budget Unit Membership. The budget unit includes persons whose needs and income are counted in computing the Special Assistance payment. The unit may be:
(A) individual with no spouse (only the countable income of the applicant or recipient shall be included);
(B) couple (the countable income of the applicant or recipient and the spouse shall be included unless the spouse receives assistance in his own right. In that case, the spouse's income shall be applied to his own needs or prorated if that is more advantageous.)
(C) Certain Disabled (CD) individual with essential person (The countable income of the applicant or recipient and the essential person shall be considered).
(3) Base Periods.
(A) Continuing Income. Unless the applicant's or recipient's income has changed, the base period for computing income (except for farm income and income from self employment) is the second month prior to the payment month. Income received in the income month shall be added and divided by the number of dates paid. Income shall be converted to a gross

monthly amount.

(B) Changing Income.

(i) Definition. Change is defined as an acquired source of income, a continuing increase or decrease in amount of income, or termination of income.

(ii) Treatment (see Paragraph (C) of this Rule for farm income and income from self employment):

(I) Full prior months. If income changes during the base period, the income received in each month shall be counted to determine eligibility and payment for those months. Monthly income shall be added, divided by the number of dates paid, and converted to a monthly amount.

(II) Disposition month. If income changes during the month of disposition, the amount for the portion of the month the applicant or recipient has received income shall be added and converted to a monthly amount. Income shall be recomputed when the applicant or recipient has received the new monthly amount.

(III) Terminated income. Terminated income shall not be counted in a month after it has stopped. For applications only that income received shall be counted if income terminates prior to the time of disposition. For on-going cases, if income terminates prior to the time of disposition, a supplemental check shall be requested. Income shall be counted in the following month.

(C) Farm Income and Income From Self Employment.

(i) Income to be discontinued (all cases). If the farm operation or business is being discontinued, the remaining portion of the current year's total net income shall be counted as reserve.

(ii) Continuing income for applications.

(I) Farm income. If the farm operation is to continue, the period for computing income is from the Special Assistance payment effective date until the next crop settlement. The cash remaining shall be divided by the number of months in the period.

(II) Income from self employment. If the business is to continue, monthly income shall be calculated on the basis of income received in the 12 calendar months prior to the payment month or the period in which the business has been in operation.

(iii) Continuing income for on-going cases. The base period for recipients is the 12 calendar months prior to the review month. If the recipient had income less than 12 calendar months, income for the number of calendar months received shall be counted.

(4) Determination of Countable Income.

(A) all countable earned income shall be added together;

(B) all countable unearned income shall be added together;

(C) countable earned income shall be added to countable unearned income.

(c) Unearned Income Counted:

(1) social security benefits (RSDI);

(2) SSI benefits;

(3) veterans benefits (VA);

(4) railroad retirement benefits;

(5) unemployment insurance (UI);

(6) Trade Readjustment benefits;

(7) private disability or unemployment benefits;

(8) Workman's Compensation;

(9) pensions;

(10) contributions;

(11) dividends from stocks, bonds, other investments, and income from trust funds;

(12) Brown Lung benefits;

(13) Black Lung benefits;

(14) Housing and Urban Development (HUD) Section 8 payments paid directly to the applicant or recipient; and

(15) income from the spouse of a domiciliary care recipient above the SSI individual benefit or above her reasonable needs.

(d) Unearned Income not Counted:

(1) relocation payments;

(2) the current SSI individual benefit level or reasonable needs of the spouse when she provides convincing evidence that they exceed the SSI benefit level;

(3) food given to the household;

(4) the value of the coupon allotment received under the Food Stamp Program;

(5) the value of the U.S. Department of Agriculture donated foods (surplus commodities);

(6) benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

(7) special one-time payments such as energy or weatherization assistance;

(8) payments made under the Alaska Native Claims Settlement Act, Public Law 92-203;

(9) payments to certain Indian tribes as permitted by Public Law 94-114;

(10) shelter, utilities, or household furnishings made

available to an applicant or recipient at no cost;

(11) food and clothing contributions made available to an applicant or recipient at no cost;

(12) that portion of educational loans, grants, or scholarships including a payment under the Veterans Educational Assistance Program (G.I. Bill), actually used for tuition, room, board, books, fees, equipment, special clothing needs, required school insurance and child care services necessary for school attendance;

(13) loans, grants, or scholarships to undergraduates from any program administered by the U.S. Department of Education;

(14) assistance from other agencies and organizations (this includes financial assistance and in-kind goods or services received from a governmental, civic or charitable organization as long as such aid is for rehabilitation purposes, special training or educational opportunities and provided no duplication exists);

(15) incentive payments made to an applicant or recipient participating in a vocational rehabilitation program as long as a training plan is in effect;

(16) weekly incentive allowance plus any reimbursement for transportation or child care costs made to trainees under the Comprehensive Employment and Training Act of 1977 (CETA);

(17) housing improvements grants to low income families approved by the North Carolina Commission of Indian Affairs or any funds distributed per capita to or held in trust for members of any Indian tribe under P.L. 92-254, P.L. 93-134, or P.L. 94-540;

(18) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(19) Title XX funds received to pay for services rendered by another individual or agency;

(20) disaster assistance;

(21) HUD Section 8 payments when paid to the provider or jointly to the applicant or recipient and provider;

(22) any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(23) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;

(24) reverse mortgages.

(e) Earned Income Counted:

(1) wages from employment, tips, seasonal employment, babysitting, domestic employment, wages from Adult Developmental Activity Program (ADAP) and from sheltered workshops where employment continues after completion of a training program, CETA On-the-Job Training (OJT), CETA Work Experience, CETA Basic Training Allowances which when added to unemployment benefits equal minimum wages for a 40-hour week, Young Adult Conservation Corps under CETA (YACC), and payments made directly to a renal dialysis patient's assistant who is a recipient;

(2) income from roomers and boarders;

(3) farm income;

(4) income from self employment;

(5) income from rental property; and

(6) supplemental payments in excess of state maximum rates for AFDC-FC and State Foster Home funds paid by the county to recipients who serve as foster parents.

(f) Earned Income not Counted:

(1) unpredictable income;

(2) income from supportive services or reimbursement of out-of-pocket expenses to volunteers serving as foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE), and any other programs under Titles I, II and III of Public Law 93-113;

(3) AFDC-FC and State Foster Home payments equal to or below the state maximum rates to recipients who serve as foster parents;

(4) income from the Adult Developmental Activities Program (ADAP) when there is a written training plan in effect; and

(5) incentive payments from the Department of Vocational Rehabilitation (VR) when there is a written training plan in effect.

(g) Verification. Income items must be verified and documented in the applicant's or recipient's case record.

(h) Computation of net earned income for an applicant or recipient of Special Assistance (includes spouse or essential person who receives or will receive CD but does not apply to a spouse of a domiciliary care recipient):

(1) the first sixty five dollars ($65.00) shall be disregarded;

(2) impairment related work expenses for such items as equipment, prostheses, and medical devices and work related expenses for uniforms, tools, materials or unusual transportation costs shall be subtracted; and

(3) then one half of the remainder shall be disregarded.

Statutory Authority G.S. 108A-26; 108A-41; 143B-153.

CHAPTER 49 - AFDC

SUBCHAPTER 49B - ELIGIBILITY DETERMINATION

SECTION .0100 - COVERAGE

.0102 OPTIONAL

~~(a) Child age 18. Assistance shall be provided to an otherwise eligible child who is age 18 and not yet 19 and is a full-time student reasonably expected to graduate from a program of secondary school (or the equivalent level of vocational or technical training) before reaching age 19.~~

~~(b)~~ Essential Adult. Assistance may be provided to an adult who is essential to the well-being of a member of the AFDC budget unit as described in 45 CFR 233.20(a)(2)(vii) ~~and this provision is hereby adopted by reference under G.S. 150B-14(c).~~ which is hereby incorporated by reference including all subsequent amendments and editions. Copies of this regulation may be obtained from the North Carolina Division of Social Services, 325 N. Salisbury St., Raleigh, North Carolina 27603, telephone number (919) 733-3055, at a cost of five cents ($.05) per copy.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.10.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 4 .0120 - .0124, .0421 - .0422, .0429 - .0430.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 28, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action:
11 NCAC 4 .0120 - .0124 - To make technical corrections.
11 NCAC 4 .0421 - .0422, .0429 - .0430 - Make clarifying changes and remove ambiguous language.

Comment Procedures: *Written comments and questions should be directed to Tony Higgins, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-4935. Oral presentations may be made at the public hearing.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 4 - CONSUMER SERVICES DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0120 POLICY OR SERVICE FEES

An agent, broker, or limited representative who deals directly with consumers and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he complies with the following:

(1) A sign that informs consumers in large bold print that a policy or service fee of [amount] will be charged, shall be displayed in a prominent place so as to be seen and read from any part of the office lobby.

(2) The consumer's consent in writing is obtained ~~with the date and amount shown~~ on a separate form each time a policy or service fee is charged. The form shall be entitled, "Policy or Service Fee Consent" and shall include the date and amount of each fee charged.

(3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium.

Statutory Authority G.S. 58-2-40; 58-2-195; 58-33-85(b).

.0121 PREMIUM PAYMENT RECEIPTS

All ~~Premium~~ premium payment receipts and copies ~~other than those issued directly by an insurer,~~ shall be dated and contain the printed or stamped name and address of the agency or agent, broker, or limited representative, and the name of the insurer. Receipts shall be signed by the person accepting the payment.

Statutory Authority G.S. 58-2-40; 58-2-185; 58-2-195.

.0122 POWER-OF-ATTORNEY

Except for authorizations given in accordance with G.S. 58-45-35(a) or G.S. 58-46-15, no insurer, agent, broker, or limited representative shall solicit or assume a power-of-attorney from a consumer that authorizes the agent, broker, or limited representative to sign insurance-related forms.

Statutory Authority G.S. 58-2-40; 58-2-195.

.0123 USE OF SPECIFIC COMPANY NAME IN RESPONSES

When an insurer makes a written response to an inquiry or complaint made by a consumer or the Department, the insurer shall identify on its response its mailing address, ~~address and~~ official corporate name and NAIC company code, or its mailing address, ~~address and~~ specific corporate ~~name~~ name, and NAIC company code if the insurer is part of a group of companies.

Statutory Authority G.S. 58-2-40; 58-2-190; 58-3-50; 58-63-95.

.0124 INSURANCE COMPANY CONTACT PERSONS

Every insurer shall provide the Department's Consumer Services Division with the name, title, address, and telephone number, including a toll-free number, of a designated

person to whom any person may send a complaint or inquiry. Every insurer shall also provide the Division with the company president's name, address, and telephone number for the Division's use. Forms will be provided by the Division, which shall be completed and returned to the Division by every insurer. Every insurer shall ~~complete~~ complete, have signed by the company president, and file with the Division a new form within 15 business days after any change in the information on the form.

Statutory Authority G.S. 58-2-40; 58-2-190; 58-63-65.

SECTION .0400 - PROPERTY AND LIABILITY

.0421 HANDLING OF LOSS AND CLAIM PAYMENTS

The commissioner shall consider as prima facie violative of G.S. 58-3-100 and 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

(1) Loss and claim payments shall be mailed or otherwise delivered within 10 business days after the claim is settled.

(2) Unless the insured consents, no insurer shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.

(3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.

(4) If a release or full payment of claim is executed by a claimant, involving a repair to a motor vehicle, it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle, which damages were directly caused by the accident and which damages could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair shall be considered promptly asserted.

(5) If a release or full payment of claim is executed by a third party claimant, involving a repair to a motor vehicle, it shall not bar the right of the third party claimant to promptly assert a claim for diminished value, which diminished value was directly caused by the accident and which diminished value could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value shall be considered promptly asserted.

~~(6) Except in total loss situations, the insurer shall be liable to the vehicle owner and others as their legal interest may require, for the full cost of repairs less policy deductibles, depreciation/betterment and pre-loss damage or conditions on the vehicle. In total loss situations, to the extent of the insurer's payment, the insurer shall protect any lienholder's interest, as recorded with the Division of Motor Vehicles, by placing the lienholder's name on the settlement check or draft as co-payee.~~

Statutory Authority G.S. 58-2-40; 58-3-100; 58-63-15.

.0422 CANCELLATION OF INSURANCE

The Commissioner shall consider an unfair trade practice the cancellation by an insurer of any personal lines insurance policy for which the premium has been paid because there is another policy in force for which the premium has not been paid. ~~In the case of an open account the agent, broker or producer who has extended credit may request cancellation of policies because of nonpayment of premium. However, payments from the insured shall be applied to proper policies, when distinguishable, and only those policies for which the premium has not been paid may be cancelled for nonpayment of premium.~~

Statutory Authority G.S. 58-2-40; 58-63-40.

.0429 COMMINGLING

The accounting records maintained by agents, brokers, and limited representatives shall be separate and apart from any other business records and demonstrate at all times that collected funds due to insurers and return premiums due to policyholders are available at all times.

Statutory Authority G.S. 58-2-40; 58-2-195.

.0430 PROOF OF MAILING; AUTOMOBILE INSURANCE

As used in G.S. ~~20-310(f),~~ 58-36-85, ~~"certificate of mailing"~~ "proof of mailing" means a certificate issued by and bearing the date stamp of the United States Postal Service.

Statutory Authority G.S. 58-2-40; 58-36-85.

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***Notice** is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to repeal rules cited as 11 NCAC 9 .0101 - .0104, .0201 - .0203.*

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 28, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action: *Rules no longer necessary.*

Comment Procedures: *Written comments and questions should be directed to Billy Creel, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-7434. Oral presentations may be made at the public hearing.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 9 - INVESTIGATIONS DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

~~(a) "Investigations division" or "the division" shall mean the investigations division of the North Carolina Department of Insurance.~~

~~(b) All other terms shall be as defined in the General Statutes of North Carolina.~~

Statutory Authority G.S. 58-9; 58-9.2.

.0102 PURPOSE OF DIVISION

~~The investigations division of the North Carolina Department of Insurance conducts investigations for the department under the direction of the Commissioner of Insurance. This division is responsible for investigations to enable the commissioner to enforce the insurance laws of the State of North Carolina. The division receives requests from insurance companies, police departments and other law enforcement agencies, the United States Postal Service and the Insurance Crime Prevention Institute for the investigation of fraudulent insurance claims occurring throughout the state.~~

~~The investigations division also investigates complaints filed with the Department of Insurance against agents, adjusters and brokers.~~

~~Each investigator is a sworn law enforcement officer.~~

Statutory Authority G.S. 58-9.2; 58-18.

.0103 DEPUTY COMMISSIONER

~~There shall be a Deputy Commissioner of the North Carolina Department of Insurance in charge of the investigations division whose duties shall include, but are not limited to the supervision of all activities relating to achieving the purpose of the division as stated in 11 NCAC 9 .0102.~~

Statutory Authority G.S. 58-7.3.

.0104 DIVISION PERSONNEL

~~Division personnel shall include an assistant chief investigator, investigators, secretaries, clerks, and such other personnel as may be necessary for the proper execution of the responsibilities of the division.~~

Statutory Authority G.S. 58-9; 58-9.2.

SECTION .0200 - INVESTIGATIONS

.0201 INVESTIGATION OF CRIMES: AUTHORITY TO ARREST

~~This division has authority to conduct examinations and investigations on behalf of the Commissioner of Insurance and when, in the opinion of the commissioner or the investigator or both, there is sufficient evidence to charge any person or persons with a criminal violation of the insurance laws, the commissioner or investigator may arrest with warrant or cause such person or persons to be arrested.~~

Statutory Authority G.S. 58-9.2.

.0202 INVESTIGATION OF CRIMES: PROCEDURES

~~(a) Types of Investigations. Types of investigations include, but are not limited to:~~

~~(1) investigation into allegations of fraudulent activities which may involve fraudulent claims ranging from a few dollars to many thousands of dollars; and~~

~~(2) investigation into allegations pertaining to embezzlement by agents, brokers or other persons.~~

~~(b) General Procedures. Investigations into alleged criminal violations require the obtaining of files from, among others, insurance companies and agents. The investigator is required to have a working knowledge of, among other things, accounting systems and general business practices of the insurance industry.~~

~~The investigator cooperates with local, state and federal law enforcement agencies, and is available to testify in all administrative and criminal proceedings.~~

~~(c) Crimes Defined in Other Than Insurance Laws. In many instances, crimes which are the subject of investigation by this division are not defined in Chapter 58 of the North Carolina General Statutes and the investigator must make reference to the criminal laws as set forth in Chapter 14 of the General Statutes as the same relate to the investigation. In addition, decisions of federal and state courts may be used during the course of an investigation.~~

Statutory Authority G.S. 58-9.2; 58-18.

.0203 NON-CRIMINAL INVESTIGATIONS

~~The investigations division conducts, among others, investigations at the discretion of the Commissioner of Insurance, either on his own motion or upon complaint being filed by a citizen of this state, into alleged violations of provisions of the insurance laws, which said alleged violation may not rise to the dignity of a criminal offense. Such investigations may include, but are not limited to, examination under oath of executive officers or agents of insurance companies as may be deemed necessary. Findings from such investigations are reported to the commissioner.~~

~~The division also conducts investigations at the request of the commissioner or his designated representative which may include, but not be limited to, the procurement of information to enable the commissioner to enforce the insurance laws in instances when the department is unable, or it would be improper to secure information by usual methods, such as by telephone or correspondence.~~

Statutory Authority G.S. 58-9; 58-18.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 10 .0105, .1102, .1603; repeal rule cited as 11 NCAC 10 .1103; adopt rules cited as 11 NCAC 10 .0605, .1110 - .1111.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 28, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action:
11 NCAC 10 .0105 *- Reduces paperwork.*
11 NCAC 10 .1102 *- Necessary to comply with statute changes.*
11 NCAC 10 .1103 *- Rewritten in a new rule.*
11 NCAC 10 .0605, .1110 *- Necessary to comply with changes made in the statutes during the last session of the General Assembly.*
11 NCAC 10 .1111 *- Necessary to comply with statute changes made during last session of the General Assembly.*
11 NCAC 10 .1603 *- Technical and procedural changes.*

Comment Procedures: *Written comments and questions should be directed to Charles Swindell, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3368. Oral presentations may be made at the public hearing.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0105 MANUSCRIPT OR INDIVIDUAL RISK FILINGS

(a) Within 60 days after the inception date of a manuscript or individual risk policy, the insurer must submit to the Department of Insurance, Property and Casualty Division:

(1) A full and complete copy of the policy. Any form or endorsement not previously filed with the Department and approved for use must be specifically identified.

(2) A statement describing how the rates were calculated.

(3) A certification that the rates are not excessive, inadequate, nor unfairly discriminatory.

(4) A statement explaining why a manuscript or individual risk filing was needed.

(5) The appropriate filing fee.

(b) The Commissioner may require such other information as he deems to be necessary for a review of filings made under this Rule.

(c) All filings made under this Rule must be refiled whenever a change occurs in or to the policy or upon the renewal date of the policy, whichever occurs first. Continuous policies are not permitted.

(d) A copy of the approved filing shall be retained by the filer in accordance with 11 NCAC 19 .0002 through 11 NCAC 19 .0005.

Statutory Authority G.S. 58-2-40; 58-6-5; 58-41-50; 58-43-5.

SECTION .0600 - CONSENT TO RATE

.0605 CONSENT TO RATE AUTO LIABILITY COVERAGE

When consent to rate procedures are used to provide motor vehicle liability coverage limits under G.S. 58-36-30(b), the application to effect consent to rate shall also show the higher liability limits required by the excess liability insurer.

Statutory Authority G.S. 58-2-40(1); 58-36-30(b).

SECTION .1100 - RATE FILINGS

.1102 APPLICABILITY

The followings Subparagraphs indicate which Rules of this Section apply to a particular filing. Note that all rate filings must be submitted separately and under independent cover from form filings.

(1) Rule ~~.1103~~ .1111 applies to all workers' compensation insurance rate filings made by the North Carolina Rate Bureau.

(2) Rule .1104 applies to all nonfleet private passenger automobile insurance rate filings made by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility.

(3) Rule .1105 applies to all rate filings made by the North Carolina Rate Bureau other than those involving workers' compensation insurance or nonfleet private passenger automobile insurance.

(4) Rule .1106 applies to all filings for deviations from the rates of the North Carolina Rate Bureau.

(5) Rule .1107 applies to all rate filings (including those filings derived from filings of licensed rating

organizations), other than those involving:

(a) Lines of insurance under the jurisdiction of the North Carolina Rate Bureau.

(b) Nonfleet private passenger automobile insurance rates for the North Carolina Reinsurance Facility.

(6) Rule .1108 applies to all rate filings described in Subparagraph (5) of this Rule that meet either or both of the following criteria:

(a) A filing for a coverage that involves an increase in one year greater than ten percent or a decrease greater than 20 percent.

(b) A filing for a coverage by a company whose market share is greater than ten percent.

(7) In Subparagraph (6) coverage shall mean one of the following:

(a) Accountants' professional liability;
(b) Architects' and engineers' professional liability;
(c) Child care liability (other than such coverage sold incidental to another coverage, e.g., in homeowners' or commercial multiperil policies);
(d) Dentists' professional liability;
(e) Directors', officers', and trustees' liability;
(f) Errors and omissions liability;
(g) Hospital premises liability;
(h) Hospital professional liability;
(i) Lawyers' professional liability;
(j) Liquor law liability;
(k) Municipal liability;
(l) Nurses' professional liability;
(m) Owners', landlords', and tenants' liability;
(n) Physicians' and surgeons' professional liability;
(o) Police professional liability;
(p) Pollution and environmental impairment liability;
(q) Products and completed operations liability;
(r) Public official liability;
(s) Public school liability;
(t) Recreational liability;
(u) Other health care specialities' professional liability;
(v) If not one of Subparagraphs (6)(a) through (6)(u) of this Rule, one of the lines listed on Page 14 of the Annual Statement.

(8) Rule .1109 applies to all licensed rating organizations participating in a filing made by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility.

(9) Rate filings are not required for the following lines of insurance:

(a) Aviation physical damage;
(b) Mortgage guaranty;
(c) Ocean marine.

(10) Rate filings are not required for the following types of policies:

(a) Those written pursuant to the Surplus Lines Act;
(b) Those written under the Fair Access to Insurance Requirements (FAIR) Plan that include coverages other than crime insurance;
(c) Those written by the North Carolina Insurance Underwriting Association (the Beach Plan) that include coverages other than windstorm and hail only or crime insurance;
(d) Those written in North Carolina covering multistate insureds except in respect to coverages applicable to North Carolina locations;
(e) Those written by a town or county farmers' mutual fire insurance association restricting its operations to not more than six adjacent counties in this State;
(f) Those that contain assessment provisions and that are written by domestic insurance companies, associations, orders, or fraternal benefit societies that are not reciprocals.

(11) All inland marine manual rates and rating plans must be filed.

(a) This Subparagraph applies to the manual rates and rating plans of both companies and rating organizations.

(b) Rates and rating plans that are not contained in or derived from a manual need not be filed.

(12) Rate filings are required for all rates whether advisory, suggested, or manual, except for those lines, policies, and rates specifically excluded in Subparagraphs (9), (10), and (11) of this Rule.

(a) Rates applicable to only one particular risk must be filed.

(b) Rates may be filed either as manual rates or as ranges of rates from which the rates for individual insureds are determined.

(c) Rates based on loss cost filings must be filed in accordance with all the requirements of Rules .1107 and .1108 including the one that requires a comparison of current and proposed rates.

(13) Rules .1107 and .1108 also apply to loss cost filings. In cases where a rating organization files prospective loss costs, the same requirements as for rate filings apply, with the exception of those dealing with expense and profit provisions.

(14) The rates contained in all filings approved prior to January 1, 1990, other than those made by the North Carolina Rate Bureau or the North Carolina Reinsurance Facility, shall have an expiration date of January 1, 1992. Such rates may, subject to the Department's approval, be automatically renewed by a letter to the Department, specifying the Department's file number and the original approval date. Thereafter, they remain in effect until superseded, withdrawn, or modified by a subsequent filing.

(15) Loss costs, rates, or multipliers for workers' compensation and employers' liability that are based upon prospective loss costs filings of the North Carolina Rate Bureau shall be submitted in accordance with Rule .1110 of this Section.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-36-30; 58-36-100; 58-40-30; 58-40-40; 58-41-50; 58-45-35; 58-46-15.

.1103 WORKERS' COMPENSATION

~~The information required by N.C.G.S. 58-36-15(h) shall be presented as follows:~~

~~Note: If data required by this Rule are not currently being collected or reported, or are not currently readily available to insurers, insurers shall commence prospectively collecting or reporting such data beginning January 1, 1992. If certain data are not regularly collected through the statistical plan, a special call for such data to companies whose aggregate workers' compensation written premium is at least three fourths of the North Carolina premium may be substituted. Thereafter, such required data that have accrued shall be included in each filing until enough data are available to fully satisfy this Rule. If in addition to the full years of data specified in this Rule, more recent data of less than a full year are available, such data shall also be provided. If updates to the information specified in this Rule become available before the close of evidence relating to the filing, they shall also be provided.~~

~~(1) North Carolina earned premiums at the actual and current rate level; losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period, including the loss ratio anticipated at the time the rates were promulgated for the experience period:~~

~~(a) Include premium, loss, and loss adjustment expense data from all companies writing North Carolina workers' compensation insurance. In addition, if exposures are used in the calculation of premiums at present rates, provide all available exposure data from these companies. If the experience of any company that writes more than one percent of the North Carolina workers' compensation written premium has been excluded from any rate level, trend, loss development, or investment income calculations, identify the company and its market share and provide an explanation for its exclusion. Also estimate the aggregate market share of other companies whose experience is excluded from such calculations.~~

~~(b) Include expense data from all companies writing North Carolina workers' compensation insurance. If the experience of any of the 50 largest (based on written premium) countrywide writers of workers' compensation insurance is excluded from any expense level calculation, identify the company and its market share and provide an explanation for its exclusion. Also estimate the aggregate market share of other companies whose experience is excluded from such calculations.~~

~~(c) If any identifiable group of policies is excluded from the calculation of classification differentials, describe those policies, indicate their market share, and provide an explanation for their exclusion.~~

~~(d) Clearly describe all adjustments to premiums, losses, loss adjustment expenses, expenses, and exposures included in the filing. Show the unadjusted amounts to which adjustments were made, identify the specific adjustments, provide details on the derivation and application of the adjustment factors, and describe all intermediate calculations. Where identical adjustments are applied to a set of similar data, an example of one of these adjustments is sufficient.~~

~~(e) Include actual earned premiums and calculate earned premiums at present rates. Also indicate how such calculations were produced, supply supporting documentation for a sample of such calculations, and justify any aggregate factors used.~~

~~(f) Estimate the amount of premium collected from expense constants. Provide this premium in dollars, as a percentage of the standard earned premium, and as a percentage of net earned premium. If the percentage of premium collected in this manner is expected to change, estimate the extent of the change and provide the details of this calculation.~~

~~(g) Estimate the amount of additional premium collected because of the minimum premium rule. Provide this premium in dollars, as a percentage of standard earned premium, and as a percentage of net earned premium. If the percentage of premium collected in this manner is expected to change, estimate the extent of the change and provide the details of this calculation.~~

~~(h) Provide the latest available written and earned premiums and market shares for the ten largest writers of North Carolina workers' compensation insurance.~~

~~(i) Provide composite loss and premium information from each of the latest two Annual Statements for which aggregate data are available for the 50 largest writers of North Carolina workers' compensation insurance, including the following:~~

~~(i) Underwriting and Investment Exhibit, Part 2, Line 16;~~

~~(ii) Underwriting and Investment Exhibit, Part 3, Line 16;~~

~~(iii) North Carolina Page 14, Line 16.~~

~~(j) Provide to the extent possible the following information on companies deviating from the workers' compensation rates of the North Carolina Rate Bureau for each of the latest five available calendar years:~~

~~(i) A list of all deviating companies;~~

(ii) The estimated total standard premium written at deviated rates;

(iii) The estimated percentage of the entire statewide standard premium written at deviated rates;

(iv) The total amount of deviations in dollars;

(v) The average percentage deviation for deviating companies;

(vi) The average percentage deviation for all companies.

(k) Provide to the extent possible the following information on companies issuing dividends on North Carolina workers' compensation policies for each of the latest five calendar years:

(i) A list of all companies issuing dividends;

(ii) The estimated total premium of companies issuing dividends;

(iii) The estimated percentage of the entire statewide premium of companies issuing dividends;

(iv) The total amount of dividends in dollars;

(v) The average percentage dividend issued by companies issuing dividends;

(vi) The average percentage dividend issued by all companies.

(l) Provide the following information on losses and loss adjustment expenses:

(i) For each of the latest three available accident and calendar years, undeveloped and untrended losses and loss adjustment expenses;

(ii) For each rate level implemented in the latest three calendar years, the expected loss ratios that were anticipated in the implemented rates;

(iii) For each accident and policy year included in the filing, paid losses, case basis reserves, loss development, incurred allocated loss adjustment expenses (if collected separately from losses), incurred unallocated (or combined allocated and unallocated) loss adjustment expenses, applied trend factors, and trended incurred losses and loss adjustment expenses.

(2) Credibility factor development and application. Provide all information related to the derivation of all credibility factors contained in the filing, including the following:

(a) A description of all data reviewed and all worksheets used;

(b) A complete description of the methodology used to derive these factors;

(c) A description of alternative methodologies used or considered for use in the last three years;

(d) A description of the criteria used to select a methodology;

(e) Specific details on the application of these criteria in the selection of a methodology for this filing;

(f) Details on the application of the methodology to this filing.

(3) Loss development factor development and application on both paid and incurred bases and in both numbers and dollars of claims:

(a) Provide all information related to the derivation of all loss development factors contained in the filing, including the following:

(i) A description of all data reviewed and all worksheets used;

(ii) A complete description of the methodology used to derive these factors;

(iii) A description of alternative methodologies used or considered for use in the last three years;

(iv) A description of the criteria used to select a methodology;

(v) Specific details on the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(b) Provide at least the latest five available years of the aggregate loss data described in Subparagraphs (3)(b)(i) through (iii) of this Rule for matching companies for all pairs of successive evaluation dates. Also provide the corresponding loss development factors and five-year average factors derivable from these data.

(i) Data on both a policy year and an accident year basis;

(ii) Data separated into indemnity and medical portions, as well as combined data;

(iii) Data separated into paid, case incurred, and incurred but not reported portions, as well as combined data;

(c) Provide for each of the loss amounts in Subparagraph (3)(b) of this Rule, the corresponding earned premiums, paid claim counts, incurred claim counts, and outstanding claim counts.

(d) Provide at least the latest ten available policy years of the incurred loss data described in Subparagraphs (3)(d)(i) through (ii) of this Rule from the Unit Statistical Plan for matching policies for all pairs of successive evaluation dates. Also provide the corresponding loss development factors and five year average factors derivable from the data.

(i) Losses separated into indemnity and medical portions, as well as combined data;

(ii) Losses separated into deaths, permanent totals, major permanent partials, minor permanent partials, temporary totals, and noncompensable medicals.

(e) Provide for each of the loss amounts in Subparagraph (3)(d) of this Rule the corresponding incurred claim counts and for each of the policy years in Subparagraph (3)(d) of this Rule the aggregate earned exposures and standard earned

premium. Where small claims are reported in bulk, provide such information as accurately as possible, given the imprecision inherent in such aggregate data.

(f) Provide for each of the policy periods in Subparagraphs (3)(b) and (3)(d) of this Rule the law amendment factors for adjusting past losses to current benefit levels.

(g) Include a description of the reasons for the differences between the policy year data provided in response to Subparagraphs (3)(b) and (3)(c) of this Rule and those provided in response to Subparagraphs (3)(d) and (3)(e) of this Rule.

(h) Provide the information in Subparagraphs (3)(b) and (3)(c) of this Rule for each of the 15 largest writers of North Carolina workers' compensation insurance.

(4) Trending factor development and application:

(a) Provide all information related to the derivation of all trend factors contained in the filing including the following:

(i) A description of all data reviewed and all worksheets used;

(ii) A complete description of the methodology used to derive these factors;

(iii) A description of alternative methodologies used or considered for use in the last three years;

(iv) A description of the criteria used to select a methodology;

(v) Specific details on the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(b) Calculate the following trend factors:

(i) Indemnity and medical trend factors based on the latest five available policy years of North Carolina paid and incurred data;

(ii) Indemnity and medical trend factors based on the latest five available accident years of North Carolina paid and incurred data;

(iii) Indemnity and medical trend factors based on the latest five available policy years of countrywide paid and incurred data;

(iv) Indemnity trend factors for individual states based on policy year data and their reconciliations with the countrywide factor;

(v) Medical trend factors for individual states and for groups of fee schedule and non-fee schedule states based on incurred policy year data and their reconciliation with the countrywide factor;

(vi) The factors in Subparagraphs (4)(b)(iii), (4)(b)(iv), and (4)(b)(v) of this Rule based on accident year data, if available.

(5) Changes in premium base and exposures.

(a) For the intervals listed in this Subparagraph, provide the number of North Carolina workers' compensation policies and their aggregate premium for the latest available five policy years. Provide this information separately for stock and nonstock companies and for all companies combined: $1 - $99, $100 - $199, $200 - $299, $300 - $499, $500 - $999, $1,000 - $2,999, $3,000 - $4,999, $5,000 - $9,999, $10,000 - $24,999, $25,000 - $49,999, $50,000 - $99,999, $100,000 - $249,999, $250,000 - $499,999, and over $499,999.

(b) Describe any countrywide distributions of number of policies or premium by layer that are used in the filing. Also provide details of how such distributions have been used in the rate filing and a description of any adjustments that have been made to them.

(c) Provide the following estimates of the average premium discount for each of the latest five available policy years:

(i) That using the North Carolina distribution of policies contained in Subparagraph (5)(a) of this Rule;

(ii) That using a countrywide distribution of policies;

(iii) That using the North Carolina distribution of policies contained in Subparagraph (5)(a) of this Rule adjusted for its exclusion of the portions of interstate policies not located in North Carolina. In estimating this adjustment factor calculate and take into the account the aggregate intrastate portions of those policies making up the countrywide distribution in Subparagraph (5)(c)(ii) of this Rule.

(d) Provide or estimate the following information on exposure trends:

(i) The statewide average weekly wage for the latest five available calendar years;

(ii) The statewide average weekly wage for the latest ten available policy years without the application of a payroll limitation;

(iii) The statewide average weekly wage for the latest ten available policy years after the application of a payroll limitation;

(iv) The estimated statewide average weekly wage for the calendar and policy years during which the rates will be in effect.

(6) Limiting factor development and application. Provide information on the following items:

(a) Limitations on losses included in the statistical data used in the filing.

(b) Limitations on the extent of the rate level change.

(c) Limitations on the extent of classification rate changes.

(d) Any other limitations applied.

(7) Overhead expense development and the application of commission and brokerage, other acquisition expenses, general expenses, taxes, licenses, and fees:

(a) Provide all information related to the derivation of all expense provisions contained in the filing including the following:

(i) A description of all data reviewed and all worksheets used;

(ii) A complete description of the methodology used to derive these factors;

(iii) A description of alternative methodologies used or considered for use in the last three years;

(iv) A description of the criteria used to select a methodology;

(v) Specific details on the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(b) Provide a comparison of the proposed expense provisions with those composite provisions for the 50 largest writers of North Carolina workers' compensation insurance included in the latest available Insurance Expense Exhibit, with those same composite provisions included in the preliminary data underlying the next such Exhibit (if available), and with those provisions in the latest available Call for 19xx Calendar Year Data by State for North Carolina.

(c) For each of the ten largest writers of North Carolina workers' compensation insurance, provide a statement regarding any activities affecting expense or service levels undertaken in the last three years.

(8) The percent rate change:

(a) Provide the overall statewide rate change, as well as the amount of the change attributable to each of the following: loss experience, a modification of the trend factor, a change in expense provisions, law amendments, a change in the tax provision, a change in the assessment provision, and any other factors.

(b) Provide the rate changes for each industry group and for each classification.

(c) If the rate changes eventually implemented differ from those provided in the filing, submit a supplement to the filing that describes the implemented changes and the modifications made to the filing to produce them. This supplement shall be submitted as soon as possible after a decision is reached to implement rates other than those that were originally filed and in any case no later than the first implementation date of the rates.

(9) Final proposed rates:

(a) Provide the proposed rates for each classification.

(b) If the rates eventually implemented differ from those provided in the filing, submit a supplement to the filing that describes the implemented rates for each classification. This supplement shall be submitted as soon as possible after a decision is reached to implement rates other than those that were originally filed and in any case no later than the first implementation date of the rates.

(10) Investment earnings, consisting of investment income and realized plus unrealized capital gains, from loss, loss expense, and unearned premium reserves:

(a) Calculate the amount of investment income earned on loss, loss expense and unearned premium reserves from North Carolina workers' compensation policies (as a ratio to both net and standard earned premium) for each of the latest five available calendar years and estimate that income for the current year and for all years during which the proposed rates are expected to be in effect. Provide the details of all calculations, including the amount of the composite reserves of each type at the beginning and end of each of the latest five available calendar years. Also describe and justify all assumptions used in such calculations.

(b) Provide information on the estimated average length of time that elapses between the occurrence of a compensable accident in North Carolina and the payment of a claim on that accident. The average shall be a weighted average based on size of claim payments. Estimate how the length has changed over the latest ten available calendar years.

(c) Provide composite asset, liability, and income information from each of the latest two Annual Statements for which aggregate data are available for the 50 largest writers of North Carolina workers' compensation insurance, including the following (in the same format and detail as the exhibits in individual company statements):

(i) Page 2 (Assets);

(ii) Page 3 (Liabilities, Surplus and Other Funds);

(iii) Page 4 (Underwriting and Investment Exhibit);

(iv) Insurance Expense Exhibit Part II, Column 16.

(11) Identification of applicable statistical plans and programs and a certification of compliance with them:

(a) Identify all statistical plans used or consulted in preparing this filing and describe the data compiled by each plan.

(b) Provide a certification that there is no evidence known to the Bureau or to the statistical agencies involved that the data that were collected in

~~accordance with such statistical plans and were used in the rate filing are not true and accurate representations of each company's experience to the best of that company's knowledge.~~

~~(c) Provide general descriptions of the editing procedures used to verify that the data were collected in accordance with the statistical plans, and concise summaries of the adjustments and corrections made to the consolidated ratemaking data.~~

~~(12) Investment earnings on capital and surplus: Given the selected underwriting profit and contingencies provision contained in the filing, indicate the resulting rates of return (including consideration of investment income) on equity capital, on statutory surplus, and on total assets. Show the derivation of all factors used in producing these calculations and justify the fairness and reasonableness of these rates of return.~~

~~(13) Level of capital/surplus needed to support premium writings without endangering the solvency of member companies:~~

~~(a) Provide aggregate premium to surplus ratios for the latest ten available calendar years for those companies writing North Carolina workers' compensation insurance during that entire period;~~

~~(b) Provide estimates of the comparable ratios for all companies writing North Carolina workers' compensation insurance for all years during which the proposed rates are expected to be in effect.~~

~~(c) Provide information on the amount of surplus needed to support the writing of North Carolina workers' compensation insurance, taking into account the riskiness of the line. Describe the assumptions used in the derivation of that amount.~~

~~(d) Provide all information relating to any explicit or implicit allocation of surplus by state and by line undertaken in the filing, including the following:~~

~~(i) A description of all data reviewed and all worksheets used;~~

~~(ii) A complete description of the methodology used to produce this allocation;~~

~~(iii) A description of alternative methodologies used or considered for use in the last three years;~~

~~(iv) A description of the criteria used to select a methodology;~~

~~(v) Specific details on the application of these criteria in the selection of a methodology for this filing;~~

~~(vi) Details on the application of the methodology to this filing.~~

~~(14) Such other information that may be required by any rule adopted by the Commissioner:~~

~~(a) Provide information on the following aspects of workers' compensation individual risk rating plans, including an explanation of their purpose and a detailed description of their derivation:~~

~~(i) Expected loss rate;~~

~~(ii) D Ratio;~~

~~(iii) Excess loss factors;~~

~~(iv) Excess loss adjustment amounts;~~

~~(v) Table of weighting and ballast values.~~

~~(b) Provide all information relating to the profit and contingencies provision contained in the filing, including the following:~~

~~(i) A description of all data reviewed and all worksheets used;~~

~~(ii) A complete description of the methodology used to derive this provision;~~

~~(iii) A description of alternative methodologies used or considered for use in the last three years;~~

~~(iv) A description of the criteria used to select a methodology;~~

~~(v) Specific details on the application of these criteria in the selection of a methodology for this filing;~~

~~(vi) Details on the application of the methodology to this filing.~~

~~(c) Include copies of all agendas and minutes of meetings of the North Carolina Rate Bureau affecting the filing, as well as a list of all attendees at these meetings, their titles, and their affiliations.~~

~~(d) Describe all payments made to all consultants (including lawyers, actuaries, and economists) related to this filing and the previous one on workers' compensation insurance. If payments cannot be specifically identified as related to particular filings, estimate them.~~

~~(e) Identify and describe all changes in methodologies from the previous North Carolina workers' compensation rate filing. If any collected or reported data required by this Rule are provided within 30 days after the initial submittal of a filing, that data shall be made a part of the filing, provided the initial submittal acknowledges that it is incomplete and identifies specifically what further data are to be submitted within the time permitted. No filing otherwise complete shall be deemed to be proper until such time that all data required by this Rule have been submitted.~~

Statutory Authority G.S. 58-2-40; 58-36-15(h).

.1110 WORKERS COMPENSATION LOSS COSTS QUESTIONNAIRE

For those filings made in accordance with 11 NCAC 10

.1102(15), supporting information shall be presented as follows:

(1) Reference Filing Adoption Form:
- (a) Insurer's name.
- (b) Contact person for filing.
- (c) Title of contact person.
- (d) Phone number.
- (e) Insurer's FEIN.
- (f) Insurer's file number.
- (g) Department file number.
- (h) NCRB reference filing number.
- (i) Effective date.
- (j) Insurer's proposed effective date (if different from NCRB effective date).
- (k) Insurer's approximate market share of North Carolina written premium.
- (l) Whether the multiplier is applicable to this filing only or to subsequent reference filings.
- (m) Statement of accuracy of information.
- (n) Signature of company official.
- (o) Date signed.

(2) Summary of Supporting Data Form:
- (a) Does this filing apply uniformly to all workers' compensation classes.
- (b) Loss costs modification:
  - (i) Without modification (factor equals 1.000).
  - (ii) With modification (supporting documentation required).
- (c) Loss costs modification factor.
- (d) Selected expenses (attach Expense Provision Exhibit):
  - (i) Commission and brokerage.
  - (ii) Other acquisition.
  - (iii) General expenses.
  - (iv) Taxes, licenses, fees, loss based assessments.
  - (v) Profit, contingencies, credit for investment income.
  - (vi) Other.
  - (vii) Total (i+ii+iii+iv+v+vi).
- (e) Development of Expected Loss and Loss Adjustment Expense (Target Cost) Ratio: Expressed in decimal form: 1.000-(d)(vii).
- (f) Overall effect of expense constant and minimum premiums: Expressed in decimal form, i.e., 1.2% overall effect would be 0.988.
- (g) Overall effect of size-of-risk discounts plus expense gradation recognition in retrospective rating: Expressed in decimal form, i.e., 8.6% average discount would be 0.914.
- (h) Provision for premium taxes, licenses, fees, and loss based assessments: See NCRB Reference Filing, Exhibit II.
- (i) Company formula loss costs multiplier: (b)(ii) x (1.000 - h) / [(g) - (d)(vii)] x (f).
- (j) Company selected loss costs multiplier: Explain any differences between (i) and (j).
- (k) Rate level changes for the coverages to which this page applies.
- (l) Are you amending the minimum premium formula.
- (m) Are you amending the expense constant(s).
- (n) Are you changing the premium discount schedules.
- (o) If the answer to (l), (m), or (n) is yes, documentation is required.

(3) Expense Provisions Exhibit: For the following items, provide the three most recent years, the average, industry average, and the selected:
- (a) Commissions and brokerage.
- (b) Other acquisition.
- (c) General expenses.
- (d) Taxes, licenses, fees, and loss based assessments.
- (e) Profit, contingencies, and investment income:
  - (i) Profit and contingencies.
  - (ii) Credit for investment income.
- (f) Other.
- (g) Total (a+b+c+d+e+f).

Indicate if the insurer's actual expense ratios are North Carolina, countrywide, or other (explain); and if the insurer's actual expense ratios are a percent of standard premium, percent of net premium, or other (explain). If the selected provisions differ from the average for reasons other than rounding, please explain.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-36-100.

.1111 WORKERS' COMPENSATION

The following information is required pursuant to G.S. 58-36-15(h) for those filings made under G.S. 58-36-100:

(1) North Carolina losses and loss adjustment expenses, each on paid and incurred bases without trending or other modification for the experience period.
- (a) The filer shall include loss and loss adjustment expense data from all companies writing North Carolina workers' compensation insurance. In addition, if exposures are used in the calculation of premiums at present rates, the filer shall provide all available exposure data from these companies. If the experience of any company that writes more than one percent of the North Carolina workers' compensation written premium has been excluded from any trend or loss development calculations, the filer shall identify the company and its market share and provide an explanation for its exclusion. The filer shall also estimate the aggregate market share of other companies whose experience is excluded from such calculations.
- (b) If any identifiable group of policies is excluded from the calculation of classification differentials, the filer shall describe those policies, indicate their market share, and provide an

explanation for their exclusion.

(c) The filer shall clearly describe all adjustments to losses, loss adjustment expenses, expenses as defined in G.S. 58-36-100(c), and exposures included in the filing.

(d) The filer shall provide the latest available written and earned premiums and market shares for the 10 largest writers of North Carolina workers' compensation insurance.

(e) The filer shall provide the following information on losses and loss adjustment expenses:

(i) For each of the latest three available accident and calendar years, undeveloped and untrended losses and loss adjustment expenses;

(ii) For each accident and policy year included in the filing, paid losses, case basis reserves, loss development, incurred allocated loss adjustment expenses (if collected separately from losses), incurred unallocated (or combined allocated and unallocated) loss adjustment expenses, applied trend factors, and trended incurred losses and loss adjustment expenses.

(2) Credibility factor development and application. The filer shall provide all information related to the derivation of all credibility factors contained in the filing, including the following:

(a) A description of all data reviewed;

(b) A complete description of the methodology used to derive these factors;

(c) A description of alternative methodologies used in the last three years;

(d) A description of the criteria used to select a methodology;

(e) Specific details on the application of these criteria in the selection of a methodology for this filing;

(f) Details on the application of the methodology to this filing.

(3) Loss development factor development and application on both paid and incurred bases and in both numbers and dollars of claims:

(a) The filer shall provide all information related to the derivation of all loss development factors contained in the filing, including the following:

(i) A description of all data reviewed;

(ii) A complete description of the methodology used to derive these factors;

(iii) A description of alternative methodologies used in the last three years;

(iv) A description of the criteria used to select a methodology;

(v) Specific details on the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(b) The filer shall provide at least the latest five available years of the aggregate loss data described in Sub-items (3)(b)(i) through (iii) of this Rule for matching companies for all pairs of successive evaluation dates. The filer shall also provide the corresponding loss development factors and five-year average factors derivable from the data:

(i) Data on both a policy year and an accident year basis;

(ii) Data separated into indemnity and medical portions, as well as combined data;

(iii) Data separated into paid, case incurred and incurred but not reported portions, as well as combined data;

(c) The filer shall provide for each of the loss amounts in Sub-item (3)(b) of this Rule, paid claim counts, incurred claim counts, and outstanding claim counts.

(d) The filer shall provide at least the latest 10 available policy years of the incurred loss data described in Sub-items (3)(d)(i) through (ii) of this Rule from the Unit Statistical Plan for matching policies for all pairs of successive evaluation dates. The filer shall also provide the corresponding loss development factors and five-year average factors derivable from the data:

(i) Losses separated into indemnity and medical portions, as well as combined data;

(ii) Losses separated into deaths, permanent totals, major permanent partials, minor permanent partials, temporary totals, and medicals only.

(e) The filer shall provide for each of the loss amounts in Sub-item (3)(d) of this Rule the corresponding incurred claim counts and for each of the policy years in Sub-item (3)(d) of this Rule the aggregate earned exposures. Where small claims are reported in bulk, the filer shall provide such information as accurately as possible, given the imprecision inherent in such aggregate data.

(f) The filer shall provide for each of the policy periods in Sub-items (3)(b) and (3)(d) of this Rule the law amendment factors for adjusting past losses to current benefit levels.

(g) The filer shall include a description of the reasons for the differences between the policy year data provided in response to Sub-items (3)(b) and (3)(c) of this Rule and those provided in response to Sub-items (3)(d) and (3)(e) of this Rule.

(4) Trending factor development and application:

(a) The filer shall provide all information related to the derivation of all trend factors contained in the filing including the following:

(i) A description of all data reviewed;

(ii) A complete description of the methodology

used to derive these factors;

(iii) A description of alternative methodologies used in the last three years;

(iv) A description of the criteria used to select a methodology;

(v) Specific details on the application of these criteria in the selection of a methodology for this filing;

(vi) Details on the application of the methodology to this filing.

(b) The filer shall calculate the following trend factors:

(i) Indemnity and medical trend factors based on the latest eight available policy years and accident years of North Carolina paid and paid plus case data;

(ii) Indemnity and medical trend factors based on the latest eight available accident years and policy years of multi-state paid and paid plus case data;

(5) Changes in premium base and exposures. The filer shall provide or estimate the following information on exposure trends:

(a) The statewide average weekly wage for the latest five available calendar years;

(b) The statewide average weekly wage for the latest 10 available policy years without the application of a payroll limitation;

(c) The statewide average weekly wage for the latest 10 available policy years after the application of payroll limitation; and

(d) The estimated statewide average weekly wage for the calendar and policy years during which the rates will be in effect.

(6) Limiting factor development and application. The filer shall provide information on the following items:

(a) Limitations on losses included in the statistical data used in the filing;

(b) Limitations on the extent of the rate or loss costs level change;

(c) Limitations on the extent of classification rate or loss costs changes; and

(d) Any other limitations applied.

(7) The percent rate or loss costs change:

(a) The filer shall provide the overall statewide rate or loss costs change, as well as the amount of the change attributable to each of the following: loss experience, a modification of the trend factor, law amendments, a change in the loss based assessment provision, and any other factors.

(b) The filer shall provide the rate or loss costs changes for each industry group and for each classification.

(8) For assigned risks rate filings, the filer shall include support for reasonable margin for underwriting profit and contingencies and investment income, including realized capital gains.

(9) For assigned risk rate filings, the filer shall provide investment earnings on capital and surplus. Given the selected underwriting profit and contingencies provision contained in the filing, the filer shall indicate the resulting rates of return (including consideration of investment income) on equity capital, on statutory surplus, and on total assets. The filer shall show the derivation of all factors used in producing these calculations and justify the fairness and reasonableness of these rates of return.

(10) As required by G.S. 58-36-15, the filer shall:

(a) Provide information on the following aspects of workers' compensation individual risk rating plans, including an explanation of their purpose and a detailed description of their derivation:

(i) For experience rating plans, the table of expected loss rate and discount ratios and table of weighting and ballast values.

(ii) For retrospective rating plans, table of insurance charges, multipliers (including the derivation of any assigned risk subsidy), and table of excess loss factors.

(b) Describe all payments made to all consultants (including lawyers, actuaries, and economists) related to this filing and the previous one on workers' compensation insurance. If payments cannot be specifically identified as related to particular filings, the filer shall estimate them.

(c) Identify and describe all changes in methodologies from the previous North Carolina workers' compensation rate filing. If any collected or reported data required by this Rule are provided within 30 days after the initial submittal of a filing, that data shall be made a part of the filing, provided the initial submittal acknowledges that it is incomplete and identifies specifically what further data are to be submitted within the time permitted. No filing otherwise complete shall be deemed to be proper until such time that all data required by this Rule have been submitted.

Statutory Authority G.S. 58-2-40; 58-36-15(h).

SECTION .1600 - PROSPECTIVE LOSS COSTS FILINGS

.1603 RATE AND LOSS COSTS

(a) A rating organization may develop and file a reference filing with the Department, which filing shall contain the advisory prospective loss costs, the underlying loss data, and other supporting statistical and actuarial information for any calculations or assumptions underlying those loss costs.

(b) After a reference filing has been made with the

Department and determined by the Commissioner to be proper, the rating organization will provide its participating insurers with a copy of the reference filing.

(c) A rating organization may print and distribute manuals of prospective loss costs, as well as supplementary rating information as described in 11 NCAC 10 .1604. After an initial prospective loss costs reference filing has been made by a rating organization and has been determined by the Commissioner to be proper, that rating organization shall no longer ~~develop or~~ file any minimum premiums in this State.

(d) Each insurer must individually determine the final rates it will file and the effective date of any rate changes through an independent company decision-making process. ~~Such rates shall be produced by adding expense and profit loading and any loss cost modification to the prospective loss costs developed by the rating organization.~~

(e) If an insurer that is a member, subscriber, or service purchaser of a rating organization decides to use the prospective loss costs in a proper reference filing in support of its own filing, the insurer must submit a proper rate filing in accordance with 11 NCAC 10 .1107. In that filing, the insurer shall provide justification for the loss cost multipliers used in producing the final rates. The insurer's rates are the combination of the prospective loss costs and the insurer's loss cost multipliers.

(f) If an insurer files a modification of the prospective loss costs in a proper reference filing based on its own anticipated experience, ~~an independent filing is required. Supporting~~ supporting documentation shall be required. ~~for any upward or downward modifications of the prospective loss costs in the reference filing.~~

(g) An insurer may vary expense loads by individual classification, grouping or subline of insurance. An insurer may use variable or fixed expense loadings or a combination of these to establish its expense loadings.

(h) If an insurer wishes to use a minimum premium of any type, a proper rate filing must be submitted to the Department.

(i) An insurer may file such other information that it deems to be relevant and shall provide such other information that is requested by the Department.

(j) ~~Whenever a new reference filing is filed and determined to be proper:~~ An insurer may request to have its loss costs multiplier remain on file with the Department and reference all subsequent prospective loss costs reference filings. Upon receipt of subsequent rating organization reference filings, the insurer's rates shall be the combination of the prospective loss costs and the loss cost multiplier on file with the Department, and will be effective on or after the effective date of the prospective loss costs. The insurer need not file anything further with the Department.

~~(1) If an insurer decides to use the prospective loss costs to revise its rates, the insurer must file with the Department a rate filing questionnaire according to 11 NCAC 10 .1107, including the effective date of the rates and copies of all new rate pages.~~

~~(2) If an insurer decides not to use the revisions, the insurer is not required to make any filing with the Department.~~

(k) If an insurer that has filed to have its loss costs multiplier remain on file with the Department intends to delay, modify, or not adopt a particular rating organization's reference filing, the insurer must make a filing with the Department before the effective date of the reference filing.

(l) To the extent that an insurer's final rates are determined solely by applying its loss costs multiplier to the prospective loss costs contained in a rating organization's reference filing and printed in the rating organization's manual, the insurer need not develop or file its final rate pages with the Department.

(m) If an insurer has filed to have its loss cost multiplier remain on file, applicable to subsequent reference filings, and a new proper reference filing is filed:

(1) If the insurer decides to use the prospective loss costs and effective date as filed, the insured does not file anything with the Department. The insurer's rates are the combination of the prospective loss costs and the on-file loss cost multiplier. The new rates become effective on the effective date of the loss costs.

(2) If the insurer decides to use the prospective loss costs as filed, but with a different effective date, the insurer must notify the Department of its effective date before the effective date of the loss costs.

(3) If the insurer decides to use the prospective loss costs, but wishes to change its loss cost multiplier, the insurer must make another filing in accordance with Paragraphs (d) through (f) of this Rule before the effective date of the loss costs.

(4) If the insurer decides not to revise its rates using the prospective loss costs, the insurer must notify the Department before the effective date of the loss costs.

(n) If the insurer has not elected to have its loss cost multiplier remain on file, applicable to the future prospective loss cost reference filings, and a new proper reference filing is filed:

(1) If the insurer decides to use the prospective loss costs to revise its rates, the insurer must file with the Department a rate filing in accordance with Paragraphs (d) through (f) of this Rule, including the effective date of the rates.

(2) If an insurer decides not to use the revisions, the insurer is not required to make any filing with the Department.

Statutory Authority G.S. 58-2-40; 58-36-15; 58-37-35; 58-40-30; 58-41-50; 58-45-45; 58-46-55.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 11B .0111, .0114, .0141, .0146, .0303; 11C .0112, .0132; 14 .0202, .0603 .0705; adopt 11 NCAC 11B .0306; 11C .0313, 11C .0504 - .0505; 14 .0432; repeal 11 NCAC 11B .0140, .0142, .0148, .0302, .0304 - .0305; 11C .0113, .0118; 11D .0108 - .0109, .0302 - .0305; 14 .0430 - .0431.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 28, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action:
11 NCAC 11B .0111, .0114, .0141, .0146, .0303, .0306; 11C .0112, .0132; 11C .0313, .0504 - .0505; 14 .0202, .0432, .0603, .0705 *- Necessary to comply with changes made in the statutes during the last session of the General Assembly.*
11 NCAC 11B .0140, .0142, .0148, .0302, .0304 - .0305; 11C .0113, .0118; 11D .0108 - .0109, .0302 - .0305; 14 .0430 - .0431 *- Rules no longer necessary.*

Comment Procedures: *Written comments and questions should be directed to Ray Martinez, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-5633. Oral presentations may be made at the public hearing.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11B - SPECIAL PROGRAMS

SECTION .0100 - SECURITIES

.0111 CONVERSION TO CASH MASTER TRUST

(a) As used in this Rule and elsewhere in this Section:

(1) "DTC" means the electronic transfer of municipal securities through the Deposit Trust Corporation.

(2) "Federal Book Entry" means the electronic transfer of U.S. Treasury obligations and cash through member banks of the Federal Reserve System.

(b) The Department ~~of Insurance will~~ shall process and release securities that have matured only upon receipt of a written request from the company and where adequate replacement has been made by the company. ~~made. Bonds or notes eligible for Book Entry, DTC or CD will convert to cash on the day of maturity.~~ Securities eligible for Federal Book Entry or DTC shall be converted to cash at maturity. Certificates of deposit shall be redeemed or rolled over at maturity. ~~Book Entry is conclusively presumed to mean the electronic transfer of United States Treasury obligations and cash through member banks and the Federal Reserve system. DTC is conclusively presumed to mean Depository Trust Corporation N.Y. electronic transfer of securities primarily municipals.~~

Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-75.

.0114 DEPOSITS HELD IN TRUST BY COMMISSIONER OF INSURANCE

The establishment and servicing of deposits shall be done by authority of the Commissioner of Insurance only. The deposits shall be in the custody of the ~~State Treasurer.~~ Master Trust Bank. The procedure for replacement of the deposit shall be as follows:

(1) The company desiring to replace bonds or notes shall make a written request for replacement to the Commissioner of Insurance. This request shall be made in advance of the shipment of any securities.

(2) The replacement deposit shall be of an equal value to the bond or note being replaced.

(3) The Commissioner ~~may~~ shall require additional securities at the time of replacement ~~when he feels that~~ if the citizens and policyholders of this state ~~may~~ will have less protection as a result of the replacement.

Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-40; 58-5-90; 58-5-95.

.0140 USE OF MASTER TRUST ALL EXISTING COMPANIES TRANSFERRED

~~Insurance companies having securities on deposit at November 27, 1985 are advised that all such securities will be transferred from the vault at the State Treasurer's Office to a North Carolina Bank as provided under the terms of an agreement between the Department of Insurance and the successful bidder bank on REP .00054 dated August 15, 1985.~~

Statutory Authority G.S. 58-7.5; 58-9.

.0141 USE OF MASTER TRUST TO INCREASE DEPOSIT

All insurance companies that are required by law to increase the market value of the securities on deposit in North Carolina ~~as a result of Rules 11 NCAC 11B .0106 through 11 NCAC 11B .0107 must make its increase deposit in compliance with the Master Trust Agreement entered between the Commissioner of Insurance, State of North Carolina and the successful bidder bank on REP .00054 dated August 15, 1985 on successor bank.~~ shall effect the increases in compliance with the Master Trust Agreement. The Master Trust Agreement is the contract between the Department and the Master Trust Bank under G.S. 58-5-1;

is on file in the Financial Compliance Division of the Department; and is available for inspection or copying in accordance with G.S. 58-6-5.

Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-25; 58-5-40; 58-5-95.

.0142 CONVERSION FROM STATE TREASURER TO MASTER TRUST BANK

~~In order to facilitate the transfer of securities from the Office of State Treasurer to the successful bidder bank, all securities were moved by the bidder bank where eligible for Federal Book Entry all securities were placed in Federal Book Entry. Where eligible for DTC Systems all securities were placed in DTC. All other securities were transferred in physical form to the successful bidder bank, as its appointed fiduciary.~~

Statutory Authority G.S. 58-7.5; 58-9.

.0146 MASTER TRUST BANK ABILITY TO REGISTER SECURITIES

From time to time registration of securities ~~may~~ shall be changed by the Master Trust Bank to facilitate ~~redemption sell or transfer of securities such~~ the redemption, sale, or transfer of securities on deposit. Such changes ~~will~~ shall be made after a written request for approval has been made by the Master Trust Bank and received and ~~acknowledged~~ approved by the Commissioner of Insurance.

Statutory Authority G.S. 58-2-40; 58-5-1; 58-5-30; 58-5-63; 58-5-70; 58-5-90; 58-5-95.

.0148 MASTER TRUST CONVERSION TO CASH

~~All deposits will be converted to cash on their maturity. It shall be the responsibility of the insurance company to make arrangements in accordance with applicable Rule 11 NCAC 11B .0151 to perfect timely release and replacement.~~

Statutory Authority G.S. 58-7.5; 58-9.

SECTION .0300 - VARIABLE CONTRACTS

.0302 QUALIFICATION TO ISSUE VARIABLE ANNUITIES

~~(a) No company shall deliver or issue for delivery variable contracts within this state unless:~~

~~(1) It is licensed or organized to do a life insurance or annuity business in this state;~~

~~(2) The Commissioner is satisfied that its financial condition and its methods of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state; and~~

~~(3) The Commissioner has amended the license of such company to reflect authority to write variable annuity contracts in North Carolina.~~

~~(b) In this connection, the Commissioner will consider among other things:~~

~~(1) the history and financial condition of the company;~~

~~(2) the character, responsibility and general fitness of the officers and directors of the company; and~~

~~(3) the law and regulations under which the company is authorized in the state of domicile to issue variable annuity contracts.~~

Statutory Authority G.S. 58-79.2.

.0303 INFORMATION REQUIRED PRIOR TO APPROVAL

Any licensed life insurance company desiring permission to amend its license to include the authority to write variable ~~annuities~~ contracts shall submit to the Commissioner for review the following items:

(1) copies of all laws and regulations under which the company is authorized in its state of domicile to issue variable ~~annuities;~~ contracts;

(2) a description of the method of operations of the company in its state of domicile as regarding variable ~~annuities,~~ contracts, the description to include, method or methods of marketing the variable ~~annuities~~ contracts and the number of years the company has issued such contracts;

(3) a description of the company's proposed method of operation in the State of North Carolina; The description shall include method or methods of marketing the variable ~~annuities,~~ contracts, the types of contracts to be issued and the criteria followed by the company in the selection of agents to sell the variable ~~annuity~~ contracts;

(4) ~~copies of all pertinent documents, such as corporate resolutions, etc., whereby one or more separate accounts have been established by the company for the purpose of issuing variable annuities;~~ copies of all pertinent documents, including:

(a) corporate resolutions that indicate that one or more separate accounts have been established and funded by the company for the purpose of issuing variable contracts;

(b) prospectus or offering memorandum filed with the Securities and Exchange Commission disclosing the information contained in 11 NCAC 11B .0306;

(5) certified copies of the separate accounts annual statements as filed with domiciliary state for the three years prior to the request for such authority in the State of North Carolina;

(6) a statement from the company indicating the other states in which the company has applied for permission to write variable ~~annuity products~~ contracts and further indicating if the state has

approved or disapproved ~~such application (if disapproved, state reason).~~ the application; and if disapproved, the reason or reasons for disapproval.

~~The Commissioner may deny permission to any company failing to submit the information in this Rule; however, companies who cannot comply with Item (5) of this Rule will be considered on a case by case basis if all other information is satisfactory.~~

Statutory Authority G.S. 58-2-40; 58-7-95.

.0304 FOREIGN COMPANIES: VARIABLE ANNUITY LAWS

~~If the law or rules of the state of domicile of a foreign company provides a degree of protection to the policyholders and the public which is substantially equal to that provided by these rules, the Commissioner, to the extent deemed appropriate by him in his discretion, may consider compliance with such law or rules as compliance with these rules.~~

Statutory Authority G.S. 58-2-40; 58-7-95.

.0305 SEPARATE ACCOUNTS OF DOMESTIC LIFE INSURANCE COMPANY

~~(a) A domestic life insurance company issuing variable annuity contracts shall establish one or more separate accounts pursuant to G.S. 58-7-95, and shall allocate to such account or accounts amounts received or retained in connection with variable contracts, subject to the following provisions:~~

~~(1) The amounts allocated to any separate account and accumulations thereon equal to the reserve liability of the separate account shall be invested in accordance with the investment laws of this State, however:~~

~~(A) Any amounts in excess of such reserve liability may be invested and reinvested without regard to any requirements or limitations prescribed by such investment laws, provided;~~

~~(B) That such reserve liability has been invested as herein required and shall include benefits guaranteed as to amount and duration and funds guaranteed as to principal amount or stated rate of interest.~~

~~The investment in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the company.~~

~~(2) With respect to 75 percent of the market value of the total assets in a separate account, no company shall purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal or interest by the United States, if immediately after such purchase or acquisition the market value of such investment, together with prior investments of such separate account in such security taken at market, would exceed 10 percent of the market value of the assets of said separate account; provided, however, that the Commissioner may waive such limitation if, in his opinion, such waiver will not render the operations of such separate account hazardous to the public or the policyholders in this state.~~

~~(3) No separate account shall invest in the voting securities of a single issuer in an amount in excess of 10 percent of the total issued and outstanding voting securities of such issuer provided that the foregoing shall not apply with respect to securities held in separate accounts, the voting rights in which are exercisable only in accordance with instructions from persons having interests in such accounts.~~

~~(4) The limitations provided in Subparagraphs (a)(2) and (a)(3) of this Rule shall not apply to the investment with respect to a separate account in the securities of an investment company registered under the Investment Company Act of 1940, provided that the investments of such investment company comply in substance with Subparagraphs (2) and (3) of this Paragraph.~~

~~(b) Unless otherwise approved by the Commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account; provided, that unless otherwise approved by the Commissioner that portion of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in Parts (A) and (B) of Subparagraph (a)(1) of this Rule, if any, shall be determined in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.~~
~~If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct. Notwithstanding any other provisions of law a company may:~~

~~(1) with respect to any separate account registered with the Securities and Exchange Commission as a unit investment trust, exercise voting rights in connection with any securities of a regulated investment company registered under the Investment Company Act of 1940 and held in such separate accounts in accordance with instructions from persons having interests in such account ratably as determined by the company; or~~

~~(2) with respect to any separate account registered with the Securities and Exchange Commission as a management investment company, establish for~~

~~such account a committee, board, or other body, the members of which may or may not be otherwise affiliated with such company and may be elected to such membership by the vote of persons having interest in such account ratably as determined by the company; Such committee, board or other body may have the power, exercisable alone or in conjunction with others, to manage such separate account and the investment of its assets.~~

~~(c) A company, committee, board or other body may make such other provisions in respect to any such separate account as may be deemed appropriate to facilitate compliance with requirements of any federal or state law now or hereafter in effect; provided that the Commissioner approves such provisions as not hazardous to the public or the company's policyholders in this state.~~

~~A company shall maintain in each such separate account assets with a value at least equal to the reserves and other contract liabilities with respect to such account, except as may otherwise be approved by the Commissioner. Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate accounts' committee, board or other similar body. No officer or director of such company nor any member of the committee, board or body of a separate account shall receive directly or indirectly any commission or any other compensation with respect to the purchase or sale of assets of such separate account.~~

Statutory Authority G.S. 58-2-40; 58-7-95.

.0306 DISCLOSURE REQUIREMENTS

The prospectus or offering memorandum of a life insurance company applying for a license to sell variable contracts in this State shall include the following language in at least 10-point boldface capital letters:

"ATTENTION NORTH CAROLINA INVESTORS: THE INFORMATION CONTAINED IN THIS VARIABLE CONTRACT OFFERING HAS NOT BEEN APPROVED OR DISAPPROVED BY THE COMMISSIONER OF INSURANCE OF THE STATE OF NORTH CAROLINA; NOR HAS THE COMMISSIONER RULED UPON THE ADEQUACY OR ACCURACY OF THIS DOCUMENT. VARIABLE CONTRACTS SOLD BY PROSPECTUS MIGHT NOT BE COVERED BY THE NORTH CAROLINA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION."

Statutory Authority G.S. 58-2-40; 58-7-95(r).

SUBCHAPTER 11C - ANALYSIS AND EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

.0112 CUSTODIAL AND FISCAL AGENCY AGREEMENT

~~The Model Custodial Agreement designated as 11 NCAC 11A .0484 has been deemed acceptable by the Department for the custody of the securities of a domestic insurance company. Other custodial agreements in substantially the same form as this model are acceptable provided the minimum provisions and safeguards of the model are included therein.~~ Domestic insurance companies subject to G.S. 58, Articles 1 through 67, that contract with third parties for custodial and fiscal agency services shall execute written agreements evidencing the services to be rendered. The agreements shall contain the minimum provisions and safeguards contained in the Model Custodial Agreement or Model Custodial and Fiscal Agency Agreement. Domestic insurance companies shall file their written agreements and any amendments with the Commissioner. The Model Custodial Agreement and the Model Custodial and Fiscal Agency Agreement are on file in the Financial Compliance Division of the Department and are available for inspection or copying in accordance with G.S. 58-6-5.

Statutory Authority G.S. 58-2-40; 58-19-30(b)(4); 58-34-10.

.0113 MODEL CUSTODIAL AND FISCAL AGENCY AGREEMENT

~~The Model Custodial and Fiscal Agency Agreement designated as 11 NCAC 11A .0485 has been deemed acceptable by the Department for the custody and control of the securities of a domestic insurance company. Other custodial and fiscal agency agreements in substantially the same form as this model are acceptable provided the minimum provisions and safeguards of the model are included therein.~~

Statutory Authority G.S. 58-79; 58-79.1.

.0118 COLLECTION PROCEDURES FOR EXAMINATION EXPENSE

~~(a) Each examiner will periodically prepare an "Examiner's Expense and Days Worked Report" for examinations of each insurance company. An examiner participating on the examination of a foreign insurance company will forward the originals of the reports to the Commissioner periodically and retain copies for the examiner's own record. The examiner in charge on the examination of domestic insurance companies will approve and forward the originals of each examiner's reports to the Commissioner periodically and retain one copy of each report for his records.~~

~~(b) Upon verification of the examiner's expense reports, the Commissioner or his designee shall prepare an invoice and periodically bill the insurance companies for charges for days worked, as well as the expense charges for each examiner. All invoices for expenses and daily work charges are to be billed directly by the Department to the company under examination. The company is directed by the invoice to submit its payments directly to the Department to the company under examination. The company is directed by the invoice to submit its payments direct to the Department for both expenses and charges for days worked and to make checks payable to the Department of Insurance.~~

~~(c) All funds received from daily charges are for the sole purpose of funding the direct and indirect cost of operations of the Field Audit Section of the Financial Evaluation Division of the Department. All charges are to be determined on a formula basis, to be adjusted from time to time as need and circumstances require.~~

Statutory Authority G.S. 58-2-40; 58-2-133(c).

.0132 ACCOUNTING FOR SALVAGE AND SUBROGATION

Whenever any insurance company is operating in a manner that is hazardous to its policyholders, creditors, or the general public for any of the reasons set out in G.S. 58-30-60(b), or whenever any insurance company is "impaired", as defined in G.S. 58-30-12(a)(2), or "insolvent", as defined in G.S. 58-30-10-13, the Commissioner shall disregard any credit taken by the company ~~No insurance company shall take credit~~ in any annual or interim financial statement filed with the Department for salvage or subrogation recoveries until the recoveries have been reduced to cash or its equivalent. Salvage or subrogation recoveries reduced to cash or its equivalent shall be accounted for as an offset to losses paid. This Rule does not apply to title or mortgage guaranty insurers.

Statutory Authority G.S. 58-2-40; 58-7-162.

SECTION .0300 - HEALTH MAINTENANCE ORGANIZATIONS

.0313 NET EARNED INCOME DEFINITION: HMO

As used in G.S. 58-67-5(i), "net earned income" means the sum of net income or loss and interest on surplus notes for the calendar year.

Statutory Authority G.S. 58-2-40; 58-67-5(i).

SECTION .0500 - REINSURANCE

.0504 TRUST AGREEMENTS QUALIFIED UNDER G.S. 58-7-26

(a) As used in this Rule:

(1) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a receiver as successor in interest to the named beneficiary, then the named beneficiary is the court -appointed domiciliary conservator, rehabilitator, or liquidator.

(2) "Financial institution" means a qualified United States financial institution as defined in G.S. 58-7-26(c).

(3) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(4) "Obligations" means:

(A) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(B) Reserves for reinsured losses reported and outstanding;

(C) Reserves for reinsured losses incurred but not reported; and

(D) Reserves for allocated reinsured loss expenses and unearned premiums.

(b) Required conditions for trust agreements.

(1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which trustee shall be a qualified financial institution.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(4) The trust agreement shall provide that:

(A) The beneficiary may withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) It is not subject to any conditions or qualifications outside of the trust agreement; and

(D) It shall not contain references to any other agreements or documents except as provided for under Subparagraph (11) of this Paragraph.

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

(A) Receive assets and hold all assets in a safe place;

(B) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary

negotiate any such assets, without consent or signature from the grantor or any other person;

(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) Notify the grantor and the beneficiary within 10 days before the making of any deposits or withdrawals from the trust account;

(E) Upon written demand of the beneficiary, immediately take all steps to transfer all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary; except that the trustee may, without the consent of, but with notice to, the beneficiary and upon the call or maturity of any trust asset, withdraw the asset upon the condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more 45 days, before termination of the trust account, that written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expense of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

(11) When a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, or accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(B) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(C) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in G.S. 58-7-26(c) apart from its general assets, in trust for such uses and purposes specified in Parts (b)(11)(A) and (B) of this Rule as may remain executory after such withdrawal and for any period after the termination date.

(12) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by Part (d)(1)(B) of this Rule, as long as these required conditions are included in the trust agreement.

(c) Permitted conditions for trust agreements.

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice; and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice; provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account; provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the

beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Part (d)(1)(B) of this Rule.

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(d) Additional conditions applicable to reinsurance agreements.

(1) A reinsurance agreement that is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

(A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(B) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), or investments of the types permitted by G.S. 58, Article 7 or any combination of the above; provided that such investments are issued by an entity that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

(C) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank; or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(D) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(E) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement; and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and

(iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(A) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(ii) After withdrawal and transfer, the market value of the trust account is no less than

102 percent of the required amount.
The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(B) Provide for:

(i) The return of any amount withdrawn in excess of the actual amounts required for Subparts (d)(1)(E)(i), (ii) and (iii), or in the case of Subpart (d)(1)(E)(iv) of this Rule, any amounts that are subsequently determined not to be due; and

(ii) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subpart (d)(1)(E)(iii) of this Rule.

(C) Permit the award by any arbitration panel or court of competent jurisdiction of:

(i) Interest at a rate different from that provided in Subpart (d)(2)(B)(ii) of this Rule,

(ii) Court of arbitration costs,

(iii) Attorney's fees, and

(iv) Any other reasonable expenses.

(3) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Department in compliance with the provisions of this Rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements. Notwithstanding the effective date of this Rule, any trust agreement in existence before January 1, 1996, will continue to be acceptable until June 30, 1996, at which time the agreements will have to be in full compliance with this Rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in Paragraph (a) of this Rule shall not be construed to affect any actions or rights that the Commissioner may take or possess pursuant to the provisions of the laws of this State.

Statutory Authority G.S. 58-2-40; 58-7-21; 58-7-26.

.0505 LETTERS OF CREDIT

(a) As used in this Rule:

(1) "Beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a receiver as successor in interest to the named beneficiary, then the named beneficiary is the court-appointed domiciliary conservator, rehabilitator, or liquidator.

(2) "Financial Institution" means a qualified United States financial institution as defined in G.S. 58-7-26(c).

(b) In order to qualify under G.S. 58-7-26(a)(3), a letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in G.S. 58-7-26(b). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. The letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in Subparagraph (h)(1) of this Rule.

(c) The heading of the letter of credit may include a boxed section that contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(d) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(e) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of not less than thirty 30 days' notice before the expiration or non-renewal date.

(f) The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(g) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400); then the letter of credit shall specifically address and make provision for a extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

(h) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to G.S. 58-7-26(c).

(i) Reinsurance agreement provisions:

(1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain

provisions that:

(A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(B) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

(iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(C) All of the provisions of Subparagraph (1) of this Paragraph shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in Subparagraph (1) of this Paragraph shall preclude the ceding insurer and assuming insurer from providing for:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subaragraph (1)(B)(iii) of this Paragraph; or

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Subpart (1)(B)(iv) of this Paragraph, any amounts that are subsequently determined not to be due.

(3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Part (1)(B) of this Paragraph, require that the parties enter into a "Trust Agreement", which may be incorporated into the reinsurance agreement or be a separate document.

(j) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements filed with the Department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. The reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specified obligation under the reinsurance agreement that the letter of credit was intended to secure.

Statutory Authority G.S. 58-2-40; 58-7-26.

SUBCHAPTER 11D - PROXY: LIQUIDATION AND MERGER

SECTION .0100 - GENERAL PROVISIONS

.0108 NOTICE OF HEARING ON PLAN OF EXCHANGE OF CAPITAL STOCK

~~Notice of a public hearing upon the terms, conditions and provisions of a plan of exchange of capital stock shall be published and mailed in accordance with the provisions of G.S. 58-9-5.~~

Statutory Authority G.S. 58-2-40; 58-9-5.

.0109 CHARGES FOR HEARING CONDUCTED PURSUANT TO G.S. 58-9-5

~~The costs of a public hearing, and the department's preliminary work relative thereto, shall be assessed upon the petitioners on the basis specified in the plan of exchange for any expenses incurred therefor. The Department will be reimbursed for the total number of man days expended for preliminary work and for the actual hearing and the amount charged shall be at the same rate charged to insurance companies for the examination of their books and records.~~

Statutory Authority G.S. 58-2-40; 58-9-5.

SECTION .0300 - MERGER: GENERAL NATURE

.0302 PROCEDURE FOR SUBMISSION OF PLAN OF MERGER - STOCK COMPANY

~~A plan of merger or consolidation of a domestic stock company must be prepared in accordance with the general business laws of North Carolina and must be submitted under petition to the Commissioner, in accordance with the~~

~~provisions of G.S. 58-7-150, who will schedule a public hearing on the plan and issue an order based on his findings. Any order issued by the Commissioner approving such plan will make no appraisal of or express any opinion with respect to the values of shares of stock or the rates of exchanges of shares of stock of the merging or consolidating companies and will in every instance be subject to the approval of the stockholders of the companies as required by law.~~

Statutory Authority G.S. 55-107 et seq.; 58-2-40; 58-7-150.

.0303 NOTICE OF PUBLIC HEARING ON PLAN OF MERGER FOR STOCK COMPANIES

~~Written notice of the public hearing on a plan of merger or consolidation shall be given to the stockholders of the merging or consolidating companies at least 20 days before the date of the hearing.~~

~~In addition, notice shall be published by the domestic companies once a week for two consecutive weeks with the last publication date not less than 20 days before the date of the hearing and shall be published in the major morning newspapers in the Cities of Wilmington, Raleigh, Greensboro, Charlotte, and Asheville, North Carolina, and the location of the principal office of the domestic companies, if other than the aforementioned.~~

~~Both written and published notice shall be in a form as prescribed by the Commissioner.~~

Statutory Authority G.S. 58-2-40; 58-7-150.

.0304 PROCEDURE FOR SUBMISSION OF PLAN OF MERGER - MUTUAL COMPANY

~~A plan of merger of consolidation of a domestic mutual company must be prepared in accordance with the general business laws of North Carolina and must be submitted under petition to the Commissioner, in accordance with the provisions of G.S. 58-7-150, who will schedule a public hearing on the plan at a date subsequent to the date of the special meeting of policyholders of the merging or consolidating domestic mutual company. If the plan is adopted by the policyholders at the special meeting of policyholders by vote of two thirds of the members voting thereon, the Commissioner shall continue with the public hearing and issue an order based on his findings.~~

Statutory Authority G.S. 58-2-40; 58-7-150.

.0305 NOTICE OF PUBLIC HEARING ON PLAN OF MERGER FOR MUTUAL COMPANIES

~~Written notices of the date, time and place of the public hearing on a plan of merger or consolidation of a domestic mutual company shall be included in the notice of the special meeting of the policyholders called to vote on said plan. Notice shall also be published by the domestic companies once a week for two consecutive weeks with the last publication date not less than 20 days before the date of the hearing and shall be published in the major morning newspapers in the Cities of Wilmington, Raleigh, Greensboro, Charlotte and Asheville, North Carolina and cities wherein the principal offices of the domestic companies are located, if other than the aforementioned. Published notice shall be in a form as prescribed by the Commissioner.~~

Statutory Authority G.S. 58-2-40; 58-7-150.

CHAPTER 14 - ADMISSION REQUIREMENTS

SECTION .0200 - FORMATION OF DOMESTIC INSURANCE COMPANY

.0202 INFORMATION REQUIRED AFTER ORGANIZATIONAL MEETING

In accordance with the procedures established by G.S. 58-7-40, the following information must be submitted to the commissioner for approval prior to the issuance of a certificate of authority to a newly organized company:

(1) a certificate of proceedings of the organizational meeting setting forth a copy of the articles of incorporation with the names of the subscribers thereto; the date of the first meeting and of any adjournments thereof; certified copies of the minutes of the meeting; certified copies of the bylaws; an opening balance sheet of the corporation's books and records and confirmation of the initial capitalization funds in escrow or otherwise, for the company; and

(2) duly prepared and executed forms furnished by the commissioner as follows:

(a) check sheet and analysis of application for admission in the form described in 11 NCAC 14 .0414;

(b) application for license in the form described ~~in 11 NCAC 11A .0404 for life, accident and health, and fire and casualty insurance companies; 11 NCAC 11A .0407 for fraternal orders; 11 NCAC 11A .0405 for hospital and medical service corporations; and 11 NCAC 11A .0406 for dental service corporations;~~ in 11 NCAC 14 .0432;

(c) petition for admission to do business in North Carolina in the form described in 11 NCAC 14 .0415;

(d) power of attorney for services of legal process in the form described in 11 NCAC 14 .0416; and

(e) power of attorney to sell securities on deposit in the form described in 11 NCAC 14 .0417.

Statutory Authority G.S. 58-2-40; 58-5-30; 58-7-35; 58-7-40; 58-16-30; 58-65-50.

SECTION .0400 - DESCRIPTION OF FORMS

.0430 ANNUAL GROSS PREMIUM TAX RETURN FOR PURCHASING GROUPS

~~The Annual Gross Premium Tax Return for Purchasing Groups is the form for filing and remitting annual premium taxes by purchasing groups registered to do business in North Carolina under the federal and North Carolina risk retention laws.~~

Statutory Authority G.S. 58-22-35(b).

.0431 ANNUAL GROSS PREMIUM TAX RETURN FOR RISK RETENTION GROUPS

~~The Annual Gross Premium Tax Return for Risk Retention Groups is the form for filing and remitting annual premium taxes by risk retention groups registered to do business in North Carolina under the federal and North Carolina risk retention laws.~~

Statutory Authority G.S. 58-22-20(3).

.0432 APPLICATION FOR LICENSE: INSURANCE COMPANY

The application for license is a form used by an insurance company to request authority to transact specific lines of insurance business in North Carolina. This form is used for initial authority by each applicant insurance company and for an annual renewal license by each licensed insurance company. The form includes the company's name, company's address, president and secretary of the company, a schedule of license fees, and the lines of authority being requested.

Statutory Authority G.S. 58-2-40; 58-7-40; 58-16-5.

SECTION .0600 - SURPLUS LINES

.0603 FINANCIAL INFORMATION REQUIRED

Each request for surplus lines eligibility shall be accompanied by the following financial information so that verification of compliance with the eligibility requirements can be made:

(1) annual statements for the preceding two years in the form required under G.S. 58-2-165 for companies licensed in at least one state in the United States;

(2) annual financial reports for the preceding two years in the English language and in U.S. dollar amounts for alien insurance companies;

(3) a certified copy of the latest report on examination or, if the company is not required to be examined by any jurisdiction, a copy of the latest CPA report and management letter;

(4) actuarial certification of the loss reserves and loss adjustment expense reserves for the most recent year if such certification is available; ~~and~~

(5) a copy of the NAIC financial ratio (IRIS) results for the most recent year, along with an explanation for any unusual values if such tests are performed; and

(6) an alien insurer must file a copy of its United States trust agreement; and must also file with and be approved by the Nonadmitted Insurers Information Office of the NAIC to be considered for eligibility in North Carolina.

Statutory Authority G.S. 58-2-40; 58-2-165; 58-21-20.

SECTION .0700 - FEDERAL RISK RETENTION ACT ENTITIES

.0705 FILING AND PAYMENT OF PREMIUM TAXES

~~(a)~~ Each risk retention group registered to transact business in North Carolina shall file with the Secretary of Revenue, ~~Commissioner,~~ on or before March 15 of each year, a report of all premiums paid to it for risks insured within North Carolina. ~~Carolina in the form described in 11 NCAC 14 .0431.~~

~~(b) Each purchasing group registered to transact business in North Carolina shall file with the Commissioner, on or before March 15 of each year, a report of all premiums paid to it for risks insured within the state in the form described in 11 NCAC 14 .0430.~~

Statutory Authority G.S. 58-22-20; 58-22-35.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rules cited as 11 NCAC 13 .0317 and .0319.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 28, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action: *Necessary to be in compliance with statute changes made during the last session of the General Assembly.*

Comment Procedures: *Written comments and questions*

should be directed to Fred Mohn, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-2200. Oral presentations may be made at the public hearing.

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 13 - SPECIAL SERVICES DIVISION

SECTION .0300 - INSURANCE PREMIUM FINANCE COMPANIES

.0317 TEN-DAY NOTICE

The ten-day written notice of intent to cancel as described in ~~General Statute 58-60(1)~~ G.S. 58-35-85(1) shall include the name and address of the premium finance company, the premium finance agreement number, the date the notice is mailed, the amount of the installment in default and all other pertinent information. A copy of the ten-day notice, or a listing of delinquent insureds showing the same general information shall be ~~mailed~~ sent to the insurance agent shown on the premium finance agreement at the same time notice is given to the insured.

Statutory Authority G.S. 58-2-40; 58-35-85(1).

.0319 EFFECTIVE DATE OF CANCELLATION

When an insurance premium finance company cancels an insurance policy by using a power of attorney signed by the insured, the effective date of cancellation as stated in the notice of cancellation shall be no earlier than the date the notice of cancellation is ~~mailed~~ sent to the insurance company.

Statutory Authority G.S. 58-2-40; 58-35-85(2).

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Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule cited as 11 NCAC 16 .0602.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 28, 1995 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action: *Necessary to comply with changes made during the last session of the General Assembly.*

Comment Procedures: *Written comments and questions should be directed to Walter James, 430 N. Salisbury Street, Raleigh, NC 27611, (919) 733-3284. Oral presentations may be made at the public hearing.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0600 - HEALTH MAINTENANCE ORGANIZATION FILINGS AND STANDARDS

.0602 HMO GENERAL FILING REQUIREMENTS

(a) All schedules of premiums for enrollee coverage for health care services and amendments to schedules of premiums that are filed with the Department shall be submitted to and stamped received by the Life and Health Division and indicate whether the filing is an original or amended filing. All data requirements prescribed by this Section must be submitted within 30 days after the date that the filing is stamped received, or the filing will be deemed to be disapproved. Subsequent data submissions for rate filings deemed to be in non-compliance with this Section shall be made directly to the Department's Actuarial Services Division within the 30 day period.

(b) All filings shall be accompanied by:

(1) A certification by ~~an~~ a qualified actuary that the premiums applicable to an enrollee are not individually determined based on the status of his health and that such premiums are established in accordance with actuarial principles for various categories of enrollees and are not excessive, inadequate, or unfairly discriminatory.

(2) Actuarial data supporting the schedule of premiums as prescribed by 11 NCAC 16 .0603, 11 NCAC 16 .0604, 11 NCAC 16 .0605, 11 NCAC 16 .0206 and 11 NCAC 16 .0207.

(c) All data and schedules that are required to be filed by this Section shall be filed in duplicate.

(d) As used in Paragraph (b) of this Rule, "qualified actuary" means an individual who is an Associate or Fellow of the Society of Actuaries or a Member of the American Academy of Actuaries and has at least three years of substantive experience in the HMO or another managed health care field.

Statutory Authority G.S. 58-2-171; 58-67-50(b); 58-67-150.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0304. Text shown in italics has been adopted by the EMC and is pending approval by the Rules Review Commission. Proposed effective date for the text in italics is January 1, 1996.

Proposed Effective Date: *April 1, 1996.*

A Public Hearing *will be conducted at 7:00 p.m. on December 5, 1995 at the Mountain Horticulture Crops Resource and Extension Center, 2016 Fanning Bridge Road, Fletcher, North Carolina.*

Reason for Proposed Action:

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

ANNOUNCEMENT OF RULE-MAKING TO RECLASSIFY THE LOWER AND UPPER FRENCH BROAD RIVERAND THE MILLS RIVER IN BUNCOMBE, HENDERSON AND TRANSYLVANIA COUNTIES

The N.C. Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission (EMC) will conduct a public hearing in order to receive public comments on a proposal to reclassify two sections of the French Broad River (referred to as the "lower" and "upper" French Broad River) and one section of the Mills River in Buncombe, Henderson and Transylvania Counties.

PROPOSAL: **LOWER FRENCH BROAD RIVER**

Affected Area: French Broad River from Mills River to a point 0.1 miles upstream of the Boring Mill Branch, including tributaries (French Broad River Basin)

Current Class: WS-IV and WS-IV CA (Critical Area)

Proposed Class: C

Affected Local Governments: Buncombe and Henderson Counties, the Town of Fletcher, and the City of Asheville

Summary: This section of the French Broad River, currently designated as a WS-IV water supply, is approximately 67,803 acres in size and is located in Buncombe and Henderson Counties. The Asheville-Buncombe Water Authority and Henderson County requested this area be reclassified from its current WS-IV water supply classification to a nonwater supply classification. This section of the French Broad is no longer planned for use as a drinking water supply source by the local governments. Four local governments have land use authority within the watershed. They are the Town of Fletcher, the City of Asheville, and Buncombe and Henderson Counties. The proposed Class C reclassification would remove the current drinking water supply WS-IV classification and the requirements for the Town of Fletcher, the City of Asheville and Buncombe and Henderson Counties to continue implementing drinking water supply ordinances for this section of the French Broad River. The classification will continue to protect all uses other than water supply, including protection as swimmable and fishable waters.

PROPOSAL: **UPPER FRENCH BROAD RIVER**

Affected Area: French Broad River from 0.5 miles downstream of Little River to a point 0.6 miles upstream of Mills River, including tributaries, is proposed as WS-IV. The French Broad River from 0.6 miles upstream of the Mills River to Mills River, including tributaries, is proposed as WS-IV CA (French Broad River Basin)

Current Class: C and WS-IV

Proposed Class: WS-IV and WS-IV CA (Critical Area)

Affected Local Governments: The Town of Laurel Park, and Henderson and Transylvania Counties

Summary: This section of the French Broad River drainage area is approximately 40,982 acres in size and is located in Henderson and Transylvania Counties. The Asheville-Buncombe Water Authority and Henderson County requested this area be reclassified as WS-IV to protect its use for drinking water supply purposes. Three local governments have land use authority within this area. They are the Town of Laurel Park, and Henderson and Transylvania Counties. The proposed reclassification to Classes WS-IV and WS-IV CA would require these local governments to adopt and implement drinking water supply ordinances for this section of the French Broad River that, at a minimum, meet the state's requirements. In turn, the state will not allow new landfills or residual application sites within the Critical Area. New industrial wastewater discharges within the Critical Area will also be required to meet more stringent effluent discharge limits. *NOTE:* A section of this area (from Mills Pond Creek to the Mills River) is already classified as WS-IV due to the overlap of the lower French Broad River. However, the section from 0.6 miles upstream of Mills River to Mills River would change from WS-IV to WS-IV CA.
The following chart summarizes the requirements related to the WS-IV water supply classification. These are the major provisions of the water supply regulation (15A NCAC 2B .0100, and .0200); to review all of them, write or call the contact person listed at the end of this announcement for more information. Local governments may adopt and implement more protective ordinances to protect the drinking water supply source, if they choose to do so.

Requirements for a WS-IV Classification

		Development Criteria		
	Wastewater Dischargers	W/O Engineered Stormwater Mgmt., Low Density Opt.	W/Engineered Stormwater Mgt., High Density Opt.	10%/70% Provision
Critical Area	Domestic & Industrial (1)	2du*/acre or up to 24% built upon area (2)	24-50% built upon area (2)	Not Allowed
Protected Area	Domestic & Industrial	2du*/acre or up to 24% built upon area (2,3)	24-70% built upon area (2,3)	Allowed

Please see the section entitled "Notes" for additional information on these requirements.

PROPOSAL: **MILLS RIVER**

Two options are proposed for the lower section of the Mills River. The Asheville-Buncombe Water Authority and Henderson County requested that the lower section of the Mills River be reclassified as WS-II. However, the state uses a system of examining the types of permitted wastewater discharges and the current land use within the proposed affected area to determine the most appropriate classification. This information is compared with the water supply watershed protection rules in order to propose a water supply classification. The size of the affected area is also considered.
The Division of Environmental Management's records indicate the presence of four domestic wastewater discharges in this section of the Mills River. The presence of these wastewater discharges qualifies this section of the river for a WS-III classification. Since the Authority and County requested a WS-II classification, we are requesting comments on the following two options: a WS-II or a WS-III classification for this section of the Mills River. The Mills River, upstream of the City of Hendersonville's water supply intake, is already classified as a WS-II and WS-I and is not affected by this proposal.

Option #1

Affected Area: Mills River from the City of Hendersonville's water supply intake to a point 0.7 miles upstream of the mouth of Mills River, including tributaries, is proposed as WS-III, and from a point 0.7 miles upstream of the mouth of the Mills River to the French Broad River is proposed as WS-III CA

Current Class: WS-IV

Proposed Class: WS-III and WS-III CA (Critical Area)

Affected Local Governments: Henderson County

Summary: The section of the Mills River proposed for reclassification is approximately 1,629 acres in size and is located in Henderson County. Ninety-four acres of the total proposed affected area is Critical Area (CA). Henderson County has land use authority for this area. The proposed reclassification to Classes WS-III and WS-III CA would require local governments having land use authority for the area proposed for reclassification to adopt and implement drinking water supply ordinances that, at a minimum, meet the state's requirements. In turn, the state would restrict new permits for wastewater discharges to this section of the Mills River. Only those that qualify for a General Permit (for example, swimming pool filter backwash) would be allowed in the Critical Area and new domestic and non-process industrial wastewater (such as non-contact cooling water discharge) would be allowed in the remainder of the watershed area proposed for reclassification.

The following chart summarizes the requirements related to the WS-III water supply classification. These are the major provisions of the water supply regulation (15A NCAC 2B .0100, and .0200); to review all of them, write or call the contact person listed below for more information. Local governments may adopt and implement more protective ordinances to protect the drinking water supply source if they choose to do so.

Requirements for a WS-III Classification

		Development Criteria		
	Wastewater Dischargers	W/O Engineered Stormwater Mgmt., Low Density Opt.	W/Engineered Stormwater Mgmt., High Density Opt.	10%/70% Provision
Critical Area	General Permits	1du*/acre or up to 12% built upon area	12-30% built upon area	Not Allowed
Balance of Watershed	Domestic & Non-process industrial	2du*/acre or up to 24% built upon area	24-50% built upon area	Allowed

Please see the section entitled "Notes" for additional information on these requirements.

Option #2

Affected Area: Mills River from the City of Hendersonville's water supply intake to a point 0.7 miles upstream of th mouth of the Mills River, including tributaries, is proposed as WS-II, and from a point 0.7 miles upstream of Mills River to the French Broad River is proposed as WS-II CA

Current Class: WS-IV

Proposed Class: WS-II and WS-II CA (Critical Area)

Affected Local Governments: Henderson County

Summary: The section of the Mills River proposed for reclassification is approximately 1,629 acres in size

and is located in Henderson County. Ninety-four acres of the total proposed affected area is Critical Area (CA). Henderson County has land use authority for this area. The proposed reclassification to Classes WS-II and WS-II CA would require local governments having land use authority for the area proposed for reclassification to adopt and implement drinking water supply ordinances that, at a minimum, meet the state's requirements. In turn, the state would restrict new permits for wastewater discharges to this section of the Mills River to only those that qualify for a General Permit (for example, swimming pool filter backwash). The Environmental Management Commission (EMC) may "grandfather in" existing wastewater discharges, but these discharges may be required to meet more stringent effluent limits.

The following chart summarizes the requirements related to the WS-II water supply classification. These are the major provisions of the water supply regulation (15A NCAC 2B .0104, and .0200); to review all of them, write or call the contact person listed below for more information. Local governments may adopt and implement more protective ordinances to protect the drinking water supply source if they choose to do so.

Requirements for a WS-II Classification

		Development Criteria		
	Wastewater Dischargers	W/O Engineered Stormwater Mgmt., Low Density Opt.	W/Engineered Stormwater Mgmt., High Density Opt.	10%/70% Provision
Critical Area	General Permits	1du*/2 acres or up to 6% built upon area	6-24% built upon area	Not Allowed
Balance of Watershed	General Permits	1du*/acre or up to 12% built upon area	12-30% built upon area	Allowed

Notes:

- Critical area is one-half mile and draining to water supply intakes in a river or stream.
- Protected Area is ten miles and draining to water supply intakes located in a river or stream.
- Requirements applicable to new development. Existing single family lots are exempt.
- Buffers required along all perennial waters indicated on most recent versions of USGS 1:24,000 scale topographic maps or as determined by local government studies; 30 foot buffer for low density and 100 foot buffer for high density development.
- Local governments will assume ultimate responsibility for the operation and maintenance of stormwater management controls.
- 10%/70% provision allows the use of 10% of each local government's jurisdiction within the watershed for new development and expansions to existing development up to 70% built-upon area, without stormwater controls, if using low density option throughout remainder of water supply.
- Residential development may apply dwelling units per acre or use percent built-upon surface area. Non-residential development must use percent built-upon surface area.
- Agricultural operations must maintain a ten foot vegetated buffer or equivalent control as determined by the Soil and Water Conservation Commission in the Critical Area (this buffer is not required outside of the Critical Area). Animal operations deemed permitted under 15A NCAC 2H .0200 are allowed in all water supply watersheds.

(1) New industrial process wastewater discharges are allowed but will require additional treatment requirements. (WS-IV)

(2) Applies only to projects requiring a Sediment/Erosion Control Permit. (WS-IV)

(3) 1/3 acre lot or 36% built-upon area is allowed for projects without a curb and gutter street system. (WS-IV)

PUBLIC INPUT: The purpose of this announcement is to encourage those interested in this proposal to provide comments. You may either attend the public hearing and make relevant verbal comments or submit written comments, data or other relevant information by January 5, 1996. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments as well.

Public Hearing:

Location: Mountain Horticulture Crops Resource & Extension Center
2016 Fanning Bridge Road
Fletcher, NC

Date: December 5, 1995
Time: 7:00 p.m.

Comment Procedure: It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed water supply reclassification being noticed. THE EMC MAY, IN ACCORDANCE WITH N.C.G.S. 150B-21.2, MAKE CHANGES IN FINAL RULES WITHOUT RENOTICE AS LONG AS THE ADOPTED RULES DO NOT DIFFER SUBSTANTIALLY FROM THE PROPOSED RULES. IN ACCORDANCE WITH THIS AUTHORITY, THE EMC MAY ADOPT FINAL MANAGEMENT REQUIREMENTS OR RULES THAT ARE MORE OR LESS STRINGENT THAN THOSE BEING NOTICED IF THE EMC DETERMINES THAT THE FINAL ADOPTED RULES DO NOT DIFFER SUBSTANTIALLY FROM THE PROPOSED RULES. ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE ANNOUNCEMENT AND SUPPORTING INFORMATION, AND COMMENT ON THE PROPOSAL PRESENTED. The proposed effective date for final rules pursuant to this rule-making process is April 1, 1996. Written comments may be submitted to the person listed below.

AUTHORITY: G.S. 143-214.1 Amendments to the Schedule of Classifications for the French Broad River Basin as referenced in 15A NCAC 2B .0304.

ADDITIONAL INFORMATION: Further explanations and details of the proposed reclassification may be obtained by writing or calling:

Steve Zoufaly
DEHNR/Division of Environmental Management
P.O. Box 29535
Raleigh, NC 27626-0535
(919) 733-5083, extension 566

Fiscal Note: *This Rule affects the expenditures or revenues of local government funds. A fiscal note was submitted to the Fiscal Research Division on September 11, 1995, OSBM on September 13, 1995.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0304 FRENCH BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

(1) Clerk of Court:
Avery County
Buncombe County
Haywood County
Henderson County
Madison County
Mitchell County
Transylvania County
Yancey County

(2) North Carolina Department of Environment, Health, and Natural Resources
Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Tennessee will be classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

(1) September 22, 1976;
(2) March 1, 1977;
(3) August 12, 1979;
(4) April 1, 1983;
(5) August 1, 1984;
(6) August 1, 1985;
(7) February 1, 1986;

(8) May 1, 1987;
(9) March 1, 1989;
(10) October 1, 1989;
(11) January 1, 1990;
(12) August 1, 1990;
(13) August 3, 1992;
(14) October 1, 1993;
(15) July 1, 1995;
(16) November 1, 1995;
(17) January 1, 1996;
(18) April 1, 1996.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

(1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.

(2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

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

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] as follows:

Option Number 1

(1) From City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS- III CA (Critical Area).

Option Number 2

(2) From City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-II, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS-II CA (Critical Area).

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

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .0531, .0804 - .0805, .0901, .0917 - .0924, .0926 - .0928, .0934 - .0935, .0937, .0951, .0953 - .0954, .1301

- .1302, .1304; 15A NCAC 2Q .0401 - .0402; and repeal rules cited as 15A NCAC 2Q .0403 - .0418.

Temporary: *Rules 15A NCAC 2D .1301 - .1302, and .1304 were filed as temporary rules effective October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *April 1, 1996.*

A Public Hearing *will be conducted at 7:00 p.m. on November 20, 1995 at the Archdale Building, Groundfloor Hearing Room, 512 N. Salisbury Street, Raleigh, North Carolina.*

Reason for Proposed Action:
15A NCAC 2D .0531, .0901 *- Clarification on definition of Volatile organic compound allowing EPA's definition to be adopted as found in the Code of Federal regulations.*
15A NCAC 2D .0804 - .0805 *- To exempt military airfields and to revise the definition of adjacent parking lots, decks, or garages.*
15A NCAC 2D .0917 - .0924, .0928, .0934 - .0935, .0937, .0951, .0953 - .0954 *- To clarify reasonably available control technology (RACT) rules, to clarify and make minor revisions to Stage I and II rules.*
15A NCAC 2D .0926 - .0927 *- To prohibit the owner or operator of a bulk gasoline terminal or bulk gasoline plant from loading a gasoline truck tank or trailer that is not certified as complying with the vacuum-pressure requirements.*
15A NCAC 2D .1301 - .1302, .1304 *- To remove the oxygenated gasoline requirement for the Raleigh/Durham Metropolitan Statistical Area.*
15A NCAC 2Q .0401 - .0418 *- To adopt the federal requirements for acid rain procedures by reference.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until December 20, 1995, to receive additional written statements. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:*

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 29580
Raleigh, NC 27626-0580
(919) 733-1489 (phone)
(919) 733-1812 (fax)

Fiscal Note: *Rules 15A NCAC 2D .0804 - .0805 affect the expenditures or revenues of local government funds.*

Fiscal Note: *Rules 15A NCAC 2D .0531, .0901, .0917 - .0924, 0926 - .0928 .0934 - .0935, .0937, .0951, .0953 - .0954, .1301 - .1302, .1304; 15A NCAC 2Q .0401 - .0418 do not affect the expenditures or revenues of local government or state funds.*

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

.0531 SOURCES IN NONATTAINMENT AREAS

(a) Applicability.

(1) Ozone Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located is designated in accordance with Part (A) or (B) of this Subparagraph and which are located in:

(A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or

(B) any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

(i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties; with the exception allowed under Paragraph (k) of this Rule;

(ii) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or

(iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

(2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.

(3) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment for ozone or carbon monoxide, all sources in

that county subject to this Rule before the redesignation date shall continue to comply with this Rule.

(b) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply. The reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.

(c) This Rule is not applicable to:

(1) complex sources of air pollution that are regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;

(2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area which are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);

(3) emission of pollutants for which the source or modification is not major;

(4) a new source or modification which qualifies for exemption under the provision of 40 CFR 51.165(a)(4); and

(5) emission of compounds that are listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide. ~~the following volatile organic compounds:~~

~~(A) carbon monoxide,~~
~~(B) carbon dioxide,~~
~~(C) carbonic acid,~~
~~(D) metallic carbides or carbonates,~~
~~(E) ammonium carbonate,~~
~~(F) methane,~~
~~(G) ethane,~~
~~(H) trichlorofluoromethane (chlorofluorocarbon 11),~~
~~(I) dichlorodifluoromethane (chlorofluorocarbon 12),~~
~~(J) chlorodifluoromethane (chlorofluorocarbon 22),~~
~~(K) trifluoromethane (fluorocarbon 23),~~
~~(L) trichlorotrifluoroethane (chlorofluorocarbon 113),~~
~~(M) dichlorotetrafluoroethane (chlorofluorocarbon 114),~~
~~(N) chloropentafluoroethane (chlorofluorocarbon 115),~~
~~(O) 1,1,1 trichloroethane (methyl chloroform),~~
~~(P) dichloromethane (methylene chloride),~~
~~(Q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),~~
~~(R) tetrafluoroethane (hydrofluorocarbon 134a),~~
~~(S) dichlorofluoroethane (hydrochlorofluorocarbon 141b),~~
~~(T) chlorodifluoroethane (hydrochlorofluorocarbon 142b),~~
~~(U) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),~~
~~(V) pentafluoroethane (hydrofluorocarbon 125),~~
~~(W) 1,1,2,2 tetrafluoroethane (hydrofluorocarbon 134),~~
~~(X) 1,1,1 trifluoroethane (hydrofluorocarbon 143a),~~
~~(Y) 1,1 difluorocarbon (hydrofluorocarbon 152a), and~~
~~(Z) perfluorocarbon compounds that fall into these classes:~~
~~(i) cyclic, branched, or linear completely fluorinated alkanes;~~
~~(ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;~~
~~(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and~~
~~(iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~

(d) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(e) To issue a permit to a source to which this Rule applies, the Director shall determine that the source will meet the following requirements:

(1) The source will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;

(2) The owner or operator of the proposed new or modified source has demonstrated that all major stationary sources in the State which are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance which is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter which EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;

(3) The source will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of lesser than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is ob-

tained. Emission reductions must not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect prior to the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions must be sufficient to represent reasonable further progress toward attaining the Ambient Air Quality Standards. The emissions reduction credits must also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G); and

(4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(f) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(g) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(h) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(i) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of Rule .0530 of this Section, the following procedures shall be followed:

(1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, industrial and other growth associated with the source or modification;

(2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;

(3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained;

(4) The Director shall only issue permits to those sources whose emissions will be consistent with making reasonable progress towards the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from man-made air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and

(5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

(j) The version of the Code of Federal Regulations incorporated in this Rule is that as of January 1, 1989, and does not include any subsequent amendments or editions to the referenced material.

(k) Paragraphs (e) and (g) of this Rule shall not apply to a new major stationary source or a major modification of a source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located has been designated in accordance with Part (a)(1)(B) of this Rule and before the area is designated in 40 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using the Urban Airshed Model (UAM), that the new source or modification will not contribute to or cause a violation. The model used shall be that maintained by the Division of Environmental Management. The Division of Environmental Management shall only run the model after the permit application has been submitted. The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source will not cause or contribute to a violation.

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

143-215.107(a)(5); 143-215.108(b).

SECTION .0800 - COMPLEX SOURCES

.0804 AIRPORT FACILITIES

(a) This Rule does not apply to military airfields.

(b) Before constructing or modifying any airport facility designed to have at least 100,000 annual aircraft operations, or at least 45 peak-hour aircraft operations (one operation equals one takeoff or one landing), the owner or developer of the airport facility shall apply for and have received a permit as described in 15A NCAC 2Q .0600, and shall comply with all terms and conditions therein.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.

.0805 PARKING FACILITIES

(a) The owner or developer of a transportation facility shall not construct or modify a parking area or associated buildings until he has applied for and received a permit under 15A NCAC 2Q .0600 where the parking area is for:

(1) construction of a new or expansion of an existing parking lot or combination of parking lots resulting in a parking capacity of at least 1500 spaces or a potential open parking area of at least 450,000 square feet (1500 spaces at 300 square feet per stall);

(2) modification of an existing parking lot or combination of parking lots with a parking capacity of at least 1500 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces;

(3) construction of a new or expansion of an existing parking deck or garage resulting in a parking capacity of at least 750 spaces or a potential parking area of at least 225,000 square feet (750 spaces at 300 square feet per stall);

(4) modification of an existing parking deck or garage with a parking capacity of at least 750 spaces that will be expanded by at least 250 spaces beyond the last permitted number of spaces;

(5) construction of a new or expansion of an existing combination of parking lots, decks, and garages resulting in a parking capacity of at least 1000 spaces or a potential parking area of at least 300,000 square feet; or

(6) modification of an existing combination of parking lots, decks, and garages with a parking capacity of at least 1000 spaces that will be expanded by at least 500 spaces beyond the last permitted number of spaces.

(b) New or modified parking lots, decks, or garages with a parking capacity of 500 or more spaces and existing or proposed parking facilities that:

(1) are directly adjacent to each other and the combined parking capacities are greater than those defined in Paragraph (a) of this Rule, and

(2) use the same public roads or traffic network,

shall be considered one lot or deck. Transportation facilities are considered to be directly adjacent if they are within 100 meters of each other in a suburban or rural area or 50 meters of each other in an urban area and if there are no existing physical barriers, such as, buildings or terrain. ~~Parking lots, decks, or garages that are connected such that a person may drive from one to another without having to travel on a public street or road shall be considered one lot or deck. Parking lots, decks, or garages of common ownership separated by a public street or road but within 150 feet of one another and with no existing physical barrier (e.g. buildings, terrain, etc.) will be considered one facility for permit and modeling purposes.~~

(c) Temporary barriers shall not be used to reduce the capacity of an otherwise affected transportation facility to less than the amount which requires permitting. The design and plan shall clearly show the total parking capacity.

(d) Phased construction shall be evaluated and permitted for a period not to exceed five years from the date of application.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.109.

SECTION .0900 - VOLATILE ORGANIC COMPOUNDS

.0901 DEFINITIONS

For the purpose of this Section, the following definitions apply:

(1) "Coating" means a functional, protective, or decorative film applied in a thin layer to a surface.

(2) "Coating applicator" means an apparatus used to apply a surface coating.

(3) "Coating line" means one or more apparatus or operations in a single line wherein a surface coating is applied, dried, or cured and which include a coating applicator and flashoff area and may include an oven or associated control devices.

(4) "Continuous vapor control system" means a vapor control system which treats vapors displaced from tanks during filling on a demand basis without intermediate accumulation.

(5) "Delivered to the applicator" means the condition of coating after dilution by the user just before application to the substrate.

(6) "Flashoff area" means the space between the application area and the oven.

(7) "High solids coating" means a coating which contains a higher percentage of solids and a lower percentage of volatile organic compounds and water thereby potentially lowering volatile organic compound emissions; usually paints with greater than 60 percent solids by volume are considered high solids coatings although the term is often applied to any coating that meets the Environmen-

tal Protection Agency Control Technology Guidelines.

(8) "Hydrocarbon" means any organic compound of carbon and hydrogen only.

(9) "Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

(10) "Intermittent vapor control system" means a vapor control system which employs an intermediate vapor holder to accumulate vapors displaced from tanks during filling. The control device treats the accumulated vapors only during automatically controlled cycles.

(11) "Loading rack" means an aggregation or combination of loading equipment arranged so that all loading outlets in the combination can be connected to a tank truck or trailer parked in a specified loading space.

(12) "Low solvent coating" means a coating which contains a substantially lower amount of volatile organic compound than conventional organic solvent borne coatings; it usually falls into one of three major groups of high solids, waterborne, or powder coatings.

(13) "Organic material" means a chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

(14) "Oven" means a chamber within which heat is used to bake, cure, polymerize, or dry a surface coating.

(15) "Potential emissions" means the quantity of a pollutant which would be emitted at the maximum capacity of a stationary source to emit the pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is described or contained as a condition in the federally enforceable permit. Secondary emissions do not count in determining potential emissions of a stationary source. Fugitive emissions count, to the extent quantifiable, in determining the potential emissions only in these cases:

(a) petroleum refineries;

(b) chemical process plants; and

(c) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(16) "Prime coat" means the first film of coating applied to a surface to protect it or to prepare it to receive subsequent coatings.

(17) "Reasonably available control technology" (also denoted as RACT) means the lowest emission limit which a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. It may require technology which has been applied to similar, but not necessarily identical, source categories.

(18) "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials, Part 17, 1973, D-323-72 (reapproved 1977).

(19) "Shutdown" means the cessation of operation of a source or a part thereof or emission control equipment.

(20) "Solvent" means organic materials which are liquid at standard conditions and which are used as dissolvers, viscosity reducers, or cleaning agents.

(21) "Standard conditions" means a temperature of 68°F and pressure of 29.92 inches of mercury.

(22) "Startup" means the setting in operation of a source or emission control equipment.

(23) "Substrate" means the surface to which a coating is applied.

(24) "Topcoat" means the final films of coating applied in a multiple or single coat operation.

(25) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962.

(26) "Vapor collection system" means a vapor transport system which uses direct displacement by the liquid loaded to force vapors from the tank into a vapor control system.

(27) "Vapor control system" means a system which prevents release to the atmosphere of at least 90 percent by weight of organic compounds in the vapors displaced from a tank during the transfer of gasoline.

(28) "Volatile organic compound" (also denoted as VOC) means any compound of carbon whose volatile content can be determined by the procedure described in Rules .0913 or .0939 of this Section ~~excluding:~~ excluding any compound that is listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity.

~~(a) carbon monoxide,~~

~~(b) carbon dioxide,~~

~~(c) carbonic acid,~~

~~(d) metallic carbides or carbonates,~~

~~(e) ammonium carbonate,~~

~~(f) methane,~~
~~(g) ethane,~~
~~(h) trichlorofluoromethane (chlorofluorocarbon 11),~~
~~(i) dichlorodifluoromethane (chlorofluorocarbon 12),~~
~~(j) chlorodifluoromethane (chlorofluorocarbon 22),~~
~~(k) trifluoromethane (fluorocarbon 23),~~
~~(l) trichlorotrifluoroethane (chlorofluorocarbon 113),~~
~~(m) dichlorotetrafluoroethane (chlorofluorocarbon 114),~~
~~(n) chloropentafluoroethane (chlorofluorocarbon 115),~~
~~(o) 1,1,1 trichloroethane (methyl chloroform),~~
~~(p) dichloromethane (methylene chloride),~~
~~(q) dichlorotrifluoroethane (hydrochlorofluorocarbon 123),~~
~~(r) tetrafluoroethane (hydrofluorocarbon 134a),~~
~~(s) dichlorofluoroethane (hydrochlorofluorocarbon 141b),~~
~~(t) chlorodifluoroethane (hydrochlorofluorocarbon 142b),~~
~~(u) 2-chloro-1,1,1,2-tetrafluoroethane (hydrochlorofluorocarbon 124),~~
~~(v) pentafluoroethane (hydrofluorocarbon 125),~~
~~(w) 1,1,2,2-tetrafluoroethane (hydrofluorocarbon 134),~~
~~(x) 1,1,1 trifluoroethane (hydrofluorocarbon 143a),~~
~~(y) 1,1 difluorocarbon (hydrofluorocarbon 152a), and~~
~~(z) perfluorocarbon compounds that fall into these classes:~~
~~(i) cyclic, branched, or linear completely fluorinated alkanes;~~
~~(ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;~~
~~(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and~~
~~(iv) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.~~

Statutory Authority G.S. 143-215.3(a)(1).

.0917 AUTOMOBILE AND LIGHT-DUTY TRUCK MANUFACTURING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Application area" means the area where the coating is applied by dipping or spraying.

(2) "Manufacturing plant" means a facility where auto body parts are manufactured ~~and/or~~ or finished for eventual inclusion into a finished product ready for sale to vehicle dealers. Customizers, body shops and other repainters are not part of this definition.

(3) "Automobile" means all passenger cars or passenger car derivatives capable of seating 12 or fewer passengers.

(4) "Light-duty trucks" means any motor vehicles rated at 8,500 pounds gross weight or less which are designed primarily for purpose of transportation or are derivatives of such vehicles except automobiles.

(b) This ~~Regulation~~ Rule applies to the application area(s), flashoff area(s), and oven(s), of automotive and light-duty truck manufacturing plants involved in prime, topcoat and final repair coating operations.

(c) With the exception stated in Paragraph (d) of this Rule, emissions of volatile organic compounds from any automotive or light-duty truck manufacturing plant coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 1.4 pounds of volatile organic compounds per gallon of solids delivered to the applicator from prime application, flashoff area, and oven operations;

(2) 4.5 pounds of volatile organic compounds per gallon of solids delivered to the applicator from topcoat and surface application, flashoff area, and oven operation;

(3) 13.8 pounds of volatile organic compounds per gallon of solids delivered to the applicator from final repair application, flashoff area, and oven operation.

(d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any automotive or light-duty truck manufacturing plant coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 1.2 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the applicator from prime application, flashoff area, and oven operations;

(2) 2.8 pounds of volatile organic compounds per gallon of coating, daily weighted average, excluding water and exempt compounds, delivered to the applicator from topcoat and surface application, flashoff area, and oven operation;

(3) 4.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the applicator from final repair application, flashoff area, and oven operation.

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

.0918 CAN COATING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "End sealing compound" means a synthetic rubber compound which is coated onto can ends and which functions as a gasket when the end is assembled on the can.

(2) "Exterior base coating" means a coating applied to the exterior of a can to provide exterior protection to the metal and to provide background for the lithographic or printing operation.

(3) "Interior base coating" means a coating applied by roller coater or spray to the interior of a can to provide a protective lining between the can metal and product.

(4) "Interior body spray" means a coating sprayed on the interior of the can body to provide a protective film between the product and the can.

(5) "Overvarnish" means a coating applied directly over ink to reduce the coefficient of friction, to provide gloss, and to protect the finish against abrasion and corrosion.

(6) "Three-piece can side-seam spray" means a coating sprayed on the exterior and interior of a welded, cemented, or soldered seam to protect the exposed metal.

(7) "Two-piece can exterior end coating" means a coating applied by roller coating or spraying to the exterior end of a can to provide protection to the metal.

(b) This ~~Regulation~~ Rule applies to coating applicator(s) and oven(s) of sheet, can, or end coating lines involved in sheet basecoat (exterior and interior) and overvarnish; two-piece can interior body spray; two-piece can exterior end (spray or roll coat); three-piece can side-seam spray and end sealing compound operations.

(c) With the exception stated in Paragraph (d) of this Rule, emissions of volatile organic compounds from any can coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 4.5 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from sheet basecoat (exterior and interior) and overvarnish or two-piece can exterior (basecoat and overvarnish) operations;

(2) 9.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from two and three-piece can interior body spray and two-piece can exterior end (spray or roll coat) operations;

(3) 21.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from a three-piece applicator from a three-piece can side-seam spray operations;

(4) 7.4 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from end sealing compound operations.

(d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any can coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 2.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from sheet basecoat (exterior and interior) and overvarnish or two-piece can exterior (basecoat and overvarnish) operations;

(2) 4.2 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from two and three-piece can interior body spray and two-piece can exterior end (spray or roll coat) operations;

(3) 5.5 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from a three-piece applicator from a three-piece can side-seam spray operations;

(4) 3.7 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from end sealing compound operations.

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

.0919 COIL COATING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Coil coating" means the coating of any flat metal sheet or strip that comes in rolls or coils.

(2) "Quench area" means a chamber where the hot metal exiting the oven is cooled by either a spray of water or a blast of air followed by water cooling.

(b) This ~~Regulation~~ Rule applies to the coating applicator(s), oven(s), and quench area(s) of coil coating lines involved in prime and top coat or single coat operations.

(c) With the exception stated in Paragraph (d) of this Rule, emissions of volatile organic compounds from any coil coating line subject to this ~~Regulation~~ Rule shall not exceed 4.0 pounds of volatile organic compounds per gallon of solids delivered to the coating ~~application~~ applicator from prime and topcoat or single coat operations.

(d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead

of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any coil coating line subject to this ~~Regulation~~ Rule shall not exceed 2.6 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from prime and topcoat or single coat operations.

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

.0920 PAPER COATING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife that spreads the coating evenly over the full width of the substrate.

(2) "Paper coating" means decorative, protective, or functional coatings put on paper and pressure sensitive tapes regardless of substrate; the coatings are distributed uniformly across the web. Related web coating processes on plastic film and decorative coatings on metal foil are included in this definition. Saturation operations are included in this definition.

(3) "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

(4) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the substance to be applied is temporarily retained in etchings on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

(b) This ~~Regulation~~ Rule applies to roll, knife or rotogravure coater(s) and drying oven(s) of paper coating lines.

~~(c) This Regulation does not apply to:~~

~~(1) the graphic arts or printing, or~~

~~(2) processes in which the coating is not distributed uniformly across the web, or~~

~~(3) processes where both coating and printing are performed on the same machine.~~

~~(d)~~ (c) With the exception stated in Paragraph ~~(e)~~ (d) of this Rule, emissions of volatile organic compounds from any paper coating line subject to this ~~Regulation~~ Rule shall not exceed 4.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from a paper coating line.

~~(e)~~ (d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518 (e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c)~~(d)~~ of this Rule. Emissions of volatile organic compounds from any paper coating line subject to this ~~Regulation~~ Rule shall not exceed 2.9 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from a paper coating line.

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

.0921 FABRIC AND VINYL COATING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Fabric coating" means applying protective or functional coatings to a textile substance with a knife, roll, rotogravure, rotary screen, or flat screen coater to impart properties that are not initially present, such as strength, stability, water or acid repellency, or appearance. Printing on textile fabric for decorative or other purposes is not part of this definition. Saturation operations are included in this definition.

(2) "Knife coating" means the application of a coating material to a substrate by means of drawing the substrate beneath a knife which spreads the coating evenly over the full width of the substrate.

(3) "Roll coating" means the application of a coating material to a substrate by means of hard rubber or steel rolls.

(4) "Rotogravure coating" means the application of a coating material to a substrate by means of a roll coating technique in which the pattern to be applied is etched on the coating roll. The coating material is picked up in these recessed areas and is transferred to the substrate.

(5) "Vinyl coating" means applying a functional, decorative, or protective topcoat, or printing on vinyl coated fabric or vinyl sheets.

(6) "Rotary screen or flat screen coating" means the application of a coating material to a substrate by means of masking the surface and applying a color or finish using a screen either in flat form or rotary form.

(b) This ~~Regulation~~ Rule applies to roll, knife, rotogravure, rotary screen, or flat screen coater(s) and drying oven(s) of fabric and vinyl coating lines.

(c) With the exception stated in Paragraph (d) of this Rule, emissions of volatile organic compounds from any fabric coating line or vinyl coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 4.8 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from a fabric coating line;

(2) 7.9 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from a vinyl coating line.

(d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any fabric coating line or vinyl coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 2.9 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from a fabric coating line;

(2) 3.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from a vinyl coating line.

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

.0922 METAL FURNITURE COATING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.

(2) "Metal furniture coating" means the surface coating of any furniture made of metal or any metal part which will be assembled with other metal, wood, fabric, plastic, or glass parts to form a furniture piece.

(b) This ~~Regulation~~ Rule applies to the application area(s), flashoff area(s), and oven(s) of metal furniture coating lines involved in prime and topcoat or single coating operations.

(c) With the exception stated in Paragraph (d) of this Rule, emissions of volatile organic compounds from any metal furniture coating line subject to this ~~Regulation~~ Rule shall not exceed 5.1 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from prime and topcoat or single coat operations.

(d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any metal furniture coating line subject to this ~~Regulation~~ Rule shall not exceed 3.0 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from prime and topcoat or single coat operations.

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

.0923 SURFACE COATING OF LARGE APPLIANCES

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Application area" means the area where the coating is applied by spraying, dipping, or flowcoating techniques.

(2) "Single coat" means a single film of coating applied directly to the metal substrate omitting the primer application.

(3) "Large appliances" means doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other similar products.

(b) This ~~Regulation~~ Rule applies to application area(s), flashoff area(s), and oven(s) of large appliance coating lines involved in prime, single, or topcoat coating operations.

~~(c) This Regulation does not apply to the use of quick-drying lacquers for repair of scratches and nicks which occur during assembly, if the volume of coating does not exceed one quart in any eight hour period.~~

~~(d)~~ (c) With the exception stated in Paragraph ~~(c)~~ (d) of this Rule, emissions of volatile organic compounds from any large appliance coating line subject to this ~~Regulation~~ Rule shall not exceed 4.5 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from prime, single, or topcoat coating operations.

~~(c)~~ (d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518 (e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph ~~(d)~~ (c) of this Rule. Emissions of volatile organic compounds from any large appliance coating line subject to this ~~Regulation~~ Rule shall not exceed 2.8 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from prime, single, or topcoat coating operations.

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

.0924 MAGNET WIRE COATING

(a) For the purpose of this ~~Regulation~~ Rule, "magnet wire coating" means the process of applying a coating of electrically insulating varnish or enamel to aluminum or copper wire for use in electrical machinery.

(b) This ~~Regulation~~ Rule applies to the oven(s) of magnet wire coating operations.

(c) With the exception stated in Paragraph (d) of this

Rule, emissions of volatile organic compounds from any magnet wire coating oven subject to this ~~Regulation~~ Rule shall not exceed 2.2 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator from magnet wire coating operations.

(d) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (c) of this Rule. Emissions of volatile organic compounds from any magnet wire coating oven subject to this ~~Regulation~~ Rule shall not exceed 1.7 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to the coating applicator from magnet wire coating operations.

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

.0926 BULK GASOLINE PLANTS

(a) For the purpose of this Rule, the following definitions apply:

(1) "Average daily throughput" means annual throughput of gasoline divided by 312 days per year.

(2) "Bottom filling" means the filling of a tank truck or stationary storage tank through an opening that is flush with the tank bottom.

(3) "Bulk gasoline plant" means a gasoline storage and distribution facility which has an average daily throughput of less than 20,000 gallons of gasoline and which usually receives gasoline from bulk terminals by trailer transport, stores it in tanks, and subsequently dispenses it via account trucks to local farms, businesses, and service stations.

(4) "Bulk gasoline terminal" means a gasoline storage facility which usually receives gasoline from refineries primarily by pipeline, ship, or barge; and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.

(5) "Gasoline" means any petroleum distillate having a Reid vapor pressure of four psia or greater.

(6) "Incoming vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank truck or trailer and a receiving stationary storage tank such that vapors displaced from the receiving stationary storage tank are transferred to the tank truck or trailer being unloaded.

(7) "Outgoing vapor balance system" means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading stationary storage tank and a receiving tank truck or trailer such that vapors displaced from the receiving tank truck or trailer are transferred to the stationary storage tank being unloaded.

(8) "Splash filling" means the filling of a tank truck or stationary storage tank through a pipe or hose whose discharge opening is above the surface level of the liquid in the tank being filled.

(9) "Submerged filling" means the filling of a tank truck or stationary tank through a pipe or hose whose discharge opening is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or whose discharge opening is entirely submerged when the liquid level is six inches above the bottom of the tank.

(b) This Rule applies to the unloading, loading, and storage facilities of all bulk gasoline plants and of all tank trucks or trailers delivering or receiving gasoline at bulk gasoline plants except stationary storage tanks with capacities less than 528 gallons.

(c) The owner or operator of a bulk gasoline plant shall not transfer gasoline to any stationary storage tanks after May 1, 1993, unless the unloading tank truck or trailer and the receiving stationary storage tank are equipped with an incoming vapor balance system as described in Paragraph ~~(g)~~ (i) of this Rule and the receiving stationary storage tank is equipped with a fill line whose discharge opening is flush with the bottom of the tank.

(d) The owner or operator of a bulk gasoline plant with an average daily gasoline throughput of 4,000 gallons or more shall not load tank trucks or trailers at such plant after May 1, 1993, unless the unloading stationary storage tank and the receiving tank truck or trailer are equipped with an outgoing vapor balance system as described in Paragraph (i) of this Rule and the receiving tank truck or trailer is equipped for bottom filling.

(e) The owner or operator of a bulk gasoline plant with an average daily throughput of more than 2,500 gallons but less than 4,000 gallons located in an area with a housing density exceeding specified limits as described in this Paragraph shall not load any tank truck or trailer at such bulk gasoline plant after November 1, 1996, unless the unloading stationary storage tank and receiving tank truck or trailer are equipped with an outgoing vapor balance system as described in Paragraph (i) of this Rule and the receiving tank truck or trailer is equipped for bottom filling. In the counties of Alamance, Buncombe, Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, New Hanover, Orange, Rowan, and Wake, the specified limit on housing density is 50 residences in a square one mile on a side with the square centered on the loading rack at the bulk gasoline plant and

with one side oriented in a true North-South direction. In all other counties the specified limit on housing density is 100 residences per square mile. The housing density shall be determined by counting the number of residences using aerial photographs or other suitable methods acceptable to the Director.

(f) The owner or operator of a bulk gasoline plant not subject to the outgoing vapor balance system requirements of Paragraph (d) or (e) of this Rule shall not load trucks or trailers at such plants unless:

(1) Equipment is available at the bulk gasoline plant to provide for submerge filling of each tank truck or trailer; or

(2) Each receiving tank truck or trailer is equipped for bottom filling.

(g) For a gasoline bulk plants located in nonattainment area for ozone, once the average daily throughput of gasoline at the bulk gasoline plant reaches or exceeds the applicability threshold in Paragraph (d) or (e) of this Rule or if Paragraph (d) or (e) is currently applicable to the bulk gasoline plant, the bulk gasoline plant shall continue to comply with the outgoing vapor balance system requirements of Paragraph (d) or (e) of this Rule, as is applicable, even though the average daily gasoline throughput falls below the threshold contained in Paragraph (d) or (e) of this Rule.

(h) The owner or operator of a bulk gasoline plant, tank truck or trailer that is required to be equipped with a vapor balance system pursuant to Paragraphs (c), (d), or (e) of this Rule shall not transfer gasoline between tank truck or trailer and stationary storage tank unless:

(1) The vapor balance system is in good working order and is connected and operating;

(2) Tank truck or trailer hatches are closed at all times during loading and unloading operations; and

(3) The tank truck's or trailer's pressure/vacuum relief valves and hatch covers and the truck tanks or storage tanks or associated vapor and liquid lines are vapor tight during loading or unloading.

(i) Vapor balance systems required under Paragraphs (c), (d), and (e) of this Rule shall consist of the following major components:

(1) a vapor space connection on the stationary storage tank equipped with fittings which are vapor tight and will be automatically and immediately closed upon disconnection so as to prevent release of organic material;

(2) a connecting pipe or hose equipped with fittings which are vapor tight and will be automatically and immediately closed upon disconnection so as to prevent release of organic material; and

(3) a vapor space connection on the tank truck or trailer equipped with fittings which are vapor tight and will be automatically and immediately closed upon disconnection so as to prevent release of organic material.

(j) The owner or operator of a bulk gasoline plant shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or before November 1, 2002, whichever is sooner.

(k) The pressure relief valves on tank trucks or trailers loading or unloading at bulk gasoline plants shall be set to release at the highest possible pressure (in accordance with state or local fire codes or the National Fire Prevention Association guidelines). The pressure relief valves on stationary storage tanks shall be set at 0.5 psi for storage tanks placed in service on or after November 1, 1992, and 0.25 psi for storage tanks existing before November 1, 1992.

(l) No owner or operator of a bulk gasoline plant may permit gasoline to be spilled, discarded in sewers, stored in open containers, or handled in any other manner that would result in evaporation.

(m) The owner or operator of a bulk gasoline plant shall observe loading and unloading operations and shall discontinue the transfer of gasoline:

(1) if any liquid leaks are observed, or

(2) if any vapor leaks are observed where a vapor balance system is required under Paragraphs (c), (d), or (e) of this Rule.

(n) The owner or operator of a bulk gasoline plant shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight in accordance with Rule .0933 of this Section within the last 12 months.

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

.0927 BULK GASOLINE TERMINALS

(a) For the purpose of this Rule, the following definitions apply:

(1) "Bulk gasoline terminal" means:

(A) breakout tanks of an interstate oil pipeline facility; or

(B) a gasoline storage facility which usually receives gasoline from refineries primarily by pipeline, ship, or barge; and delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.

(2) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.

(3) "Breakout tank" means a tank used to:

(A) relieve surges in a hazardous liquid pipeline system, or

(B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or

trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:

(1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding:

(A) 80 milligrams per liter (4.7 grains per gallon) of gasoline loaded for control systems installed before December 1, 1992 until December 1, 1995 or the next major modification, whichever occurs first; after December 1, 1995 or at the next major modification, these control systems shall prevent emissions of volatile organic compounds from exceeding 35 milligrams per liter of gasoline loaded;

(B) 35 milligrams per liter for control systems installed after December 1, 1992; and that is properly installed, in good working order, and in operation. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;

(2) Displaced vapors and gases are vented only to the vapor control system or to a flare;

(3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and

(4) All loading and vapor lines are equipped with fittings which make vapor-tight connections and which are automatically and immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this Rule shall not:

(1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or

(2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all new tanks storing gasoline at a bulk gasoline terminal when put into service and shall be required on all existing tanks storing gasoline at a bulk gasoline terminal by December 1, 1995:

(1) rim-mounted secondary seals on all external and internal floating roof tanks,

(2) welded seams where possible, otherwise gaskets on roof and deck fittings, and

(3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

(1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and

(2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter, the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved as a result of compliance with this Rule, in the ratio of at least 1.3 to 1.

(i) The owner or operators of a bulk gasoline terminal that has been permitted before December 1, 1992, to emit toxic air pollutants under 15A NCAC 2H .0610 to comply with Section .1100 of this Subchapter shall continue to adhere to all terms and conditions of the permit issued under 15A NCAC 2H .0610 and to bring the terminal into compliance with Section .1100 of this Subchapter in accordance with the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (h) of this Rule.

(j) Within one year after December 1, 1996, the Director shall determine the incremental ambient benzene levels at the fence line of any bulk gasoline terminal cluster resulting from benzene emissions from such cluster and shall report his findings to the Commission.

(k) The owner or operator of any bulk gasoline terminal subject to this Rule that begins construction or is in operation before December 1, 1992, shall submit:

(1) documentation that the control system meets the limit of 35 milligrams per liter required under Paragraph (c) of this Rule and that the requirements of Paragraph (g) of this Rule have been met, or

(2) a compliance schedule by which the bulk gasoline terminal shall come into compliance by December 1, 1995, with Paragraphs (c) or (g) of this Rule.

(l) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight in accordance with Rule .0933 of this Section within the last 12 months.

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

.0928 GASOLINE SERVICE STATIONS STAGE I

(a) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.

(2) "Delivery vessel" means tank trucks or trailers equipped with a storage tank and used for the transport of gasoline from sources or supply to stationary storage tanks of gasoline dispensing facilities.

(3) "Submerged fill pipe" means any fill pipe with a discharge opening which is entirely submerged when the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or which is entirely submerged when the level of the liquid is:

(A) six inches above the bottom of the tank if the tank does not have a vapor recovery adaptor, or

(B) 12 inches above the bottom of the tank if the tank has a vapor recovery adaptor.

If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank.

(4) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.

(5) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

(6) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(7) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks.

(8) "Throughput" means the amount of gasoline dispensed at a facility during a calendar month after November 15, 1990.

(9) "Line" means any pipe suitable for transferring ~~fluids~~ gasoline.

(10) "Dual point system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage ~~tanks~~ tank occurs ~~occur~~ through two separate openings in the storage tank and two separate hoses between the tank truck and the stationary storage tank.

(11) "Coaxial system" means the delivery of the product and recovery of vapors occur through a single coaxial fill tube, which is a tube within a tube. Product is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube.

(12) "Poppeted vapor recovery adaptor" means a vapor recovery adaptor that automatically and immediately closes itself when the vapor return line is disconnected and maintains a tight seal when the vapor return line is not connected.

(13) "Stationary storage tank" means a gasoline storage container which is a permanent fixture.

(b) Applicability. This Rule applies to all gasoline dispensing facilities and gasoline service stations and to delivery vessels delivering gasoline to a gasoline dispensing facility or gasoline service station.

(c) Exemptions. This Rule does not apply to:

(1) transfers made to storage tanks ~~of~~ at gasoline dispensing facilities or gasoline service stations equipped with floating roofs or their equivalent;

(2) stationary tanks with a capacity of not more than 2,000 gallons which are in place before July 1, 1979, if the tanks are equipped with a permanent or portable submerged fill pipe;

(3) stationary storage tanks with a capacity of not more than 550 gallons which are installed after June 30, 1979, if tanks are equipped with a permanent or portable ~~(portable)~~ submerged fill pipe;

(4) stationary storage tanks with a capacity of not more than 2000 gallons located on a farm or a residence and used to store gasoline for farm equipment or residential use if gasoline is delivered to the tank through a permanent or portable ~~(portable)~~ submerged fill pipe except that this exemption does not apply in ozone non-attainment areas;

(5) stationary storage tanks at a gasoline dispensing facility or gasoline service ~~stations~~ station where the combined annual throughput of gasoline at the facility or station does not exceed 50,000 gallons, if the tanks are permanently equipped with submerged fill pipes;

(6) any tanks used exclusively to test the fuel dispensing meters.

(d) With exceptions stated in Paragraph (c) of this Rule, gasoline shall not be transferred from any delivery vessel into any stationary storage tank unless:

(1) The tank is equipped with a submerged fill pipe, and the vapors displaced from the storage tank during filling are controlled by a vapor control system as described in Paragraph (e) of this Rule;

(2) The vapor control system is in good working order and is connected and operating with a vapor tight connection;

(3) The vapor control system is properly maintained and all damaged or malfunctioning components or elements of design are repaired, replaced or modified;

(4) Gauges, meters, or other specified testing de-

vices are maintained in proper working order;

(5) The delivery vessel and vapor collection system complies with Rule .0932 of this Section; and

(6) The following records, as a minimum, are kept in accordance with Rule .0903 of this Section:

(A) the scheduled date for maintenance or the date that a malfunction was detected;

(B) the date the maintenance was performed or the malfunction corrected; and

(C) the component or element of design of the control system repaired, replaced, or modified.

(e) The vapor control system required by Paragraph (d) of this Rule shall include one or more of the following:

(1) a vapor-tight line from the storage tank to the delivery vessel and:

(A) for a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor;

(B) for a dual point vapor recovery system, poppeted vapor recovery adaptor; or

(2) a refrigeration-condensation system or equivalent designed to recover at least 90 percent by weight of the organic compounds in the displaced vapor.

(f) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line except when the vapor return line is being connected or disconnected.

(g) If an unpoppeted vapor recovery adaptor is used pursuant to Part (e)(1)(A) of this Rule, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or is removed and upgraded.

(h) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters shall be used. No more than one tank is to be loaded at a time if the manifold vapor lines are size 2 ½ inches and smaller. If the manifold vapor lines are 3 inches and larger, then two tanks at a time may be loaded.

(i) Vent lines on tanks with Stage I controls shall have pressure release valves or restrictors.

(j) The vapor-laden delivery vessel:

(1) shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport with the exception of normal pressure/vacuum venting as required by regulations of the Department of Transportation; and

(2) if it is refilled in North Carolina, shall be refilled only at:

(A) bulk gasoline plants complying with Rule .0926 of this Section, or

(B) bulk gasoline terminals complying with Rule .0927 of this Section or Rule .0524 of this Subchapter.

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

.0934 COATING OF MISCELLANEOUS METAL PARTS AND PRODUCTS

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Heat sensitive material" means materials that cannot be exposed to temperatures greater than 180°F to 200°F.

(2) "Air dried coating" means coatings which are dried by the use of air or a forced air drier.

(3) "Clear coat" means a coating which lacks color and opacity.

(4) "Extreme performance coatings" means coatings designed for harsh exposure or extreme environmental conditions.

(5) "Extreme environmental conditions" means exposure to:

(A) the weather at all times;

(B) temperatures consistently above 203°F;

(C) detergents, scouring, solvents, or corrosive atmospheres; or

(D) other similar environmental conditions.

(b) This ~~Regulation~~ Rule applies to application areas, flashoff areas, ovens and other processes that are used in the coating of metal parts and products of the following types of manufacturing plants:

(1) large farm machinery including harvesting, fertilizing and planting machines, tractors, combines, and other similar machines;

(2) small farm machinery including lawn and garden tractors, lawn mowers, rototillers, and other similar machines;

(3) small appliances including fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, and other similar machines;

(4) commercial machinery including computers and auxiliary equipment, typewriters, calculators, vending machines, and other similar machines;

(5) industrial machinery including pumps, compressors, conveyor components, fans, blowers, transformers, and other similar machines;

(6) fabricated metal products including metal covered doors, frames and other similar structures; and

(7) any other manufacturing plant that coats metal parts or products.

(c) This ~~Regulation~~ Rule does not apply to:

(1) sources covered by ~~Regulations~~ Rule .0917, .0918, .0919, .0922, .0923, and .0924 of this Section;

(2) architectural and maintenance coating;

(3) coating of airplane exterior;

(4) automobile refinishing;

(5) customized coating of automobiles and trucks; or

(6) exterior of marine vessels.

(d) With the exception stated in Paragraph (e) of this Rule, emissions of volatile organic compounds from any coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 10.3 pounds of volatile organic compounds per gallon of solids delivered to a coating applicator that applies clear coatings;

(2) 6.7 pounds of volatile organic compounds per gallon of solids delivered to a coating applicator in a coating application system that utilized air or forced air driers;

(3) 6.7 pounds of volatile organic compounds per gallon of solids delivered to a coating applicator that applies extreme performance coatings;

(4) 5.1 pounds of volatile organic compounds per gallon of solids delivered to a coating applicator that applies coatings of frequent color changes or of a large number of colors or applies the coating that is the first coat on untreated ferrous substrate; or

(5) where there are no or infrequent color changes or a small number of colors is applied:

(A) 0.4 pounds of volatile organic compounds per gallon of solids delivered to a coating applicator that applies powder coatings; or

(B) 5.1 pounds of volatile organic compounds per gallon of solids delivered to a coating applicator for any other type of coating.

Whenever more than one of the aforementioned emission limitations may apply to a process, then the least stringent emission limitation shall apply to the process.

(e) Any source which has chosen to control emissions of volatile organic compounds under Rule .0518(e) of this Subchapter and which has installed air pollution control equipment in accordance with an air quality permit in order to comply with this Rule before December 1, 1989, may comply with the limits contained in this Paragraph instead of those contained in Paragraph (d) of this Rule. Emissions of volatile organic compounds from any coating line subject to this ~~Regulation~~ Rule shall not exceed:

(1) 4.3 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to a coating applicator that applies clear coatings;

(2) 3.5 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to a coating applicator in a coating application system that utilized air or forced air driers;

(3) 3.5 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to a coating applicator that applies extreme performance coatings;

(4) 3.0 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to a coating applicator that applies coatings of frequent color changes or of a large number of colors or applies the coating that is the first coat on untreated ferrous substrate; or

(5) where there are no or infrequent color changes or a small number of colors is applied:

(A) 0.4 pounds of volatile organic compounds per gallon of coating, excluding water and exempt compounds, delivered to a coating applicator that applies powder coatings; or

(B) 3.0 pounds of volatile organic compounds per gallon, excluding water and exempt solvents, delivered to a coating applicator for any other type of coating.

Whenever more than one of the aforementioned emission limitations may apply to a process, then the least stringent emission limitation shall apply to the process.

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

.0935 FACTORY SURFACE COATING OF FLAT WOOD PANELING

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Class II hardboard paneling finishes" means finishes which meet the specifications of Voluntary Product Standard PS-59-73 as approved by the American National Standards Institute.

(2) "Hardboard" is a panel manufactured primarily from inter-felted lignocellulosic fibers which are consolidated under heat and pressure in a hot-press.

(3) "Hardwood plywood" means plywood whose surface layer is a veneer of hardwood.

(4) "Natural finish hardwood plywood panel" means a panel whose original grain pattern is enhanced by essentially transparent finishes frequently supplemented by fillers and toners.

(5) "Particle board" means a manufactured board made of individual wood particles which have been coated with a binder and formed into flat sheets by pressure. Thin particleboard has a thickness of one-fourth inch or less.

(6) "Printed panel" means a panel whose grain or natural surface is obscured by fillers and basecoats upon which a simulated grain or decorative pattern is printed.

(7) "Tileboard" means paneling that has a colored waterproof surface coating.

(b) This ~~Regulation~~ Rule applies to factory finishing of the following flat wood products:

(1) printed interior wall panels made of hardwood plywood and thin particleboard;

(2) natural finish hardwood plywood panels; and

(3) class II finishes of hardboard paneling.

(c) This ~~Regulation~~ Rule does not apply to the following factory finished flat wood products:

(1) exterior siding,

(2) tileboard,
(3) particleboard used in cabinetry or furniture,
(4) insulation board, or
(5) softwood plywood.

(d) Emissions of volatile organic compounds from any factory finished flat wood product operation subject to this ~~Regulation~~ Rule shall not exceed:

(1) 6.0 pounds of volatile organic compounds per 1,000 square feet of coated finished product of printed interior wall panels made of hardwood plywood and thin particle board, or
(2) 12.0 pounds of volatile organic compounds per 1,000 square feet of coated finished product of natural finish hardwood plywood panels, or
(3) 10.0 pounds of volatile organic compounds per 1,000 square feet of coated finished product of class II finishes on hardboard paneling.

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

.0937 MANUFACTURE OF PNEUMATIC RUBBER TIRES

(a) For the purpose of this ~~Regulation~~ Rule, the following definitions apply:

(1) "Bead dipping" means the dipping of an assembled tire bead into a solvent based cement.
(2) "Green tires" means assembled tires before molding and curing have occurred.
(3) "Green tire spraying" means the spraying of green tires, both inside and outside, with release compounds which help remove air from the tire during molding and prevent the tire from sticking to the mold after curing.
(4) "Pneumatic rubber tire manufacture" means the production of passenger car tires, light and medium truck tires, and other tires manufactured on assembly lines.
(5) "Tread end cementing" means the application of a solvent based cement to the tire tread ends.
(6) "Undertread cementing" means the application of a solvent based cement to the underside of a tire tread.

(b) This ~~Regulation~~ Rule applies to undertread cementing, tread end cementing, bead dipping, and green tire spraying operations of pneumatic rubber tire manufacturing.

(c) With the exception stated in Paragraph (d) of this ~~Regulation~~ Rule, emissions of volatile organic compounds from any pneumatic rubber tire manufacturing plant shall not exceed:

(1) 25 grams of volatile organic compounds per tire from each undertread cementing operation,
(2) 4.0 grams of volatile organic compounds per tire from each tread end cementing operation,
(3) 1.9 grams of volatile organic compounds per tire from each bead dipping operation, or
(4) 24 grams of volatile organic compounds per tire from each green tire spraying operation.

(d) If the total volatile organic compound emissions from all undertread cementing, tread end cementing, bead dipping, and green tire spraying operations at a pneumatic rubber tire manufacturing facility does not exceed 50 grams per tire, Paragraph (c) of this ~~Regulation~~ Rule shall not apply.

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

.0951 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS

(a) This Rule applies to all facilities that use volatile organic compounds as solvents, carriers, material processing media, or industrial chemical reactants, or in other similar uses or that mix, blend, or manufacture volatile organic compounds for which there is no other applicable rule in this Section.

(b) This Rule does not apply to architectural or maintenance coating.

(c) Facilities with potential emissions of volatile organic compounds less than 100 tons per year shall comply with 15A NCAC 2D .0518.

(d) With the exception of Paragraph (b) of this Rule, the owner or operator of any facility with the potential to emit 100 tons per year or more of volatile organic compounds shall:

(1) install and operate control equipment which meets the requirements of best available control technology as defined in and determined by procedures of Rule .0530 of this Section (A new best available control technology determination and procedure need not be performed if in the judgement of the Director a previous best available control technology determination is applicable.);
(2) limit emissions of volatile organic compounds from coating lines not covered by Rules .0917 through .0924, .0934, or .0935 to no more than 6.7 pounds of volatile organic compounds per gallon of solids delivered to the coating applicator; or
(3) reduce the emissions of volatile organic compounds from all sources at the plant site that are not covered by Subparagraphs (d)(1) or (2) of this Paragraph or another rule in this Section by at least 85 percent by weight or down to 40 pounds per day by destruction or by capture of volatile organic compounds in the emission stream. (Calculation of capture efficiency shall be adjusted to reflect eventual emission to the atmosphere as volatile organic compounds except for material reused, burned, or reprocessed for reuse.)

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

143-215.107(a)(5).

.0953 VAPOR RETURN PIPING FOR STAGE II VAPOR RECOVERY

(a) Applicability. This Rule applies to any facility located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake counties or the Dutchville Township in Granville county or that portion of Davie county that is bounded by the Yadkin River, Dutchman's Creek, NC Highway 801, Fulton Creek and back to the Yadkin River:

(1) that is built after June 30, 1994, or

(2) whose tanks are replaced or removed for upgrades or repairs after June 30, 1994.

When a new tank is added, the new tank shall comply with this Rule.

(b) Exemptions. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain adequate records of throughput and shall furnish these records to the Director upon request. These records shall be maintained on file for three years. The following facilities are exempt from this Rule based upon the previous two years records:

(1) any facility which dispenses 10,000 gallons of gasoline or less per calendar month;

(2) any facility which dispenses 50,000 gallons of gasoline or less per calendar month and is an independent small business marketer of gasoline;

(3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or

(4) any tanks used exclusively to test the fuel dispensing meters.

Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3), or (4) of this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Paragraph (e) of this Rule, and shall remain subject to these provisions even if the facility's later operation meets the exemption requirements.

(c) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "Affected Facility" means any gasoline service station or gasoline dispensing facility subject to the requirements of this Rule.

(2) "CARB" means the California Air Resources Board.

(3) "Certified Stage II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.

(4) "Facility" means any gasoline service station or gasoline dispensing facility.

(5) "ISBM" means independent small business marketer.

(6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.

(7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

(8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.

(9) "Stage II Vapor Recovery" means the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight underground storage tank or are captured and destroyed.

(10) "Throughput" means the amount of gasoline dispensed at a facility during any calendar month.

(11) "Vapor Recovery Dispenser Riser" means piping rising from the vapor recovery piping to the dispenser.

(12) "Vapor Recovery Piping" means vapor return piping connecting the storage tank(s) with the vapor recovery dispenser riser(s).

(d) Requirements. Affected facilities shall install the necessary piping for future installation of CARB certified Stage II vapor recovery system. The vapor piping shall extend from the tanks to the pumps. The vapor piping shall be installed in accordance with the following requirements:

(1) Gasoline vapors shall be:

(A) transferred from each gasoline dispenser to the underground storage tank individually, or

(B) manifolded through a common header from which a single return line is connected through another manifold to all of the underground tanks.

Each vapor return pipe shall allow the transfer of gasoline vapors to the tank from which the liquid gasoline is being drawn;

(2) Pipe diameter must meet manufacturer's specifications. If the manufacturer does not specify diameters, the following minimum pipe diameters apply. If the manufacturer only specifies diameters for part of the system, the following diameters apply for the pipe(s) not specified. All fittings, connectors, and joints must have an inside diameter equal to the inside diameter of the pipe it is attached to. Diameters are specified for the number of nozzles which may be operated at the same time.

(A) Vapor Recovery Dispenser Risers

(i) 3/4" for vapor recovery dispenser risers returning vapors from 1 nozzle; or

(ii) 1" for vapor recovery dispenser risers returning vapors from 2 nozzles;

(B) Vapor Recovery Piping

(i) Two inches for one, two, or three nozzles;

(ii) Two and one half inches for four or five nozzles;

(iii) Three inches for six, seven, eight, or nine

nozzles;

(iv) Three and one half inches for 10, 11, or 12 nozzles; or

(v) Four inches for more than 12 nozzles;

(3) All piping and fittings shall be installed in accordance with manufacturer's instructions and specifications. Metal pipe shall be minimum schedule 40 welded or seamless steel per ASTM A-53, "Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless Pipe". Fittings shall be 150 pounds cold water screwed malleable iron. Pipe and fittings shall be galvanized and pipe threads shall be zinc-coated. Nonmetallic pipes and fittings shall be U/L listed under nonmetallic primary pipes and fittings for underground flammable liquids (gas and oil equipment directory);

(4) Each vapor return pipe shall slope towards the storage tank with a minimum grade of 1/4 inches per foot. Special care shall be taken to ensure that no low points or sags exist along the return piping;

(5) All vapor return and vent piping shall be provided with flexible joints or swing joints at each tank connection and at the base of the vent pipe riser where it fastens to a building or other structure;

(6) All vapor return pipe-trenching shall be compacted to 90 percent of the standard proctor according to ASTM D-698 "Laboratory Compaction Characteristics of Soil Using Standard Effort" of the area soil before the pipes are installed and back-filled with sand or other material approved by the pipe manufacturer at least six inches below and above the piping;

(7) The pipes shall not be driven over or in any other way crushed prior to paving or surfacing;

(8) The vapor return piping or manifolded piping on a vacuum assisted system shall enter a separate opening to the tank from that connected to the vent pipe or the Stage I piping;

(9) All vapor return piping shall be tagged at the termination point recording the function of the piping. In addition, a record of the installation of the Stage II vapor return piping shall be kept in the facility;

(10) Vent piping shall be constructed of materials in accordance with Subparagraph (3) of this Paragraph;

(11) All vent pipes shall be a minimum of two inches inside diameter or meet the local Fire Codes; and

(12) All vent pipes shall slope towards the underground storage tank with a grade of at least 1/4 inch per linear foot.

(e) Compliance Schedule. Compliance under Paragraph (d) of this Rule by the affected facility shall coincide with the completion of the tank installation or repair. Facilities that lose their exemption under Paragraph (b) of this Rule shall comply with this Rule within 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked.

(f) Testing Requirements.

(1) Within 30 days after installation of the vapor return piping, the owner or operator of the facility shall submit reports of the following tests to be completed as described in EPA-450/3-91-022b:

(A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure, and

(B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure.

(2) Testing shall be in accordance with Rule .0912 of this Section.

(3) The owner or operator of the facility shall notify the Regional Office Supervisor by telephone at least five business days before back-filling the trenches and at least 10 business days before the tests given in Subparagraph (1) of this Paragraph are to be performed to allow inspection by the Division. The owner or operator may commence back-filling five days after notification has been given to the Division.

(4) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.

(5) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.

(6) Where the Division conducts a test on the vapor control system, it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.

(g) Referenced documents

(1) EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment, Health, and Natural Resources (Addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office

(MD-35), U.S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851, and the cost is fifty-two dollars ($52.00).

(2) The American Society for Testing and Materials (ASTM) specification and test methods cited in this Rule are hereby incorporated by reference including any subsequent amendments and editions. A copy of the ASTM specification and test method can be obtained from the Air Quality Section, Division of Environmental Management, P.O. Box 29525, Raleigh, North Carolina 27626, at no cost.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a); 150B-21.6.

.0954 STAGE II VAPOR RECOVERY

(a) Applicability. This Rule applies to the control of gasoline vapors at the vehicle fill-pipe during refueling operations at a facility. The vapors are captured and returned to a vapor-tight underground storage tank or are captured and destroyed. These systems must be installed at all facilities that dispense gasoline to motor vehicles unless exempted under Paragraph (b) of this Rule.

(b) Exemptions. The following gasoline dispensing facilities are exempt from this Rule based upon the previous two years records:

(1) any facility which dispenses 10,000 gallons of gasoline or less ~~of gasoline during~~ per calendar month;

(2) any facility which dispenses 50,000 gallons of gasoline or less ~~during~~ per calendar month and is an independent small business marketer of gasoline;

(3) any facility which dispenses gasoline exclusively for refueling marine vehicles, aircraft, farm equipment, and emergency vehicles; or

(4) any tanks used exclusively to test the fuel dispensing meters.

Any facility that ever exceeds the exemptions given in Subparagraphs (1), (2), (3) or (4) in this Paragraph shall be subject to all of the provisions of this Rule in accordance with the schedule given in Subparagraph (f) of this Rule, and shall remain subject to these provisions even if the facility's later operation meets the exemption requirements.

(c) Proof of Eligibility. The burden of proof of eligibility for exemption from this Rule is on the owner or operator of the facility. Persons seeking an exemption from this Rule shall maintain the following:

(1) chronologically arranged bills of lading for receipt of gasoline shipments from the last three years, and

(2) daily inventory of each gasoline type for each day of operation or equivalent records as required; this shall be maintained for the last three years.

These records shall be furnished to the Director upon request.

(d) Definitions. For the purpose of this Rule, the following definitions apply:

(1) "CARB" means the California Air Resources Board.

(2) "Certified STAGE II Vapor Recovery System" means any system certified by the California Air Resources Board as having a vapor recovery or removal efficiency of at least 95 percent by weight.

(3) "Defective equipment" means any absence, disconnection, or malfunction of a Stage II vapor recovery system component which is required by this Rule including the following:

(A) a vapor return line that is crimped, flattened or blocked or that has any hole or slit that allows vapors to leak out;

(B) a nozzle bellows that has any hole or tear large enough to allow a 1/4 inch diameter cylindrical rod to pass through it or any slit one inch or more in length;

(C) a nozzle face-plate or cone that is torn or missing over 25 percent of its surface;

(D) a nozzle with no automatic overfill control mechanism or an inoperable overfill control mechanism;

(E) an inoperable or malfunctioning vapor processing unit, vacuum generating device, pressure or vacuum relief valve, vapor check valve or any other equipment normally used to dispense gasoline, or that is required by this Rule; or

(F) a failure to meet the requirements of Paragraph (g) of this Rule.

(4) "Facility" means any gasoline service station, gasoline dispensing facility, or gasoline cargo tanker.

(5) "ISBM" means independent small business marketer.

(6) "Independent Small Business Marketer of Gasoline" means a facility that qualifies under Section 324 of the Federal Clean Air Act.

(7) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed.

(8) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility.

(9) "Pressure Balanced Stage II System" means one which is not vacuum-assisted. That is, the volume of vapor in the automobile's fuel tank displaced by the incoming liquid gasoline equals the space in the underground tank created by the gasoline leaving.

(10) "Remote Vapor Check Valve" means a check valve in the vapor return line but not located in the nozzle.

(11) "Stage II Vapor Recovery" means to the control of gasoline vapor at the vehicle fill-pipe, where the vapors are captured and returned to a vapor-tight storage tank or are captured and destroyed.

(12) "Throughput" means the amount of gasoline dispensed at a facility during any calendar month after June 30, 1994.

(e) Stage II Requirements. No person shall transfer or permit the transfer of gasoline into the fuel tank of any motor vehicle at any applicable facility unless:

(1) the transfer is made using a Certified Stage II vapor recovery system that meets the requirements of the inspections;

(2) all installed Stage II vapor recovery systems use coaxial vapor recovery hoses; no dual-hose designs shall be used;

(3) all installed Stage II vapor recovery systems used are certified by CARB except that the Stage I system need not be CARB certified. In addition, no Stage II system shall employ a remote vapor check valve. Pressure balanced Stage II systems may be used; and

(4) the underground vapor return piping satisfies the requirements of Rule .0953 of this Subchapter.

In the event that CARB revokes certification of an installed system, the owner or operator of the facility shall have four years to modify his equipment to conform with re-certification requirements unless modifications involve only the replacement of dispenser check valves, hoses, or nozzles or appurtenances to these components in which case the allowed time period is three months. This time period is defined as the period from the day that the owner or operator of the facility has been officially notified by the Director.

(f) Compliance Schedule. Affected gasoline service station or gasoline dispensing facilities shall comply with this Rule as follows:

(1) if the gasoline service stations or gasoline dispensing facilities are subject to the requirements of this Rule in accordance with Paragraph (c) of Rule .0902 of this Section, compliance shall be achieved no later than:

(A) May 1, 1996, for facilities having any single monthly throughput of at least 100,000 gallons per month;

(B) May 1, 1997, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;

(C) for affected facilities owned by a single ISBM:

(i) May 1, 1996, for 33 percent of affected facilities;

(ii) May 1, 1997, for 66 percent of the affected facilities;

(iii) May 1, 1998, for the remainder of the affected facilities;

By January 31, 1996, the ISBM shall provide the Director with a list detailing specific scheduling of the ISBM station conversion.

(D) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or

(E) before beginning operation for islands constructed after April 30, 1995.

(2) if the gasoline service station or gasoline dispensing facility is subject to the requirements of this Rule in accordance with Paragraph (d) of Rule .0902 of this Section, compliance shall be achieved no later than:

(A) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of at least 100,000 gallons per month;

(B) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for facilities having any single monthly throughput of greater than 10,000 gallons but less than 100,000 gallons;

(C) for affected facilities owned by a single ISBM:

(i) one year from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 33 percent of affected facilities;

(ii) two years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for 66 percent of the affected facilities;

(iii) three years from the date that the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone, for the remainder of the affected facilities;

(D) 18 months after the day the owner or operator of the facility has been notified by the Director that his exemption under Paragraph (b) of this Rule has been revoked; or

(E) before beginning operation for islands constructed after the Director notices in the North Carolina Register that an area is in violation of the ambient air quality standard for ozone.

(g) Testing Requirements

(1) Within 30 days after the commencement of operation of the Stage II system and every five years thereafter, the owner or operator of the facility shall submit reports of the following tests

as described in EPA-450/3-91-022b:

(A) Bay Area Source Test Procedure ST-30, Leak Test Procedure, or San Diego Test Procedure TP-91-1, Pressure Decay/Leak Test Procedure every five years;

(B) Bay Area Source Test Procedure ST-27, Dynamic Back Pressure, or San Diego Test Procedure TP-91-2, Pressure Drop vs Flow/Liquid Blockage Test Procedure every five years; and

(C) Bay Area Source Test Procedure ST-37, Liquid Removal Devices every five years.

If the tests have been performed within the last two years the owner or operator may submit a copy of those tests in lieu of retesting. Testing shall be in accordance with Rule .0912 of this Section.

(2) The owner or operator shall perform daily testing and inspections as follows:

(A) daily tests to ensure proper functioning of nozzle automatic overfill control mechanisms and flow prohibiting mechanisms, and

(B) daily visual inspection of the nozzle bellows and face-plate.

(3) The owner or operator of the facility and the test contractor shall report all test failures to the Regional Office Supervisor within 24 hours of the failure.

(4) The Director may require the owner or operator of the facility to perform any of the tests in Subparagraph (1) of this Paragraph if there are any modifications or repairs.

(5) Where the Air Quality Division conducts tests or upon requirement from the Director to test the vapor control system it shall be without compensating the owner or operator of the facility for any lost revenues incurred due to the testing procedure.

(h) Operating Instructions and Posting

(1) The owner or operator of the facility shall post operating instructions for the vapor recovery system on the top one-third of the front of each gasoline dispenser to include the following:

(A) a clear description of how to correctly dispense gasoline with the vapor recovery nozzles,

(B) a warning that repeated attempts to continue dispensing gasoline, after the system has indicated that the vehicle fuel tank is full (by automatically shutting off), may result in spillage or recirculation of gasoline,

(C) a telephone number to report problems experienced with the vapor recovery system to the owner or operator of the facility, and

(D) a telephone number to report problems experienced with the vapor recovery system to the Director.

(2) The owner or operator shall provide written instructions on site as detailed in EPA-450/3-91-022b to insure that employees of the facility have an accurate understanding of the operation of the system and, in particular, when the system is malfunctioning and requires repair.

(i) Other General Requirements. The owner or operator of the facility shall conspicuously post "Out of Order" signs on any nozzle associated with any aboveground part of the vapor recovery system which is defective until the system has been repaired to bring it back into compliance with this Rule.

(j) Record-keeping and Reporting. Owners or operators of the facility shall maintain records in accordance with Rule .0903 of this Section on compliance and testing.

(k) Referenced document. EPA-450/3-91-022b, "Technical Guidance - Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Volume II: Appendices", November 1991, cited in this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the Regional Offices of the North Carolina Department of Environment, Health, and Natural Resources (addresses are given in Rule .0103 of this Subchapter). Copies of this document may be obtained through the Library Services Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park or National Technical Information Services, 5285 Port Royal Road, Springfield VA 22161. The NTIS number for this document is PB-92132851 and the cost is fifty-two dollars ($52.00).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a); 150B-21.6.

SECTION .1300 - OXYGENATED GASOLINE STANDARD

.1301 PURPOSE

This Section sets forth oxygenated gasoline standards in areas where an oxygenated gasoline program is implemented pursuant to State law for all gasoline sold wholesale for use or for all gasoline sold retail, offered for use, dispensed, or otherwise provided for use in any spark-ignition engine other than aircraft in the areas defined in Rule .1302 of this Section during the time periods defined in Rule .1302(c) ~~and .1304(b)~~ of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).

.1302 APPLICABILITY

~~(a) This Section applies to gasoline identified in Rule .1301 of this Section during the time period described in Paragraph (c) of this Rule in the Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties.~~

~~(b)~~ (a) This Section shall apply to gasoline identified in

Rule .1301 of this Section during the time period described in Paragraph (c) of this Rule in any of the following areas, and in that area only, when the Director notices in accordance with Paragraph (b) of this Rule in the North Carolina Register that ~~the area is in violation of~~ oxygenated gasoline is needed in that area to attain and maintain the ambient air quality standard for carbon monoxide:

(1) the Greensboro/Winston-Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties;

(2) the Charlotte/Gastonia/Rock Hill Metropolitan Statistical Area consisting of Cabarrus, Gaston, Mecklenburg, and Union Counties; and

(3) the Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties.

~~Violations of the ambient air quality standard for carbon monoxide shall be determined in accordance with 40 CFR 50.8.~~

(b) If a violation of the ambient air quality standard for carbon monoxide is measured in accordance with 40 CFR 50.8 in one of the areas named in Paragraph (a) of this Rule, the Director shall initiate analyses to determine if additional measures are needed to attain and maintain the ambient air quality standards in that area. If the Director finds that 2.7 percent oxygen by weight oxygenated gasoline is needed, the Director shall notice in the North Carolina Register by the following September 1 that only oxygenated gasoline shall be sold in that area beginning on the following November 1. The notice shall identify the area in which oxygenated gasoline shall be sold. Also by the following September 1, the Director shall notify the Gasoline and Oil Inspection Board and the primary gasoline distributors that only oxygenated gasoline shall be sold in the area beginning on the following November 1.

(c) This Section applies to gasoline identified in Rule .1301 of this Section and in the counties identified in Paragraph (a) ~~or (b)~~ of this Rule for the four-month period beginning November 1 and running through the last day of February of the following year.

(d) Gasoline in ~~storage:~~ storage

~~(1) within the counties identified in Paragraph (a) of this Rule prior to November 1 or~~

~~(2)~~ within the counties identified in Paragraph (a) of this Rule prior to November 1 of the year in which this Section goes into effect

at a dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempted from Rule .1304 of this Section, but any gasoline supplied to the facility during the period identified in Paragraph ~~(b) or~~ (c) of this Rule shall comply with Rule .1304 of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).

.1304 OXYGEN CONTENT STANDARD

~~(a)~~ Gasoline to which this Section applies in accordance with Rule .1302~~(b)~~ (a) of this Section shall have an oxygen content of not less than 2.7 percent by weight during the period defined in Rule .1302(c) of this Section.

~~(b) Gasoline to which this Section applies in accordance with Rule .1302(a) of this Section shall have an oxygen content of not less than:~~

~~(1) 2.7 percent by weight until February 28, 1995;~~

~~(2) 2.0 percent by weight after October 31, 1995 to February 28, 2000;~~

~~(3) 2.2 percent by weight after October 31, 2000 to February 28, 2005; and~~

~~(4) 2.6 percent by weight after October 31, 2005~~

~~during the period defined in Paragraph (c) of Rule .1302 of this Section.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(7).

SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0400 - ACID RAIN PROCEDURES

.0401 PURPOSE AND APPLICABILITY

(a) The purpose of this Rule is to implement Phase II of the federal acid rain program pursuant to the requirements of Title IV of the Clean Air Act as provided in 40 CFR Part 72.

(b) ~~(a)~~ The procedures and requirements under this Section do not apply until the EPA approves this Section and Section .0500 of this Subchapter.

(c) Applicability.

~~(b)~~ (1) Each of the following units shall be an affected unit, and any facility that includes such a unit shall be an affected facility, subject to the requirements of the Acid Rain Program:

~~(1)~~ (A) A unit listed in 40 CFR Part 73, Subpart B, Table 1.

~~(2)~~ (B) A unit that is identified as qualifying for an allowance allocation under 40 CFR 73.10 Table 2 or 3 ~~Sections 403 and 405 of the federal Clean Air Act~~ and any other existing utility unit, except a unit under Subparagraph (2) of this Paragraph ~~Paragraph (c) of this Rule~~.

~~(3)~~ (C) A utility unit, except a unit under Subparagraph (2) of this Paragraph ~~Paragraph (c) of this Rule~~, that:

~~(A)~~ (i) is a new unit; ~~or~~

~~(B)~~ (ii) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990.;

(iii) was a simple combustion turbine on November 15, 1990 but adds or uses auxil-

iary firing after November 15, 1990;

(iv) was an exempt cogeneration facility under Part (2)(D) of this Paragraph but during any three calendar year period after November 15, 1990, sold to a utility power distribution system, an annual average of more than one third of its potential electrical out-put capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

(v) was an exempt qualifying facility under Part (2)(E) of this Paragraph but at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(vi) was an exempt independent power production facility under Part (2)(F) of this Paragraph but at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(vii) was an exempt solid waste incinerator under Part (2)(G) of this Paragraph of this Rule but during any three calendar year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.

~~(c)~~ (2) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

~~(1)~~ (A) A simple combustion turbine that commenced operation before November 15, 1990.

~~(2)~~ (B) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

~~(3)~~ (C) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

~~(4)~~ (D) A co-generation facility ~~Co-generation units.~~ which:

(i) for a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electrical output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electrical output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program, or

(ii) for units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electrical output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electrical output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

~~(5)~~ (E) A qualifying facility ~~Qualifying facilities, which are qualifying small production facilities within the meaning of Section 3(17)(C) of the Federal Power Act or a qualifying cogeneration facility within the meaning of Section 3(18)(B) of the Federal Power Act.~~ that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) consists of one or more units designed by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator will designate which units are exempt.

~~(6)~~ (F) An ~~New~~ independent power production facility ~~facilities.~~ that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) consists of one or more units designed by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator

will designate which units are exempt.

~~(7)~~ (G) A solid ~~Solid~~ waste incinerator, ~~incinerators.~~ if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

~~(8)~~ (H) A non-utility unit.

(3) A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR 72.6(c). The Administrator's determination of applicability shall be binding upon the Division, unless the petition is found to have contained significant errors or omissions.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0402 ACID RAIN PERMITTING PROCEDURES

(a) For the purpose of this Rule the definitions contained in 40 CFR 72.2 and the measurements, abbreviations, and acronyms contained in 40 CFR 72.3 shall apply.

(b) Affected units as defined in 40 CFR 72.6 and Subparagraph (c)(1) of Rule .0401 of this Section shall comply with the permit, monitoring, sulfur dioxide, nitrogen oxides, excess emissions, recordkeeping and reporting, liability, and any other provisions as required in 40 CFR Part 72. The term "permitting authority" shall mean Division of Environmental Management, and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

(c) If the provisions or requirements of 40 CFR part 72 conflict with or are not included in Section .0500 of this Subchapter, the Part 72 provisions and requirements shall apply and take precedence.

~~The terms used in this Section shall have the meanings set forth in the federal Clean Air Act and in this Subchapter as follows:~~

~~(1) "Acid rain emissions reduction requirement" means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.~~

~~(2) "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV.~~

~~(3) "Act" means the Clean Air Act, 42 U.S.C. 7401, et. seq. as amended by Public Law No. 101-549 (November 15, 1990).~~

~~(4) "Administrator" means the administrator of the United States Environmental Protection Agency (EPA) or the Administrators's duly authorized representative.~~

~~(5) "Affected Facility" means a facility that includes one or more affected units.~~

~~(6) "Affected Unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation.~~

~~(7) "Allocate or allocation" means the initial crediting of an allowance by the Administrator to an allowance Tracking System unit account of general account.~~

~~(8) "Allowance" means an authorization by the Administrator under the Acid Rain Program to emit up to one ton of sulfur dioxide during or after a specified calendar year.~~

~~(9) "Allowance deduction" or "deduct" when referring to allowances means the permanent withdrawal of allowances by the Administrator from an Allowance Tracking System compliance subaccount to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR part 75, or for any other allowance surrender obligations of the Acid Rain Program.~~

~~(10) "Allowance tracking system" means the Acid Rain Program system by which the Administrator allocates, records, deducts, and tracks allowances.~~

~~(11) "Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected facility or group of identified affected facilities authorized to represent the owners and operators of such facility(facilities) and of the affected units at such facility (facilities) with regard to matters under the Acid Rain Program.~~

~~(12) "Commenced commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.~~

~~(13) "Designated representative" means a responsible natural person authorized by the owners and operators of an affected facility, and of all the affected units at the facility, as evidenced by a certificate of representation submitted in accordance with CFR 40 Part 72, Subpart B, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to~~

the Acid Rain Program. Whenever the term "responsible official" is used in this Subchapter it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.

(14) "Draft permit" means the version of the permit, or the acid rain portion of an operating permit, that a permitting authority offers for public comment.

(15) "Facility" means any contiguous group of one or more sources.

(16) "General account" means an Allowance Tracking System account that is not a unit account.

(17) "Generator" means any device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

(18) "mmBtu" means millions of British Thermal Units.

(19) "MWe" means megawatts of electricity.

(20) "NADB" means the National Allowance Data Base.

(21) "Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

(22) "Offset plan" means a plan pursuant to 40 CFR part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

(23) "Owner or operator" means any person who operates, controls, or supervises an affected unit or an affected facility and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected facility.

(24) "Permit" as it is used in this Section means the legally binding written document, or portion of such document, issued by the Director including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected facility, to each affected unit at an affected facility, and to the owners and operators and the designated representative of the affected unit or the affected facility. In addition, the permit shall satisfy the procedures under Section .0500 of this Subchapter.

(25) "Permit revision" means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 40 CFR Part 72, Subpart H.

(26) "Permitting authority" means either:

(a) the Administrator, or

(b) the Director.

(27) "Phase I utility" refers to any of 110 utility plants identified by the EPA and listed in Section 404, Table A of the Act. Each unit has a nameplate capacity of greater than 100 MWe and emits greater than 2.5 lbs/mmBtu of sulfur dioxide.

(28) "Phase II utility" refers to the inclusion of additional utilities with capacities greater than 25 MWe to the Acid Rain Program.

(29) "Secretary of Energy" refers to the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

(30) "Simple Combustion Turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing but excludes such units with auxiliary firing.

(31) "Source" means any governmental, institutional, commercial or industrial structure, installation, plant or building that emits or has the potential to emit any regulated air pollutant under the Act.

(32) "Stack" means a structure that includes one or more flues and the housing for the flues.

(33) "Unit" means a fossil fuel-fired combustion device.

(34) "Utility" means any person that sells electricity.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0403 NEW UNITS EXEMPTION

(a) Applicability. This Rule applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined for a sample of each fuel delivery using the methods specified in 40 CFR 72.7(d)2.

(b) Exemption. The designated representative, authorized in accordance with 40 CFR 72.20, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Director for a written exemption for the unit from certain requirements of the Acid Rain Program in accordance with 40 CFR 72.7.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0404 RETIRED UNITS EXEMPTION

(a) Applicability. This Rule applies to any affected unit that is retired prior to the issuance (including renewal) of a permit for the unit as a final action by the Director.

(b) Exemption. The designated representative, authorized in accordance with 40 CFR Part 72, Subpart B, of a facility that includes a unit under Paragraph (a) of this Rule may petition the Director for a written exemption, or to renew a

written exemption, for the unit from certain requirements of 40 CFR Part 72 in accordance with 40 CFR 72.8.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0405 REQUIREMENT TO APPLY

(a) Duty to apply. The designated representative of any facility with an affected unit shall submit a complete permit application by the applicable deadline in Paragraphs (b) and (c) of this Rule. The Owner or Operator shall not operate the facility without a permit that states its Acid Rain Program requirements.

(b) Deadlines:

(1) Phase II. For any facility with an existing unit under Subparagraph (b)(1) or (2) of Rule .0401 of this Section, the designated representative shall submit a complete permit application governing such unit during Phase II to the Director on or before:

(A) January 1, 1996 for sulfur dioxide;

(B) January 1, 1998 for nitrogen oxides.

(2) New Units.

(A) For any facility with a new unit under Part (b)(3)(A) of Rule .0401 of this Section, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

(B) For any facility with a unit under Part (b)(3)(B) of Rule .0401, the designated representative shall submit a complete permit application governing such unit to the Director at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(3) Acid Rain Compliance Option Deadlines. The deadlines for applying for approval of any acid rain compliance options shall be the deadlines specified in the relevant section of 40 CFR Part 72, Subpart D and in Section 407 of the federal Clean Air Act and regulations implementing section 407 of the federal Clean Air Act.

(c) Duty to Reapply. The designated representative shall submit a complete permit application for each facility with an affected unit at least nine months prior to the expiration of an existing permit governing the unit during Phase II.

(d) Four copies of all permit applications shall be submitted to the Director.

(e) Permit Issuance Deadline.

(1) On or before December 31, 1997, the Director shall issue a permit for Phase II for sulfur dioxide to each affected facility in the State as set forth in 40 CFR 72.73(a); provided that the designated representative for the facility submitted a timely and complete permit application. Each permit issued in accordance with this Rule shall have a term of five years commencing on its effective date. Each permit shall take effect by the later of January 1, 2000, or, where the permit governs a unit under Subparagraph (b)(3) of Rule .0401 of this Section, the deadline for monitor certification under 40 CFR Part 75.

(2) Nitrogen Oxides. Not later than January 1, 1999, the Director shall reopen the permit to add the Acid Rain Program nitrogen oxides requirements. Such reopening shall not affect the term of the acid rain portion of a construction and operation permit.

(3) Grandfathering of Phase II Units. Pursuant to the Federal Register, vol. 57, no. 228, p. 55634, units that meet the following Phase I nitrogen oxides emission limitations before 1997:

(A) 0.45 lb/mmBtu for tangentially fired boilers;

(B) 0.50 lb/mmBtu for dry bottom wall fired boilers;

shall be exempted from any revision in emission limitations pursuant to Section 407(b)(2).

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0406 REQUIREMENTS FOR PERMIT APPLICATIONS

A complete permit application shall contain the following elements in a format to be specified by the Administrator:

(1) identification of the affected facility for which the permit application is submitted;

(2) identification of each unit at the facility for which the permit application is submitted;

(3) a complete compliance plan for each unit, in accordance with 40 CFR Part 72, Subpart D;

(4) the standard requirements under 40 CFR Part 72.9; and

(5) if the permit application is for Phase II and the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0407 PERMIT APPLICATION SHIELD AND BINDING EFFECT OF PERMIT APPLICATION

(a) Once a designated representative submits a timely and complete permit application, the owner or operator shall be deemed in compliance with the requirement to have a permit under 40 CFR 72.9(a) and Paragraph (a) of Rule .0405 of this Section; provided that any delay in issuing a permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental

information, as required by the Director, necessary to issue a permit.

(b) Prior to the earlier of the date on which a permit is issued subject to administrative appeal or judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete permit application shall be deemed to be operating in compliance with the Acid Rain Program and this Section.

(c) A complete permit application shall be binding on the owners and operators of the affected facility and the affected units covered by the permit application and shall be enforceable as a permit from the date of submission of the complete permit application until the final issuance or denial of a permit covering the units and subject to administrative appeal or judicial review.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0408 COMPLIANCE PLANS

For each affected unit included in a permit application, a complete compliance plan shall follow the requirements under 40 CFR 72.40 where "permitting authority" is replaced with "Director."

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0409 PHASE II REPOWERING EXTENSIONS

The procedures required for a repowering extension shall follow the requirements contained in 40 CFR 72.44 where "permitting authority" is replaced with "Director".

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0410 PERMIT CONTENTS

Each permit (including any draft or proposed permit) shall contain the following elements:

(1) all elements required for a complete permit application under Rule .0406, as approved or modified by the Director;

(2) the applicable acid rain emissions limitation for sulfur dioxide; and

(3) the applicable acid rain emissions limitation for nitrogen oxides.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0411 STANDARD REQUIREMENTS

(a) The standard requirements set forth in Paragraphs (c) through (i) of this Rule shall be binding on all owners and operators (including the designated representative) of the affected facility and affected units at the facility.

(b) Except as provided under 40 CFR 72.22, each affected facility, including all affected units at the facility, shall have one and only one designated representative, with regard to all matters under the Acid Rain Program concerning the facility or any affected unit at the facility as provided in 40 CFR 72.20. Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made in accordance with 40 CFR 72.21

(c) Permit Requirements.

(1) The designated representative of each affected facility and each affected unit at the facility shall:

(A) submit a complete permit application (including a compliance plan) under this Section in accordance with the deadlines specified in Rule .0405;

(B) submit in a timely manner any supplemental information that the Director determines is necessary to review a permit application and issue or deny a permit;

(2) The owners or operators of each affected facility and each affected unit at the facility shall have a permit and shall operate the unit in compliance with a complete permit application or a superseding permit issued by the Director.

(d) Monitoring Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall comply with all applicable monitoring requirements of 40 CFR Part 75 and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(2) The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides requirements under the Acid Rain Program.

(3) The requirements of 40 CFR Part 75 and regulations implementing Section 407 of the federal Clean Air Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the facility.

(e) Sulfur Dioxide Requirements.

(1) The owners and operators of each facility and each affected unit at the facility shall:

(A) hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the

unit; and

(B) comply with the applicable acid rain emissions limitations for sulfur dioxide.

(2) Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

(3) An affected unit shall be subject to the requirements under Subparagraph (e)(1) of this Rule as follows:

(A) starting January 1, 2000, an affected unit under Subparagraph (b)(1) or (2) of Rule .0401;

(B) starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under Subparagraph (b)(3) of Rule .0401.

(4) Allowances shall be held in, deducted from, or transferred among Allowance Tracking System accounts in accordance with the Acid Rain Program.

(5) An allowance shall not be deducted, in order to comply with the requirements under Part (e)(1)(A) of this Rule, prior to the calendar year for which the allowance was allocated.

(6) An allowance allocated by the Administrator under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the permit application, the permit, or the permit under 40 CFR Part 72.7 and Part 72.8 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) An allowance allocated by the Administrator under the Acid Rain Program does not constitute a property right.

(f) Nitrogen Oxides Requirements. The owners and operators of the facility and each affected unit at the facility shall comply with the applicable acid rain emissions limitation established by rules implementing Section 407 of the federal Clean Air Act, as modified by a permit application and a permit in accordance with the requirements of the Acid Rain Program.

(g) Excess Emissions Requirements. The owners and operators of an affected unit that has excess emissions for sulfur dioxide or nitrogen oxides in any calendar year shall:

(1) pay without demand the penalty required, and pay upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) submit a proposed offset plan and comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

(h) Recordkeeping and Reporting Requirements.

(1) Unless otherwise provided, the owners and operators of the facility and each affected unit at the facility shall keep on site at the facility each of the following documents for a period of five years from the date the document is created; this period may be extended if there is a change in applicable requirements, at any time prior to the end of five years, in writing by the Administrator or Director:

(A) the certificate of representation for the designated representative for the facility and each affected unit at the facility and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR Part 72.24; provided that the certificates and documents shall be retained on site at the facility beyond such five year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative;

(B) all emissions monitoring information, in accordance with 40 CFR Part 75.50(a);

(C) copies of all reports, compliance certifications, and other submissions and all records under the Acid Rain Program; and

(D) copies of all documents used to complete a permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(2) The designated representative shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 40 CFR Part 72, Subpart I, and 40 CFR Part 75.

(i) Exempted Units.

(1) The owners and operators of each unit exempted under Rule .0403 of this Section shall retain at the facility that includes the unit, the records of the results of the tests required to be performed under 40 CFR 72.7(d)(2) and a copy of the purchase agreements for the fuel burned in the exempted unit, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

(2) On the earlier of the date the written exemption expires, the date a unit exempted under Rule .0403 of this Section burns any fuel with a sulfur content in excess of 0.05 percent by weight (as determined in accordance with 40 CFR 72.7(d)(2)), or 24 months prior to the date the unit first serves one or more generators with a total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under Rule .0403 of this Section and shall be subject to all requirements of the Acid Rain Program, except that:

(A) Notwithstanding Rule .0405(b) and (c) of this

Section, the designated representative of the facility that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date that the unit is no longer exempted under Rule .0403 of this Section; and

(B) For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements in Rule .0403(a) of this Section.

(3) The owners and operators of a unit exempted under Rule .0404 shall comply with monitoring requirements in accordance with 40 CFR Part 75 and will be allocated allowances in accordance with 40 CFR Part 73.

(4) A unit exempted under Rule .0404 of this Section shall not resume operation unless the designated representative of the facility that includes the unit submits an Acid Rain permit application for the unit not less than 24 months prior to the later of January 1, 2000, or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an Acid Rain permit application is submitted or is required to be submitted under this Subparagraph, the unit shall no longer be exempted under Rule .0404 of this Section and shall be subject to all requirements of 40 CFR Part 72.

(j) Liability.

(1) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(2) Each affected facility and each affected unit shall meet the requirements of the Acid Rain Program.

(3) Any provision of the Acid Rain Program that applies to an affected facility shall also apply to the owners and operators (including the designated representative) of such facility and of the affected units at the facility.

(4) Any provision of the Acid Rain Program that applies to an affected unit shall also apply to the owners and operators (including the designated representative) of such unit. Except as provided under Rule .0409 of this Section, and Sections 407 of the federal Clean Air Act, and rules implementing Section 407 of the federal Clean Air Act, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR Parts 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators and that is at the same facility unless they are owners or operators of that facility.

(5) Any violation of a provision of 40 CFR Parts 72, 73, 75, 77, and 78, or rules implementing Sections 407 of the federal Clean Air Act by an affected unit, or by an owner or operator or designated representative of such unit, shall be a separate violation.

(k) Effect on Other Authorities. No provision of the Acid Rain Program, a permit application, a permit, or a written exemption under Rule .0403 and .0404 of this Section shall be construed as:

(1) except as expressly provided in Title IV, exempting or excluding the owners and operators of an affected facility or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable national ambient air quality standards or state implementation plans;

(2) limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the facility's obligation to comply with any other provisions of the federal Clean Air Act or Subchapter 2D of Title 15A;

(3) requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State rule, including any prudence review requirements under such State law;

(4) modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

(5) interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.65; 143-215.66; 143-215.108.

.0412 PERMIT SHIELD

Each affected unit operated in accordance with the permit that governs the unit and that was issued in compliance with Title IV, as provided in this Part, 40 CFR Parts 73, 75, 77, and 78, and the rules implementing Sections 407 of the federal Clean Air Act, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph (j)(6) of Rule .0411 of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0413 PERMIT REVISIONS GENERALLY

(a) The permit revision procedures shall govern revisions

to any acid rain portion of any construction and operation permit.

(b) The permit revision procedures shall supersede the permit revision procedures specified in Section .0500 of this Subchapter with regard to revision of any Acid Rain Program permit provision.

(c) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(d) Except for minor permit modifications or administrative amendments, the terms of the permit shall apply while the permit revision is pending.

(e) Any determination by the Director or a State court modifying or voiding any permit provision shall be subject to review by the Administrator in accordance with 40 CFR 70.8(c), unless the determination or interpretation is an administrative amendment approved in accordance with Rule .0416 of this Section.

(f) The standard requirements of 40 CFR Part 72.9 shall not be modified or voided by a permit revision.

(g) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Rule .0409 of this Section and Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.

(h) For permit revisions not described in Rules .0414 and .0415 of this Section, the Director may, at his discretion, determine which of these Rules is applicable.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0414 PERMIT MODIFICATIONS

(a) The following permit revisions shall follow the permit modification procedures:

(1) relaxation of an excess emission offset requirement after approval of the offset plan by the Administrator;

(2) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period; or

(3) determination of whether efforts to design, construct, and test repowering technology under a repowering extension plan were in good faith and whether such repowering technology was properly constructed and tested under 40 CFR 72.44(g)(1)(i) and (2).

(b) The following permit revisions shall follow either the permit modification procedures or the fast-track modification procedures under Rule .0415 of this Section:

(1) incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;

(2) addition of a nitrogen oxides alternative emissions limitation demonstration period or a nitrogen oxides averaging plan to a permit; or

(3) changes in a repowering plan, nitrogen oxides averaging plan, nitrogen oxides alternative emissions limitation demonstration period, or nitrogen oxides compliance deadline extension.

(c) Permit modifications shall follow the requirements of Rules .0410 and .0412 of this Section and Section .0500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0415 FAST-TRACK MODIFICATIONS

All fast-track modifications applicable to sources subject to the acid rain portion of this Section shall follow the procedures given in 40 CFR 72.80 where "permitting authority" shall be replaced with "Director".

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0416 ADMINISTRATIVE PERMIT AMENDMENT

(a) The following revisions to the acid rain portion of the permit shall follow the administrative permit amendment procedures:

(1) activation of a compliance option conditionally approved by the Director, provided that all requirements for activation under 40 CFR Part 72, Subpart D, are met;

(2) changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted;

(3) correction of typographical errors;

(4) changes in names, addresses, or telephone or facsimile numbers;

(5) changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days; and

(6) termination of a compliance option in the permit, provided that this procedure shall not be used to terminate a repowering plan after December 31, 1999.

(b) Administrative amendments shall follow the procedures set forth under Section .0500 of this Subchapter except that ownership changes under Subparagraph (a)(5) of this Rule shall follow the procedures under Rule .0524 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0417 AUTOMATIC PERMIT AMENDMENT

~~The following permit revisions shall be deemed to amend automatically, and become a part of, the affected unit's permit by operation of law without any further review:~~

~~(1) upon recordation by the Administrator under 40 CFR Part 73 all allowance allocations to, transfers to, and deductions from an affected unit's Allowance Tracking System account; and~~

~~(2) incorporation of an offset plan that has been approved by the Administrator under 40 CFR Part 77.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0418 PERMIT REOPENINGS

~~(a) As provided in Section .0500 of this Subchapter, the Director shall reopen a permit for reasons specified in Rule .0517 of this Subchapter, including whenever additional requirements become applicable to any affected unit governed by the permit.~~

~~(b) Upon reopening a permit for reasons specified in Rule .0517 of this Subchapter, the Director shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.~~

~~(c) As necessary, the Director shall reopen a permit to incorporate nitrogen oxides requirements, consistent with Section 407 of the federal Clean Air Act and rules implementing Section 407 of the federal Clean Air Act.~~

~~(d) Any reopening of a permit shall not affect the term of the permit.~~

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Marine Fisheries Commission intends to adopt temporary and permanent rules establishing the procedures and conditions which will be used to issue proclamations closing or restricting the harvest of fish in areas of coastal waters which are the subject of warnings or advisories by the State Health Director concerned with dangers or risks to public health or safety from the consumption of fish taken from those areas. During the next several weeks, the Marine Fisheries Commission will be drafting criteria in cooperation with the State Health Director and scientific experts for deciding when closures are necessary and when reopening the areas should be considered. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

Proposed Effective Date: *March 1, 1996.*

A Public Hearing *will be conducted at 7:00 p.m. on November 21, 1995 at the Grover C. Fields Middle School, 2000 Clarendon Blvd., New Bern, NC.*

Reason for Proposed Action: *Adoption of this Rule will establish a procedure for prohibiting or restricting the taking of fish from areas where the toxic dinoflagellate Pfiesteria piscimorte is present and is killing fish. The effects this substance might have on humans is unknown. The MFC will be drafting criteria for these actions and intends to adopt a temporary rule at the November 30 - December 1 Marine Fisheries Commission Business Meeting establishing these procedures.*

Comment Procedures: *Comments and statements, both written and oral, may be presented at the hearing. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 8:00 a.m., December 1, 1995. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearings.*

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Marine Fisheries Commission intends to adopt rule cited as 15A NCAC 3J .0403.

Temporary: *This Rule was filed as a temporary rule effective October 16, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *March 1, 1996.*

A Public Hearing *will be conducted at 7:00 p.m. on November 21, 1995 at the Grover C. Fields Middle School, 2000 Clarendon Blvd., New Bern, NC.*

Reason for Proposed Action: *Adoption of this Rule will close a portion of the Neuse River to the taking of all marine and estuarine resources by any method. This closure is necessary because of the presence of Pfiesteria piscimorte, a toxic dinoflagellate which has caused fish kills and the unknown affects it has on humans.*

Comment Procedures: *Comments and statements, both written and oral, may be presented at the hearing. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 8:00 a.m., December 1, 1995. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearings.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0400 - FISHING GEAR

.0403 NEUSE RIVER AND ITS TRIBUTARIES

(a) It is unlawful to possess, sell, or take fish by any method from the Neuse River and its tributaries upstream of a line from Slocum Creek to Beard Creek, until the Fisheries Director, by proclamation, opens the area or any portion thereof to the harvest of fish.

(b) The Fisheries Director shall issue a proclamation opening the area after consultation with the State Health Director and scientific experts working on the dinoflagellate Pfiesteria piscimorte and the Marine Fisheries Commission Chairman.

(c) The Fisheries Director may, after prior consent of the Marine Fisheries Commission, by proclamation close the areas or a portion thereof described in Paragraph (a) of this Rule, for which a subsequent health advisory is issued by the State Health Director.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Resources Commission intends to amend rules cited as 15A NCAC 7H .0208, .0305, .0308, and adopt 15A NCAC 7H .2301 - .2305. (The text in **BOLD** in 15A NCAC 7H .0208 published in Volume 10, Issue 3, pages 197 - 204.)*

Proposed Effective Date: *March 1, 1996.*

A Public Hearing *will be conducted at 4:00 p.m. on November 16, 1995 at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hills, NC.*

Reason for Proposed Action:

15A NCAC 7H .0208 *- Strict application of current CRC rules would prevent issuing permits for these development proposals. Historically, the permits have been issued in absence of review agency objections. The new rule will correct this inconsistency.*

15A NCAC 7H .0305 & .0308 *- The proposed rules are necessary to codify the CRC's position on how to measure the first line of stable natural vegetation (FLSNV) on ocean beaches that have been replenished with sand. The FLSNV is the baseline used for setback of structures on the beaches. Past interpretations of the current definition have been to use the vegetation line that existed prior to the nourishment project. A recent contested case has focussed on the need to have the rules amended to reflect the intent of past interpretations.*

15A NCAC 7H .2301 - .2305 *- The new general permit will allow expedited approval of proposals to replace existing bridges and culverts across streams in the coastal zone. The permit will be applied to projects within certain parameters of size, wetland impacts, etc. The parameters have been developed from a review of past permit decisions. It is projected that the new general permit will be used approximately six times per year to approve projects, proposed by the Dept. of Transportation. It will also apply to private projects. There is a need to expedite review and approval of routine impacts on Coastal Resources.*

Comment Procedures: *All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than December 1, 1995. 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. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(a) General Use Standards

(1) Uses which are not water dependent will not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent may include: utility easements; docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins; navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches.

(2) Before being granted a permit by the CRC or local permitting authority, there shall be a finding that the applicant has complied with the following standards:

(A) The location, design, and need for development, as well as the construction activities involved must be consistent with the stated management objective.

(B) Before receiving approval for location of a use

or development within these AECs, the permit-letting authority shall find that no suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).

(C) Development shall not violate water and air quality standards.

(D) Development shall not cause major or irreversible damage to valuable documented archaeological or historic resources.

(E) Development shall not measurably increase siltation.

(F) Development shall not create stagnant water bodies.

(G) Development shall be timed to have minimum adverse significant affect on life cycles of estuarine resources.

(H) Development shall not impede navigation or create undue interference with access to, or use of, public trust areas or estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable and prudent alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and will be implemented at the applicant's expense. These measures taken to mitigate or minimize adverse impacts may include actions that will:

(A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(B) restore the affected environment; or

(C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) Primary nursery areas are those areas in the estuarine system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are officially designated and described by the N.C. Marine Fisheries Commission in 15A NCAC 3B .1405 and by the N.C. Wildlife Resources Commission in 15A NCAC 10C .0110.

(5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission pursuant to Title 15A, Subchapter 2B .0216 of the N.C. Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance. In those estuarine waters and public trust areas classified as ORW by the Environmental Management Commission (EMC), no permit required by the Coastal Area Management Act will be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or Marine Fisheries Commission (MFC) for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource values unless such degradation is temporary.

(6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules. In defining SAVs, the CRC recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the SAV definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins must be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.

(A) Navigation channels and canals may be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.

(B) All spoil material from new construction shall be confined landward of regularly and irregu-

larly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or marsh.

(C) Spoil from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by an acceptable method having no significant, long term wetland impacts. Under no circumstances shall spoil be placed on regularly flooded wetlands.

(D) Widths of the canals and channels shall be the minimum required to meet the applicant's needs and provide adequate water circulation.

(E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.

(F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels.

(G) Canals for the purpose of multiple residential development shall have:

(i) no septic tanks unless they meet the standards set by the Division of Environmental Management and the Division of Environmental Health;

(ii) no untreated or treated point source discharge;

(iii) storm water routing and retention areas such as settling basins and grassed swales.

(H) Construction of finger canal systems will not be allowed. Canals shall be either straight or meandering with no right angle corners.

(I) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, vegetative stabilization, or adequate setbacks based on soil characteristics.

(J) Maintenance excavation in canals, channels and boat basins within primary nursery areas and beds of submerged aquatic vegetation should be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991.

(i) The applicant demonstrates and documents that a water-dependent need exists for the excavation; and

(ii) There exists a previously permitted channel which was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there must be clear evidence that the channel was continuously used for a specific purpose; and

(iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation; and

(iv) The original depth and width of a human-made or natural channel will not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

(A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow adequate settlement of suspended solids.

(B) Dredge spoil must be either confined on high ground by adequate retaining structures or if the material is suitable, deposited on beaches for purposes of renourishment, with the exception of (G) of this Subsection (b)(2).

(C) Confinement of excavated materials shall be on high ground landward of regularly and irregularly flooded marshland and with adequate soil stabilization measures to prevent entry of sediments into the adjacent water bodies or marsh.

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations must be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below mean low water.

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.

(F) A water control structure must be installed at the intake end of the effluent pipe.

(G) Publicly funded projects will be considered by review agencies on a case-by-case basis with respect to dredging methods and spoil disposal.

(H) Dredge spoil from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any marshland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary for adequate drainage.

(B) Spoil derived from the construction or maintenance of drainage ditches through regularly

flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Spoil derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on nonwetlands wherever feasible. Non-wetland areas include relic disposal sites.

(C) Excavation of new ditches through high ground shall take place landward of a temporary earthen plug or other methods to minimize siltation to adjacent water bodies.

(D) Drainage ditches shall not have a significant adverse effect on primary nursery areas, productive shellfish beds, beds of submerged aquatic vegetation, or other documented important estuarine habitat. Particular attention shall be placed on the effects of freshwater inflows, sediment, and nutrient introduction. Settling basins, water gates, retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.

(C) Drainage ditches shall not create stagnant water pools or significant changes in the velocity of flow.

(D) Drainage ditches shall not divert or restrict water flow to important wetlands or marine habitats.

(5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall also comply with these standards for all development other than maintenance and repair necessary to maintain previous service levels.

(A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, submerged aquatic vegetation, and wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alterative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:

(i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing adequate flushing by tidal or wind generated water circulation;

(ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in the significant degradation of existing fishery, shellfish, or wetland resources and the basin design shall provide adequate flushing by tidal or wind generated water circulation;

(iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and

(iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

(B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas will be considered on a case-by-case basis.

(C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.

(D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 sq. ft. of public trust areas for every one lin. ft. of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 sq. ft. allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.

(E) To protect water quality of shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human

consumption since November 28, 1975 or that shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish which have been harvested or are available for harvest in the area where harvest will be affected by the development.

(F) Marinas shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.

(G) Marina basins shall be designed to promote flushing through the following design criteria:

(i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and

(ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.

(H) Marinas shall be designed to minimize adverse effects on navigation and public use of public trust areas while allowing the applicant adequate access to deep waters.

(I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.

(J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.

(K) Marinas which require dredging shall provide acceptable areas to accommodate disposal needs for future maintenance dredging. Proof of the ability to truck the spoil material from the marina site to an acceptable disposal area will be acceptable.

(L) Marina design shall comply with all applicable requirements for management of stormwater runoff.

(M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of information on local pump-out services.

(N) Boat maintenance areas must be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate containment devices to prevent entry of waste materials into adjacent waters.

(O) All marinas shall comply with all applicable standards for docks and piers, bulkheading, dredging and spoil disposal.

(P) All applications for marinas shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of marina development.

(Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the preceding rules are complied with to the maximum extent possible, with due consideration being given to replacement costs, service needs, etc.

(6) Docks and Piers

(A) Docks and piers shall not significantly interfere with water flows.

(B) To preclude the adverse effects of shading coastal wetlands vegetation, docks and piers built over coastal wetlands shall not exceed six feet in width. "T"s and platforms associated with residential piers must be at the waterward end, and must not exceed a total area of 500 sq. ft. with no more than six feet of the dimension perpendicular to the marsh edge extending over coastal wetlands. Water dependent projects requiring piers or wharfs of dimensions greater than those stated in this Rule shall be considered on a case-by-case basis.

(C) Piers shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters by:

(i) not extending beyond the established pier length along the same shoreline for similar use; (This restriction shall not apply to piers 200 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);

(ii) not extending into the channel portion of the water body; and

(iii) not extending more than one-third the width of a natural water body or man-made canal or basin. Measurements to determine widths of the channels, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The one-third length limitation will not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line.

(D) Pier alignments along federally maintained channels must meet Corps of Engineers Dis-

trict guidelines.

(E) Piers shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to an approved diagram illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(F) Docks and piers shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct a dock or pier shall provide notice of the permit application or exemption request to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend.

(7) Bulkheads and Shore Stabilization Measures

(A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate mean high water or normal water level.

(B) Bulkheads shall be constructed landward of significant marshland or marshgrass fringes.

(C) Bulkhead fill material shall be obtained from an approved upland source, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.

(D) Bulkheads or other structures employed for shoreline stabilization shall be permitted below approximate mean high water or normal water level only when the following standards are met:

(i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;

(ii) the bulkhead alignment extends no further below approximate mean high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;

(iii) the bulkhead alignment will not result in significant adverse impacts to public trust rights or to the property of adjacent riparian owners;

(iv) the need for a bulkhead below approximate mean high water or normal water level is documented in the Field Investigation Report or other reports prepared by the Division of Coastal Management; and

(v) the property to be bulkheaded is in a nonoceanfront area.

(E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than vertical seawalls.

(8) Beach Nourishment

(A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use.

(B) Beaches may be created or maintained in areas where they have historically been found due to natural processes. They will not be allowed in areas of high erosion rates where frequent maintenance will be necessary.

(C) Placing unconfined sand material in the water and along the shoreline will not be allowed as a method of shoreline erosion control.

(D) Material placed in the water and along the shoreline shall be clean sand free from pollutants and highly erodible finger material. Grain size shall be equal to or larger than that found naturally at the site.

(E) Material from dredging projects can be used for beach nourishment if:

(i) it is first handled in a manner consistent with rules governing spoil disposal;

(ii) it is allowed to dry for a suitable period; and

(iii) only that material of acceptable grain size is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.

(F) Beach creation shall not be allowed in any primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.

(G) Material shall not be placed on any coastal wetlands or beds of submerged aquatic vegetation.

(H) Material shall not be placed on any submerged bottom with significant shellfish resources.

(I) Beach construction shall not create the potential for filling adjacent or nearby navigation channels, canals, or boat basins.

(J) Beach construction shall not violate water quality standards.

(K) Permit renewal of these projects shall require an evaluation of any adverse impacts of the original work.

(L) Permits issued for this development shall be limited to authorizing beach nourishment only one time during the life of the permit. Permits may be renewed for maintenance work or repeated need for nourishment.

(9) Wooden and Riprap Groins

(A) Groins shall not extend more than 25 ft. waterward of the mean high water or normal water level unless a longer structure is justified by site specific conditions, sound engineering and design principals.

(B) Groins shall be set back a minimum of 15 ft. from the adjoining property lines. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.

(C) Groins shall pose no threat to navigation.

(D) The height of groins shall not exceed 1 ft. above mean high water or the normal water level.

(E) No more than two structures shall be allowed per 100 ft. of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.

(F) "L" and "T" sections shall not be allowed at the end of groins.

(G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant in other than non-harmful quantities and of a size sufficient to prevent its movement from the site by wave and current action.

(10) "Free Standing Moorings"

(A) A "free standing mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

(B) Free standing moorings shall be permitted only:

(i) to riparian property owners within their riparian corridors; or

(ii) as a publicly sponsored project providing a suitable area for access to any mooring(s) and other land based operations which shall include but not be limited to wastewater pump out, trash disposal and vehicle parking.

(C) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish which have been harvested or are available for harvest in the area where harvest will be affected by the development.

(D) Moorings shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.

(E) Moorings shall be designed and maintained to minimize adverse effects on navigation and public use of public trust areas while allowing the applicant adequate access to deep waters.

(F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory,

that may cause a federally maintained channel to be restricted.

(G) Open water moorings shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.

(H) Moorings and the associated land based operation design shall comply with all applicable requirements for management of stormwater runoff.

(I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and explaining the availability of information on local pump-out services and waste disposal.

(J) All applications for moorings shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of moorings development.

(K) Free standing moorings associated with public service or temporary construction/salvage operations can be permitted without a public sponsor and shall be evaluated on a case-by-case basis.

(L) Free standing mooring buoys and piles are to be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access by blocking channels, deep water, etc. which allows riparian access. Free standing moorings shall not interfere with the ability of any riparian owner to place a pier for access.

(M) Free standing moorings shall be marked or colored in compliance with U.S. Coast Guard and N.C. Wildlife Resource Commission requirements and the required marking maintained for the life of the mooring(s).

(N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.

(O) Existing free standing moorings (i.e. buoys/pilings) may be maintained in place for two years. However, if the moorings(s) deteriorate or are damaged such that replacement is necessary during the two year period, the mooring(s) then must comply with those guidelines of the Division in place at that time. In any event, existing moorings must comply with these Rules within two years.

(11) Filling of Canals, Basins and Ditches - Not withstanding the general use standards for estuarine systems as set out in 7H .0208(a) of this Rule, filling canals, basins and ditches shall be allowed if:

(A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level; and

(B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored; and

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, bed of submerged aquatic vegetation, coastal wetlands other than a narrow fringe around the shoreline, recognized public trust right or established public trust usage; and

(D) the filling will not adversely affect the value and enjoyment of property of any riparian owner; and

(E) the filling will further some policy of the Commission such as retreating from erosion or avoiding water quality degradation.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

.0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(1) the growth of vegetation occurs, or

(2) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(b) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(c) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.

(d) General Identification. For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the

land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

(e) "Vegetation Line" means the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line. In areas within the boundaries of a beach nourishment or spoil deposition project which is likely to change the location of the vegetation line, the vegetation line means the first line of stable natural vegetation as it existed prior to initiation of the beach nourishment or spoil deposition project. A project will be considered likely to change the location of the vegetation line based on an analysis of the amount and quality of sand and the manner in which the sand is placed on the beach.

(f) "Erosion Escarpment" means normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(g) Measurement line means the line from which the ocean front setback as described in Rule .0306(a) of this ~~Subchapter~~ Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(a)(4) of this ~~Subchapter.~~ Section. Procedures for determining the measurement line shall be adopted by the Commission for each area where such a line is designated. These procedures shall be available from any local permit officer or the Division of Coastal Management.

Statutory Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

.0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 7M .0200.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include, but are not limited to: bulkheads; seawalls; revetments; jetties; groins and breakwaters.

(C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.

(D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.

(E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important fish and wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.

(F) Project construction shall be timed to minimize adverse effects on biological activity.

(G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

(H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:

(i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:

(i) the structure is necessary to protect an historic site of national significance, which is imminently threatened by shoreline erosion; and

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or

long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and

(ii) dredging alone is not practicable to maintain safe access to the affected channel; and

(iii) the structure is limited in extent and scope to that necessary to maintain the channel; and

(iv) the structure will not result in substantial adverse impacts to fisheries or other public trust resources; and

(v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits clearly outweigh the short or long range adverse impacts. Additionally, the permit must include conditions providing for mitigation or minimization by that agency of any significant and unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(K) Proposed erosion response measures using innovative technology or design will be considered as experimental and will be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed above mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph may be used only to protect imminently threatened structures. Normally, a structure will be considered to be imminently threatened if its foundation septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp.

(C) Temporary erosion control structures may be used to protect only the principal structure and its associated septic system, but not such appurtenances as gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures must not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads.

(F) A temporary erosion control structure may remain in place for up to two years after the date of approval if it is protecting a building with a total floor area of 5000 sq. ft. or less, or, for up to five years if the building has a total floor area of more than 5000 sq. ft. A temporary erosion control structure may remain in place for up to five years if it is protecting a bridge or a road. The property owner will be responsible for removal of the temporary structure within 30 days of the end of the allowable time period. A temporary erosion control structure may remain in place for up to five years regardless of the size of the structure if the community in which it is located is actively pursuing a beach nourishment project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment project if it has:

(i) been issued a CAMA permit approving such project, or

(ii) been deemed worthy of further consideration by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, or

(iii) received a favorable economic evaluation report on a federal project approved prior to 1986.

(G) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, it must be removed by the property owner within 30 days.

(H) Removal of temporary erosion control structures may not be required if they are covered by dunes with vegetation sufficient to be considered stable and natural.

(I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the

structure shall not exceed 20 feet, and the height shall not exceed six feet.

(K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(L) Construction of a temporary erosion control structure can be approved only once on any property regardless of ownership.

(M) Existing sandbag structures can be maintained provided that the permitted dimensions are not exceeded.

(N) Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.

(3) ~~Beach Nourishment.~~ Beach Nourishment/Spoil Disposal:

(A) Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.

(B) The vegetation line existing at the beginning of any large scale beach nourishment or spoil deposition project shall be located by DCM and surveyed by the project sponsor or permittee and placed on the current erosion rate maps. Said line shall be used for future setback determinations.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);

(C) Movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

(1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.

(2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

(4) Sand used to establish or strengthen dunes must be of the same general characteristics as the sand in the area in which it is to be placed.

(5) No new dunes shall be created in inlet hazard areas.

(6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.

(7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alterative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is less than six feet in width; and

(C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier

against flooding and erosion; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

(4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:

(1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume 1-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.

(4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124.

SECTION .2300 - GENERAL PERMIT FOR REPLACEMENT OF EXISTING BRIDGES AND CULVERTS IN ESTUARINE WATERS, ESTUARINE SHORELINES, PUBLIC TRUST AREAS, AND COASTAL WETLANDS

.2301 PURPOSE

This permit will allow the replacement of existing bridges and culverts in estuarine water, estuarine shoreline, public trust areas and coastal wetland AECs according to authority provided in 15A NCAC 7J .1100 and according to the following guidelines.

Statutory Authority G.S. 113A-107; 113A-118.1; 113A-124.

.2302 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development.

(b) The applicant must provide:

(1) information on site location, detailed project description, and his/her name, address and telephone number;

(2) a dated scaled plat(s) showing existing and proposed development that follows the criteria outlined in 15A NCAC 7J .0203, a completed Form DCM-MP-5; and

(3) confirmation that:

(A) a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or

(B) the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments. If DCM determines that:

(i) the comments are relevant to the potential impacts of the proposed project; and

(ii) the permitting issues raised by the comments are worthy of more detailed review, the applicant will be notified that he/she must submit an application for a major development permit.

(c) Approval of individual projects will be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit must be completed within

one year of permit issuance or the general authorization expires and a new permit shall be required to begin or continue construction.

(d) No work shall begin until an onsite meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development may be issued during this visit if other approval procedure criteria have been met.

Statutory Authority G.S. 113A-107; 113A-118.1; 113A-124.

.2303 PERMIT FEE

The applicant must pay a permit fee of fifty dollars ($50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107; 113A-118.1; 113A-124.

.2304 GENERAL CONDITIONS

(a) Projects authorized by this permit will be demolition, removal, and replacement of existing bridges and culverts along the existing alignment and conforming to the standards herein. This permit is applicable only to single bridge and culvert projects and does not authorize temporary fill causeways or temporary bridges that may be associated with bridge replacement projects.

(b) The permittee shall allow authorized representatives of the Department of Environment, Health, and Natural Resources (DEHNR) to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) This general permit will not be applicable to proposed construction where DEHNR believes that authorization may be warranted, but that the proposed activity might significantly affect the quality of human environment or unnecessarily endanger adjoining properties.

(d) This general permit will not be applicable to proposed construction where DEHNR determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation, or recreational values.

(e) DEHNR may, on a case by case basis, determine that the general permit shall not be applicable to a specific construction proposal. In these cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

(f) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(g) Development carried out under this permit must be consistent with all local requirements, AEC guidelines, and local land use plans current at the time of authorization.

(h) This permit does not apply to projects that require work channels.

(i) Review of individual project requests will be coordinated with appropriate Division of Marine Fisheries or Wildlife Resources Commission personnel. This may result in a construction moratorium during periods of highest biological productivity.

(j) Development under this permit must be carried out within existing Department of Transportation (DOT) right-of-ways or on lands under the ownership of the applicant in the case of a non-DOT project.

(k) Bridge and culvert replacements shall be designed to minimize any adverse impacts to potential navigation or use of the waters by the public.

(l) This permit shall apply only to projects involving repair or replacement of bridges currently serving their intended function.

Statutory Authority G.S. 113A-107; 113A-118.1; 113A-124.

.2305 SPECIFIC CONDITIONS

(a) This general permit is applicable to bridge replacement projects spanning no more that 250 feet of estuarine water, public trust area, and coastal wetland AECs.

(b) Existing roadway deck width cannot be expanded to create additional lanes.

(c) Replacement of existing bridges with new bridges shall not reduce vertical or horizontal navigational clearances.

(d) Bridges replacement projects shall not create vertical clearance more that five feet above the NWL or NHW, or by more than 25 percent of the existing vertical clearance, whichever is greater.

(e) All demolition debris will be disposed of in approved highground locations.

(f) Bridges and culverts shall be designed to allow passage of anticipated high water flows.

(g) Measures sufficient to adequately restrain sedimentation and erosion shall be implemented at each site. These measures should be coordinated through the North Carolina Division of Land Resources.

(h) Limits of excavation and fill: Bridge or culvert replacement activities involving excavation or fill in wetlands, public trust areas, and estuarine waters shall meet the following conditions:

(1) Replacing bridges with culverts shall not be allowed in primary nursery areas.

(2) The total area of public trust area, estuarine waters, and wetlands to be excavated or filled shall not exceed 2,500 square feet except that the wetland component shall not exceed 500 square feet.

(3) Culverts shall not be used to replace bridges with open water spans greater than 50 feet.

(4) The temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands is not authorized.

(5) No excavated or fill material will be placed at any time in any wetlands or surrounding waters outside of the alignment of the fill area indicated on the work plat(s).

(6) All excavated materials will be confined above mean high water or normal water level and landward of any wetlands behind adequate dikes or other retaining structures to prevent spill-over of solids into any wetlands or surrounding waters.

(7) Placement of fill shall be restricted to the widening of the approaches, or that which is necessary to install culvert(s).

(8) No bridges with a clearance of four feet or greater above the NWL or NHW will be allowed to be replaced with culvert(s) unless the culvert design maintains the existing water depth, vertical clearance and horizontal clearance.

(9) If a bridge is being replaced by a culvert(s) then the width of the waterbody shall not be decreased by more than 40 percent.

Statutory Authority G.S. 113A-107; 113A-118.1; 113A-124.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10F .0339.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 20, 1995 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604.*

Reason for Proposed Action: *To regulate boat speeds in congested areas.* ***Pending changes are in italics.***

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 1, 1995 - December 1, 1995. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, North Carolina 27604-1188.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of local government or state funds.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0339 MCDOWELL COUNTY

(a) Regulated Areas. This Rule applies to the following waters located on Lake James in McDowell County:

(1) that area adjacent to the shoreline of the McDowell Wildlife Club property;

(2) that area adjacent to the shoreline of the Marion Moose Club property;

(3) that area known as Morgan Cove;

(4) that area within 50 yards of the shoreline at the New Manna Baptist Youth Camp;

(5) that area within 50 yards of the shoreline at Burnett's Landing;

(6) the cove area adjacent to the State Park swimming area;

(7) the cove area adjacent to the State Park picnic area and dock;

(8) that area within 50 yards of camping areas in the Lake James State Park as designated by the appropriate markers;

(9) that area within 50 yards of the boat launching ramp at the Marion Lake ~~*Club.*~~ *Club;*

(10) that area within 50 yards in either direction from the marina docks in Plantation Point Cove;

(11) that designated area of Goodman's Landing Cove within 50 yards of the swimming area and boat docks of Goodman's Campground.

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

(c) Restricted Swimming Areas. No person operating or responsible for the operation of any vessel, surfboard or waterskis shall permit the same to enter any marked swimming area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of McDowell County is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

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

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rule cited as 16 NCAC 6C .0101; and adopt rule cited as 16 NCAC 6C .0313.

Temporary: *These Rules were filed as temporary rules effective October 10, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

Proposed Effective Date: *April 1, 1996.*

A Public Hearing *will be conducted at 9:00 a.m. on December 5, 1995 at the Education Building, Room 224, 301 N. Wilmington Street, Raleigh, NC 27601-2825.*

Reason for Proposed Action: *These Rules are needed to implement Chapter 373 of the 1995 Session Laws so that local school boards may adopt policies governing the use of criminal history checks for applicants.*

Comment Procedures: *Any interested person may present comments either orally at the hearing or in writing before or at the hearing.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

As used in this Subchapter:

(1) "Convicted" or "Conviction" means and includes the entry of:
  (a) a plea of guilty;
  (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
  (c) a plea of no contest, nolo contendere, or the equivalent.

(2) ~~(1)~~ "Institution of higher education" (IHE) means a senior college or university.

(3) ~~(2)~~ "Instructional personnel" means all teachers as defined by G.S. 115C-325, with the exception of supervisors, and non-teaching principals, assistant principals, social workers, counselors and psychologists. The term includes principals, assistant principals, or counselors who teach any part of the day, librarians and instructional aides, except that:
  (a) aides are not included for the purpose of applying Rule .0403 of this Subchapter; and
  (b) aides are not included for the purpose of applying Rule .0301 of this Subchapter.

(4) ~~(3)~~ "License" has the same meaning as the term "certificate" as used in 16 NCAC 1A .0001(2).

(5) ~~(4)~~ "National Teachers' Examination" (NTE) means the standard examination adopted by the SBE pursuant to G.S. 115C-284(c), 115C-296 and 115C-315(d).

(6) ~~(5)~~ "Other personnel" means those persons not included within the definition of instructional personnel.

(7) ~~(6)~~ "Part-time employee" means a person employed for at least 20 hours per week.

(8) ~~(7)~~ "Permanent employee" means a person who is not a student enrolled in the school system who is employed:
  (a) other than on an interim basis, to fill a position which is to become permanent if current needs and funds continue; or
  (b) for at least six months under one contract, to replace one or more employees who are on leave without pay.

(9) ~~(8)~~ "Professional public school employee" means and includes:
  (a) teachers;
  (b) Administrators (superintendents, assistant or associate superintendents, principals, assistant principals, and supervisors); and
  (c) education specialists (counselors, school social service workers, curriculum instructional specialists, school psychologists, and media personnel).

(10) ~~(9)~~ "Renewal credit" means credit earned by a certificated employee for certificate renewal purposes.

(11) ~~(10)~~ "SACS" means the Southern Association of Colleges and Schools.

(12) ~~(11)~~ "Substitute" means a person who holds a teacher's certificate, or who is a college graduate, or who has been determined by a local board to be capable of performing the duties of a substitute teacher.

(13) ~~(12)~~ "Teacher education program" means the curriculum, instructional resources and faculty that contribute to the quality of instruction and the acquisition of knowledge, skills and competencies required for professional personnel to perform effectively in the public schools.

Authority N.C. Constitution, Article IX, Sec. 5.

SECTION .0300 - CERTIFICATION

.0313 CRIMINAL HISTORY CHECKS

(a) An LEA may obtain criminal history checks on applicants for employment as provided in G.S. 115C-332 and on applicants and current employees as provided in G.S. 114-19.2(a).

(b) An LEA shall not make any employment decision based solely upon the criminal history check provided by the Department of Justice whether provided pursuant to G.S. 115C-332 or G.S. 114-19.2(a). An LEA shall obtain from the repository of the record a certified copy of an applicant's or employee's conviction prior to making a final employment decision based on the conviction.

(c) An LEA shall maintain data from a criminal history check from Department of Justice in paper format only, in a locked, secure place, separate from the individual's application or personnel file. Only those officials who have been designated by the local board of education as having a need to know the results of a criminal history check may

obtain access to the records. Certified copies of records of convictions are public records and need not be maintained in accordance with this Rule.

(d) In the event the LEA discovers as a result of a criminal history check from Department of Justice that any applicant or employee who possesses a certificate or license issued by the SBE has a criminal history, the LEA shall notify in writing the SBE office of legal counsel and shall submit to that office a certified copy of the record of conviction or convictions. The office of legal counsel may initiate license or certificate revocation as appropriate.

(e) Nothing in this Rule is intended to prohibit suspension with or without pay or demotion or dismissal pursuant to the provisions of G.S. 115C-325 without any requirement that there be actual conviction of a crime.

Statutory Authority 1995 S.L., c. 373, s. 3.

TITLE 18 - SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Secretary of State intends to amend rules cited as 18 NCAC 4 .0102, .0201, .0203, .0205 - .0206, .0302 - .0308, .0311, .0316, .0401 - .0402, .0501 - .0504; 18 NCAC 5 .0101, .0103 - .0209, .0305; 18 NCAC 6 .1601 - .1602, .1607; 18 NCAC 7 .0302; repeal 18 NCAC 4 .0312 - .0314; 18 NCAC 5 .0304, .0404; 18 NCAC 6 .1605; and adopt 18 NCAC 4 .0317 - .0318.

Temporary: *(18 NCAC 4 .0317 - .0318 were filed as temporary adoptions effective November 10, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.)*

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on December 4, 1995 at the Legislative Office Building, 3rd Floor Conference Room, 300 N. Salisbury Street, Raleigh, NC 27603-5909.*

Reason for Proposed Action:

18 NCAC 4 .0102 *- To add newly created statutory entities to responsibilities of Corporations Division.*

18 NCAC 4 .0201 *- To reflect the repeal of tax on filing of nonprofit corporation documents.*

18 NCAC 4 .0203 *- To reflect change in title of personnel.*

18 NCAC 4 .0205 *- To reflect the repeal of tax on filing of nonprofit corporation documents.*

18 NCAC 4 .0206 *- To reflect change in statute numbers and repeal of tax on filing of nonprofit documents.*

18 NCAC 4 .0302 *- To conform rule to creation of new statutory business entities.*

18 NCAC 4 .0303 *- To reflect change in statutory criteria for acceptance of nonprofit documents submitted for filing and change in Division accounting procedures.*

18 NCAC 4 .0304 *- To conform rule to addition of new statutory business entity.*

18 NCAC 4 .0305 *- To conform rules to new statutory procedures for corrective filings.*

18 NCAC 4 .0306 *- To conform rules to new statutory requirements for nonprofit corporations and to modify rule's application to encompass limited liability companies.*

18 NCAC 4 .0307 *- To reflect recent revisions to statutory requirements on name availability.*

18 NCAC 4 .0308 *- To broaden rule to encompass limited liability companies.*

18 NCAC 4 .0311 *- To broaden rule to encompass L.L.C. mergers.*

18 NCAC 4 .0312 *- Rule superseded by G.S. 55B-16.*

18 NCAC 4 .0313 & .0314 *- Rule superseded by statutory procedures.*

18 NCAC 4 .0316 *- To broaden rule to encompass limited liability companies.*

18 NCAC 4 .0317 & .0318 *- Procedure in rule mandated by statute.*

18 NCAC 4 .0401 *- To modify rule to encompass limited liability companies.*

18 NCAC 4 .0402 *- To encompass limited liability companies and to reflect new statutory fees.*

18 NCAC 4 .0501 *- To reflect revised statutory requirements on name availability.*

18 NCAC 4 .0502 *- To clarify terms used in rule and to reference new statutory procedure for qualification of foreign professional corporations.*

18 NCAC 4 .0503 *- To reflect current statutory name availability criteria.*

18 NCAC 4 .0504 *- To reflect creation of limited liability companies.*

18 NCAC 5 .0101 *- To correct the hours of operation of the U.C.C. Division.*

18 NCAC 5 .0203 *- To conform the rule to revised statutory requirements on U.C.C. filing fees.*

18 NCAC 5 .0204 *- To reflect current administrative policy on refunds of overpayment.*

18 NCAC 5 .0205 *- To reflect amendments to time period allowed for filing of U.C.C. continuation statement.*

18 NCAC 5 .0206 *- To eliminate repetition of contents of statute.*

18 NCAC 5 .0207 *- To conform the rule to revised statutory requirements on U.C.C. filing fees.*

18 NCAC 5 .0208 & .0209 *- To reflect current administrative operating practices.*

18 NCAC 5 .0304 *- U.C.C. Division now allows the public to search its records.*

18 NCAC 5 .0305 *- To reflect the statutory requirement of tender of fee as requirement of filing.*

18 NCAC 5 .0404 *- To reflect current administrative policy.*

18 NCAC 6 .1601 - .1602, .1604 - .1605, .1607 *- To reflect statutory amendments.*

18 NCAC 7 .0302 *- To conform the rule to requirements of the new G.S. 10A-4.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing, or mail comments to 300 N. Salisbury St., Raleigh, NC 27603-5909. All comments must be received no later than 5 p.m. on December 4, 1995.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

CHAPTER 4 - CORPORATIONS DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0102 ADMINISTRATION AND FUNCTIONS

(a) The chief officer of the Division is the Director.

(b) The Division is responsible for filing and maintaining documents on behalf of ~~corporations~~ corporations, limited liability companies, limited liability partnerships, and limited partnerships whenever filing with the Secretary of State is specified by statute.

(c) The Division prepares and certifies copies of documents on file upon request. Statutory fees are charged for preparation and certification.

(d) The Division provides information in response to written or telephone inquiry, based on information contained in documents on file. There is no fee for providing information by telephone or letter.

(e) The Division certifies to facts contained in documents on file, based on an examination of its documents and indices.

Statutory Authority G.S. 55-1-22; 55-1-25; 55-1-30; 55A-1-22 ; 55A-1-25; 55A-1-30; 57C-1-22; 57C-1-25; 57C-1-30; 59-84.2; 59-206.

SECTION .0200 - PAYMENT OF FEES AND TAXES

.0201 TENDER OF FEE

Filing of any document shall be accomplished only upon tender of applicable filing fee ~~and tax~~ to the Division.

Statutory Authority G.S. 55-1-22; 55-1-30; 55A-1-22; 55A-1-30; 57C-1-22; 57C-1-30; 59-1106.

.0203 INVOICES

Upon request for documents on file or certificates of information not accompanied by the applicable fee, the Division shall prepare and remit the material requested, accompanied by an invoice for the applicable fee, unless it is determined by the Corporations ~~Attorney~~ Director that it is in the interest of the state to require prepayment.

Statutory Authority G.S. 55-1-30; 55A-1-30; 57C-1-30.

.0205 OVERPAYMENT

If the Director determines that an overpayment of ~~tax or~~ fees by check or money order is so large that it is not in the interest of the state to issue a refund, he shall require tender of the exact amount of ~~tax or~~ fees prior to filing, preparation of copies, or certification.

Statutory Authority G.S. 55-1-30; 55A-1-30; 57C-1-30 .

.0206 DOCUMENTS NOT SPECIFICALLY PROVIDED FOR

When any document is filed for any corporation organized under a statute other than one found in Chapter 55 or 55A, and no fee is specifically provided in the applicable statute, the fee ~~or tax~~ for such filing shall be the fee ~~or tax~~ provided in G.S. 55-1-22 ~~55-1-22; G.S. 55A-77;~~ or G.S. ~~55A-78~~ 55A-1-22; for a comparable type of document, and if no comparable type of document exists, the fee shall be the fee provided in G.S. 55-1-22(a)(26) or G.S. ~~55A-77(a)(17);~~ 55A-1-22(27).

Statutory Authority G.S. 55-1-22; 55A-1-22.

SECTION .0300 - FILING OF DOCUMENTS

.0302 EXECUTION

When execution is required by any person acting in the capacity of officer, director, incorporator, member, manager, or registered agent, execution by a holder of a power of attorney, by a personal representative, or by a legal guardian of the person shall be rejected.

Statutory Authority G.S. 55-1-20; 55-1-30; 55A-1-20; 55A-1-30; 57C-1-20; 57C-1-30.

.0303 REJECTION

If the Director finds that a document submitted for filing pursuant to a provision of ~~Chapter 55A or~~ Chapter 59 does not conform to law in any respect, he shall by return mail or other appropriate method remit the document ~~and fee submitted~~ to the person who submitted such document, accompanied by an explanation, in adequate detail, of the deficiency and credit the fee to that person's account. The date of filing of such document shall be the date upon which the document is filed by the Division in such form as shall conform to law.

Statutory Authority G.S. 59-206.

.0304 IDENTIFICATION OF CORPORATION /LLC AND TYPE OF DOCUMENT

(a) Each document shall consistently identify the corporation or limited liability company executing such document, if executed by a corporation or limited liability company. The ~~corporate~~ entity's name shall be recited throughout the document in the identical form, as to spelling, spacing, and punctuation, as the name appears in the existing charter of the ~~corporation~~ entity.

(b) If captioned, a document shall contain in its caption words identical to the words which appear in the applicable statute to identify the type of document.

(c) Articles of incorporation for a business corporation shall identify the corporation as a "business corporation" or make reference to G.S. Chapter 55. Articles of incorporation for a nonprofit corporation shall identify the corporation as a "nonprofit corporation" or make reference to G.S. Chapter 55A. Articles of incorporation for a professional corporation shall identify the corporation as a "professional corporation" or make reference to G.S. Chapter 55B.

Statutory Authority G.S. 55-1-30; 55A-1-30; 55B-3; 55B-4; 57C-1-30.

.0305 CORRECTIVE FILINGS - LIMITED PARTNERSHIPS

~~(a) Any error in the name of the registered agent or the location of the registered office which appears in any document which has been filed by or on behalf of a nonprofit corporation may be corrected by filing statement of change of registered office or registered agent.~~

~~(b) Subject to Paragraph (a) of this Rule, any error in the articles of incorporation of a nonprofit corporation which have been filed shall be corrected only by filing articles of amendment.~~

~~(c) Subject to Paragraph (a) of this Rule, any error in a restated charter of a nonprofit corporation which has been filed shall be corrected only by filing a restated charter.~~

~~(d) Subject to Paragraph (a) of this Rule, any error in articles of merger or consolidation of nonprofit corporations which have been filed shall be corrected only by filing articles of amendment executed only by the surviving or new corporation.~~

~~(e) Subject to Paragraph (a) of this Rule, any error in an application for a certificate of authority which has been filed by or on behalf of a foreign nonprofit corporation shall be corrected only by filing an application for an amended certificate of authority.~~

~~(f)~~ An error in a certificate of limited partnership which has been filed by or on behalf of a domestic limited partnership or in an application for registration which has been filed by a foreign limited partnership shall be corrected only by the filing of an amended certificate of limited partnership or an amended application for registration.

~~(g) In any case in which there is an error in any document which has been filed by or on behalf of a North Carolina nonprofit corporation and for which the manner of correction is not specified in Paragraphs (a) through (e) of this Rule, the only methods of correcting such error shall be either:~~

~~(1) filing a document pursuant to the same statute pursuant to which the filing containing the error was made, or~~

~~(2) filing articles of amendment.~~

~~(h) No document filed to correct an error shall make reference to the error or to "correction" or "corrected" in its caption, but such error may be recited elsewhere in the document.~~

Statutory Authority G.S. 59-202; 59-905.

.0306 INCORPORATION BY REFERENCE

~~(a) The address of each director and incorporator and the address of the registered office in articles of incorporation shall contain a street address if the address lists a city with a population of 5,000 or more persons according to the latest U.S. Census. In any instance where street address is required, name of building, rural route number, or name of road or street shall be accepted in lieu of street address, but post office box number alone shall not be accepted.~~

~~(b)~~ Articles of incorporation ~~which contain bylaws~~ or articles of organization in which bylaws or an operating agreement are incorporated by reference shall be rejected. Reference may be made in articles of incorporation or articles of organization to bylaw provisions or provisions in an operating agreement so long as such provisions are not thereby incorporated in the charter.

~~(c) Articles of incorporation filed pursuant to G.S. 55A-7 shall list names and addresses of a minimum of three initial directors.~~

Statutory Authority G.S. 55-2-02; 55A-2-02; 57C-2-21.

.0307 APPLICATION FOR RESERVATION OF NAME

(a) If an applicant requests reservation of more than one ~~corporate~~ name for a corporation, a limited liability company, or a limited partnership, a separate application shall be submitted for each name.

(b) The date of filing shall be the first day in determining the date of expiration of reservation. The reservation shall expire immediately after the termination of filings by the Division on the final day of the reservation period. If the final day of the reservation period is not an operating day of the Division, the reservation shall nevertheless expire on such final day.

(c) A person who wishes to reserve a particular ~~corporate~~ limited partnership name after having reserved that name on a previous occasion may apply to reserve such name again after the elapse of one full business day following the expiration of the previous reservation.

Statutory Authority G.S. 55-4-02; 55A-4-02; 57C-2-31; 59-104.

.0308 REGISTERED OFFICE AND REGISTERED AGENT

(a) In the event that a corporation has never designated a registered office or registered agent, or in the event that ~~the~~ a corporation's or limited liability company's registered agent has resigned, the ~~corporation~~ entity may designate a registered agent and/or registered office.

~~(b) The fee for filing a designation shall be the fee specified in G.S. 55-1-22(a)(9) or G.S. 55A-77(a)(17), as applicable.~~

(b) ~~(c)~~ The information required for the designation of a registered agent or a registered office shall be set forth in a statement which shall be substantially the same as that provided for in ~~G.S. 55-5-02, G.S. 55-15-08, G.S. 55A-12, or G.S. 55A-65,~~ the change of a registered agent or registered office, except that it shall be unnecessary to set forth information concerning the current registered agent or current registered office.

(c) ~~(d)~~ With respect to documents permitted to be filed with the Office of the Secretary of State, a person shall consistently use the same name and same business office address in each instance in which that person serves as registered agent for any corporation or limited liability company.

(d) ~~(e)~~ A person who serves as registered agent for more than one corporation or limited liability company may notify the Secretary of State of the change of the address of the registered offices of such ~~corporations~~ entities by attaching a list of the names of those ~~corporations~~ entities to the statement required to be filed by G.S. ~~55-5-02 or G.S. 55-15-08~~ 55-5-02, G.S. 55-15-08, G.S. 55A-5-02, G.S. 55A-15-08, G.S. 57C-2-41, or G.S. 57C-7-08.

Statutory Authority G.S. 55-1-22; 55-1-30; 55-5-01; 55-5-02; 55-15-07; 55-15-08; 55A-1-22; 55A-1-30; 55A-5-01; 55A-5-02; 55A-15-07; 55A-15-08; 57C-1-22; 57C-1-30; 57C-2-40; 57C-2-41; 57C-7-07; 57C-7-08.

.0311 ART OF MERGER/SHARE EXCH INVOLVING FOREIGN ENTITY

~~(a)~~ Each foreign ~~corporation~~ entity which is a party to a merger or a share exchange pursuant to G.S. 55-11-07, G.S. 55-11-09, G.S. 55A-11-06, ~~or G.S. 55A-42.1~~ 55A-11-08, or 57C-9-06 shall be identified in the articles of merger or share exchange by state or country of incorporation or organization. Articles of merger filed pursuant to ~~G.S. 55-11-07 or G.S. 55A-42.1~~ these statutes shall contain:

(1) a statement that the merger is permitted by the law of the state or country of incorporation or organization of each foreign ~~corporation~~ entity which is a party, and

(2) a statement that each foreign ~~corporation~~ entity which is a party has complied or shall comply with the applicable laws of its state or country of incorporation or organization regarding such merger.

~~(b) Filing pursuant to G.S. 55-11-07 or G.S. 55A-42.1 shall have the same effect as filing pursuant to G.S. 55-15-20 or G.S. 55A-72 for any foreign corporation which has authority to transact business in this state, which is a party to such merger, and which is not the surviving corporation.~~

Statutory Authority G.S. 55-11-07; 55-11-09; 55A-11-06; 55A-11-08; 57C-9-06.

.0312 APPL FOR CERT OF AUTHORITY BY FOREIGN PROF CORPORATION

~~If a foreign corporation which renders professional services as defined in G.S. 55B-2(6) applies for a certificate of authority, each copy of such application shall be accompanied by a certificate of the applicable North Carolina licensing board, making the same certification as is required for articles of incorporation pursuant to G.S. 55B-4(4). This requirement shall not apply to any corporation which was organized prior to June 5, 1969, and was permitted by the law of its jurisdiction of incorporation to render such services prior to June 5, 1969.~~

Statutory Authority G.S. 55-15-03; 55B-2; 55B-4; 55B-15.

.0313 FILING MERGER INVOLVING FOREIGN CORPORATION

~~(a) If one or more parties to a merger filed pursuant to G.S. 55A-70 is a domestic corporation, the filing of articles of merger pursuant to G.S. 55A-41 and G.S. 55A-42.1 shall take place prior to or simultaneously with the filing of articles of merger pursuant to G.S. 55A-70.~~

~~(b) The filing of articles of merger pursuant to G.S. 55A-70 or G.S. 55A-41 shall be deemed a substitute for and shall have the same effect as the filing of an application for withdrawal pursuant to G.S. 55A-72 by any foreign corporation which has authority to transact business in this state, which is a party to such merger, and which is not the surviving corporation.~~

~~(c) If a foreign corporation has been authorized to transact business in this state and is a non-surviving party to a statutory merger, the filing of the articles of merger by the surviving corporation shall be accepted by the Division as the equivalent of a filing of an application for withdrawal, even if the surviving corporation has not been authorized to transact business in this state.~~

Statutory Authority G.S. 55A-41; 55A-42.1; 55A-70; 55A-72; 55A-81.

.0314 FILING EVIDENCE OF DISSOLUTION OF FOREIGN NONPROFIT CORP

~~The filing of a copy of any final document of dissolution bearing an original certification of the appropriate official of the state or country of incorporation shall be deemed a substitute for and shall have the same effect as the filing of an application for withdrawal pursuant to G.S. 55A-72.~~

Statutory Authority G.S. 55A-72; 55A-81.

.0316 FORM FOR ANNUAL REPORT

A corporation filing its annual report in order to comply with G.S. 55-16-22 or a limited liability company filing an annual report pursuant to G.S. 57C-2-23 must use the

annual report form promulgated by the Secretary of State. Exact copies of the annual report form provided by the Corporations Division may be made and used to satisfy the annual filing requirement. However, annual reports with formats different from the form prescribed by the Corporations Division will not be accepted for filing.

Statutory Authority G.S. 55-1-21; 57C-1-30.

.0317 AUTHORIZATION OF CORRECTIONS ON DOCUMENTS

A document that is submitted to the Corporations Division for filing but rejected because it does not satisfy the requirements of Chapter 55, 55A, 57C, or 59 may be corrected by the examiner in charge of examining the document provided that the examiner is authorized by the person submitting the document to make the correction. Upon receiving such authorization, the examiner shall obtain and record by memorandum the following information:

(1) the name of the entity to which the document relates;
(2) the type of document;
(3) the name of the person authorizing the correction;
(4) the name of the person or entity represented by the person authorizing the correction;
(5) the instructions received by the examiner making the correction;
(6) the time, date, and manner of the authorization, including a telephone number by which the person authorizing the correction may be reached; and
(7) the name of the examiner making the correction.

The memorandum of authorization shall be retained by the Division with the original of the document so corrected. Upon request, a copy of the memorandum of authorization shall be furnished to any person desiring one.

Statutory Authority G.S. 55-1-25; 55A-1-25; 57C-1-25; 59-206.

.0318 AUTHORIZATION OF FOREIGN PROFESSIONAL CORPORATIONS

A foreign professional corporation (as defined in G.S. 55B-16(b)) shall submit with its application for a certificate of authority to transact business in this State a written certification by each licensing board authorized to regulate each professional service proposed to be provided in this State by the applicant corporation to the effect that such licensing board has determined that the corporation meets the definitional requirement of a "foreign professional corporation" as set forth in G.S. 55B-16(b). Such certification shall be made during the six months preceding the date of submission of the application for certificate of authority to which it relates.

Statutory Authority G.S. 55-1-30; 55B-3; 55B-16.

SECTION .0400 - CERTIFICATION

.0401 DOCUMENTS

(a) Copies of documents filed with respect to a ~~nonprofit corporation~~ limited liability company may be certified as ~~charter documents~~ its articles of organization only if such copies begin chronologically with ~~articles of incorporation or other document of incorporation,~~ the articles of organization, the latest restated ~~charter~~ articles of organization, or the latest articles of amendment or articles of merger purporting to rewrite the ~~charter~~ articles of organization in ~~its~~ their entity. If requested, the copies to be certified as ~~charter documents~~ the limited liability company's articles of organization shall include only such beginning document, all subsequent articles of amendment, and all subsequent articles of merger. If not otherwise requested, copies to be certified as ~~charter documents~~ the articles of organization shall begin chronologically with the latest ~~restated or rewritten charter~~ restatement and shall include all subsequent documents on file.

(b) Copies of documents filed with respect to corporations subject to the provisions of Chapter 55 or Chapter 55A may be certified as the articles of incorporation of such corporation only if such copies begin chronologically with the articles of incorporation or other documents of incorporation, the latest restated articles of incorporation, or the latest articles of amendment or articles of merger purporting to rewrite the corporation's articles of incorporation in their entirety. If requested, the documents requested to be so certified shall include only such beginning document, all subsequent articles of amendment, and all subsequent articles of merger. If not otherwise requested, such documents to be certified shall begin chronologically with the latest restated or rewritten articles of incorporation and shall include all related documents subsequently filed.

(c) When certification of a certificate of limited partnership of a domestic limited partnership or a certificate of authority of a foreign limited partnership is requested, such certification shall include the original certificate of limited partnership or certificate of authority and all amendments or changes thereto.

Statutory Authority G.S. 55-1-30; 55-1-40(1); 55-10-07(e); 55A-1-30; 55A-1-40(1); 55A-10-06(f); 57C-1-03(1); 57C-1-30; 59-206.

.0402 CERTIFICATION OF FACTS/ CERTIFICATE OF EXISTENCE/ AUTHORIZATION

~~(a)~~ No certification of facts, certificate of existence, or certificate of authorization shall contain information relating to more than one corporation or limited liability company unless such information pertains to a merger to which such corporations or limited liability companies were parties.

~~(b) The fee for each certificate of existence or certificate of authorization for corporations subject to the provisions of Chapter 55 shall be the fee specified in G.S. 55-1-22. For corporations subject to the provisions of Chapter 55A, the fee for each certification of facts shall be the fee specified~~

~~in G.S. 55A-77(a)(15) for affixing certificate and seal. For limited partnerships, the fee for each certified document shall be the fee specified in G.S. 59-1106(7).~~

Statutory Authority G.S. 55-1-28; 55A-1-28; 57C-1-28.

SECTION .0500 - CORPORATE NAME

.0501 GENERAL

(a) The Secretary of State expressly reserves the right pursuant to G.S. 55-4-01, ~~G.S. 55A-10~~ G.S. 55A-4-01, G.S. 55-15-06, ~~G.S. 55A-60,~~ G.S. 55A-15-06, G.S. 57C-2-30, G.S. 57C-7-06, G.S. 59-103, or any other applicable statute, to reject filing of any document conferring a ~~corporate~~ corporate, limited liability company, or limited partnership name, if he determines that such ~~corporate~~ name is contrary to law.

~~(b) With respect to corporations subject to the provisions of Chapter 55A, the Secretary of State shall accept consent of a corporation with a name similar to the name proposed to be used by another corporation as only one factor in determining whether such proposed name is contrary to law, and shall make his determination based upon all the circumstances as they appear, when the proposed name is submitted, in accordance with the applicable statutes. The Secretary of State, upon receipt of such a consent, may allow the use of such a proposed name, but shall not permit the use of a name which is the same as a name which is reserved or registered or which has been approved for use at that time. Should the use of a name which is identical to one which is reserved or registered or which has been approved for use be granted by error, the Secretary of State shall charge no tax or fee for filing articles of amendment to correct such error.~~

(b) ~~(c)~~When a corporation applies to the Secretary of State for authorization to use a name which is not distinguishable upon his records from ~~names described in G.S. 55-4-01(b) or G.S. 55-15-06(b)~~ a name used, reserved, or registered by another entity, and provides the consent of ~~another corporation~~ the other entity to such use, the undertaking required of the consenting ~~corporation by G.S. 55-4-01(c)(1) or by G.S. 55-15-06(c)(1)~~ entity shall consist of the consenting ~~corporation's~~ entity's amendment to the appropriate document filed with the division effecting a change of that ~~corporation's~~ entity's name to a name distinguishable on the records of the Secretary of State from the name sought to be used by the applying ~~corporation.~~ entity.

Statutory Authority G.S. 55-4-01; 55-15-06; 55A-4-01; 55A-15-06; 57C-2-30; 57C-7-06; 59-103.

.0502 WORDS PROHIBITED IN ADDITION TO STATUTORY PROHIBITIONS

(a) The words "engineer" or "engineering" or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with ~~Rule .0312(c) of this Chapter~~ G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than the practice of engineering as defined in G.S. 89C-3(b).

(b) The words "surveyor", "survey", "surveying", or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with ~~.0312(c) of this Chapter~~ G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than ~~land surveying~~ the practice of land surveying by registered land surveyors as defined in G.S. 89C-3(7).

(c) The words "architecture", "architectural", "architect", or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies ~~with .0312(c) of this Chapter~~ G.S. 55B-16, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than ~~design of structures~~ the practice of architecture as defined in G.S. 83A-1(7) or landscape architecture as defined in G.S. 89A-1(c).

(d) The word "co-op" shall not be included in ~~the~~ a corporate name ~~of a corporation unless it is organized or domesticated pursuant to~~ in which the use of the word "cooperative" is prohibited by G.S. 54-139.

(e) When a document is submitted conferring a corporate name containing the word "wholesale," unless the purpose clause of the document indicates clearly that the corporation shall not engage in retail sales, the Corporations Attorney shall not file the articles unless he finds, pursuant to written assurance by the principals or their attorney, that the corporation shall comply with G.S. 75-29.

(f) The corporate name for a business corporation shall not contain the word "Realtor."

(g) The corporate name for a business corporation shall not contain the word "insurance" followed directly by a corporate ending or the word "insurance" followed directly by a geographical designation and a corporate ending.

Statutory Authority G.S. 54-139; 55-4-01; 55A-4-01.

.0503 DECEPTIVELY SIMILAR AND DISTINGUISHABLE NAMES

~~(a) A name proposed to be used by a corporation subject to the provisions of Chapter 55A shall not be permitted where it begins with two or more words which are the same as an existing corporate name where the only substantial difference between the two names is the addition or deletion of another word such as "services", "sales", "associates", "industries", "enterprises", or any other word which does~~

~~not indicate the type of business to be pursued by the corporation.~~

~~(b) A name proposed to be used by a corporation subject to the provisions of Chapter 55A shall not be permitted where the only substantial difference between it and an existing corporate name is the addition or deletion of a geographical designation, unless such geographical designation added is the name of a city or county other than the city or county of the then registered office of the existing corporation, or the geographical designation deleted is the name of a city or county other than the city or county of the registered office of the proposed corporation. This provision is subject to G.S. 55A-60.~~

(a) ~~(c)Words indicating corporateness~~ Designations of entities, such as "company", "co.", "limited", "ltd.", "corporation", "corp.", "incorporated", "inc.", "professional association", ~~and "p.a."~~ "p.a.", "limited liability company", "L.L.C.", "professional limited liability company", and "limited partnership" shall be disregarded in determining if a proposed ~~corporate~~ entity name is distinguishable upon the records of the Secretary of State ~~(in the case of a corporation subject to the provisions of Chapter 55) or permissible (in the case of a corporation subject to Chapter 55A)~~, provided that such words appear at the end of the proposed ~~corporate~~ entity name. Such words shall not be disregarded in such determination when they appear in the body, rather than at the ending, of the proposed ~~corporate~~ entity name.

(b) ~~(d)~~Articles, conjunctions, prepositions, singular or plural forms of a particular word, punctuation, spaces, and the substitution of an Arabic numeral for a word shall be disregarded in determining whether a proposed ~~corporate~~ entity name is distinguishable upon the records of the Secretary of State or otherwise permissible for use in a proposed ~~corporate~~ entity name.

Statutory Authority G.S. 55-4-01; 55A-4-01; 57C-2-30; 59-103.

.0504 FILING FICTITIOUS OR ASSUMED NAME FOR FOREIGN ENTITY

(a) A foreign corporation, limited liability company, or limited partnership whose ~~corporate~~ name contains a word which is prohibited by statute or by Rule .0502 of this Chapter shall agree to use an assumed or fictitious name ~~as provided in G.S. 55-15-06 or G.S. 55A-60~~ as a condition of the issuance of a certificate of authority to transact business in this State.

(b) A foreign ~~corporation~~ entity which has been granted authority to transact business in this state, and which desires to add to or delete from ~~an assumed~~ a fictitious name or to adopt a fictitious name in order to avoid or remove a conflict over the use of a name, or which desires to change its assumed or fictitious name, shall file ~~pursuant to G.S. 55-15-04 or G.S. 55A-71.~~ an application for an amended certificate of authority.

(c) No ~~assumed or~~ fictitious name shall be filed with the Division unless required by statute or administrative rule.

Statutory Authority G.S. 55-15-03; 55-15-04; 55-15-06; 55A-15-03; 55A-15-04; 55A-15-06; 57C-7-04; 57C-7-05; 57C-7-06; 59-103; 59-904; 59-905.

CHAPTER 5 - UNIFORM COMMERCIAL CODE DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0101 LOCATION AND HOURS

The Uniform Commercial Code Division of the Department of the Secretary of State is located in Room 302, Legislative Office Building, 300 North Salisbury Street, Raleigh, North Carolina ~~27611~~ 27603-5909. The hours of the division are 7:30 a.m. to ~~4:30~~ 5:00 p.m. Monday through Friday. Filing of Uniform Commercial Code documents may be made from 7:30 a.m. until ~~3:00~~ 3:30 p.m. ~~No filings will be made after 3:00 p.m.~~

Statutory Authority G.S. 25-9-401.

SECTION .0200 - FILING PROCEDURE

.0203 FORMS

(a) Standard Forms. The following forms have been approved by the Secretary of State for use as standard forms:

(1) Form UCC-1 Uniform Commercial Code Financing Statement,
(2) Form UCC-2 Uniform Commercial Code Financing Statement (for extra copies),
(3) Form UCC-3 Uniform Commercial Code Financing Statement Change,
(4) Form UCC-4 Uniform Commercial Code Financing Statement Change (for extra copies),
(5) Form UCC-5 Uniform Commercial Code Additional Sheets,
(6) Form UCC-11 Uniform Commercial Code Request for Information.

Forms UCC-1, 3 and 5 are five part snap-out forms. The snap-out size of the forms is five inches deep by eight inches wide. ~~One time snap-out carbons are interleaved so as to print on the second and succeeding parts.~~ Forms UCC-2 and 4 are identical to the UCC-1 and 3 in size ~~and carbon requirements~~ but contain only four parts. Form UCC-11 is a three part snap-out form. The snap-out size of the form is five inches deep by eight inches wide. ~~One time snap-out carbons are interleaved so as to print on the second and third parts.~~

~~(b) Non Standard Forms. Forms submitted which do not conform to the standard adopted by the Secretary of State will be considered non-standard documents. These documents will require special handling and a fee penalty will be imposed. This includes approved forms which are accompa-~~

~~nied by non approved attachments. If an approved form is received with pages 1, 2 or 3 missing it will be considered a non standard form. Pages 1, 2 and 3 of the UCC-1, 2, 3, 4, 5, and 11 must be submitted intact with the carbons in place.~~

~~(c)~~ (b) Procurement of Forms. The Department of the Secretary of State does not furnish or sell UCC forms. UCC forms may be purchased from commercial printers. Anyone wishing to print UCC forms may obtain specifications and samples from the Department of the Secretary of State, UCC Division, 300 North Salisbury Street, Raleigh, N.C. ~~27611~~ 27603-5909.

Statutory Authority G.S. 25-9-402(9); 25-9-403(5); 25-9-405; 25-9-406.

.0204 FEES

~~Each document submitted for filing must be accompanied by the exact statutory fee. Those documents~~ Documents which are submitted with no money or with an insufficient amount will be returned with a note stating the exact amount of the fee. Fees may be paid by check, money order or cash. Checks and money orders should be made payable to the Secretary of State--North Carolina. A list of filing fees is available upon request.

Statutory Authority G.S. 25-9-403.

.0205 CONTINUATIONS

Continuation statements will be accepted at any time ~~until~~ during the period beginning six months prior to the expiration of the original document to which ~~it~~ the continuation statement refers ~~has expired~~ and ending on the date of the expiration of that document. ~~Acceptance of the continuation statement does not insure that the continuation was filed at the proper time.~~ If an original document expires on a Saturday, Sunday or on a legal holiday on which the office was closed, a continuation may be filed on the next day that the office is open for business. Continuations received which refer to expired documents cannot be filed.

Statutory Authority G.S. 25-9-403.

.0206 TERMINATION

(a) Page number 3 of the approved UCC-1 and UCC-2 has been designed for use as a termination statement. Whenever a given financing statement is to be terminated the secured party of record should date and sign this page in the space provided for termination. The secured party's signature must appear in this space in order to terminate the original document. If the signature appears elsewhere on this form it will not be accepted as a termination.

(b) Form UCC-3 or UCC-4 may be used as a termination statement. Sections 1, 2, 5, and 7 must be completed. This form must be signed by the secured party of record.

~~(c) A written termination statement may be submitted by the secured party of record. This statement must refer to the original financing statement to which it pertains by file number. It must contain the following statement: "The secured party no longer claims a security interest under the financing statement bearing file number as shown." This statement must be signed by the secured party of record.~~

~~(d) After an assignment is filed, the assignee is considered the secured party of record.~~

Statutory Authority G.S. 25-9-404.

.0207 FILING BY MAIL

UCC documents may be mailed to the division. The mailing address is the Department of the Secretary of State, UCC Division, 300 North Salisbury Street, Raleigh, N.C. ~~27611~~ 27603-5909. The document must be accompanied by the exact statutory fee. When using the standard form send only the first three pages of the form. Pages 1 and 2 will be retained by our office. Page number 3 will be returned as an acknowledgment of filing. If the form arrives with more than three pages attached the remaining pages will be discarded. ~~Pages 1, 2, and 3 of the UCC-1, 2, 3, 4, and 5 must be submitted to be considered a standard filing.~~ Acknowledgment of filing is normally mailed in a window envelope using the name and address of the secured party on the UCC form. If the acknowledgment copy is to be mailed to an address other than that of the secured party a self addressed envelope should accompany the document. ~~When a non standard document is received by mail which is not accompanied by an approved form, a filing receipt is sent which contains the name of the debtor and secured party, the file number, and the date and hour of filing. If the filing party desires a copy with the file number and date and hour of filing noted, a copy should be submitted with the request that the file number and date and hour of filing be noted on the copy and returned.~~

Statutory Authority G.S. 25-9-407.

.0208 OVER THE COUNTER FILINGS

Uniform Commercial Code documents may be file stamped between 7:30 a.m. and ~~3:00~~ 3:30 p.m. Those documents received after ~~3:00~~ 3:30 p.m. on any given day will be ~~held~~ filed by the filing officer and file stamped with the following ~~day~~ day's date in order of receipt. ~~Acknowledgment copies of documents held and filed the following day may be mailed or picked up after 7:30 a.m. on the following day.~~

Statutory Authority G.S. 25-9-403.

.0209 REFUNDS

Refunds will be made on overpayment of filing fees in connection with original Uniform Commercial Code Financing Statements. ~~Refunds will not be made on continuations, amendments, assignments or releases. When overpayments are received in connection with continuations, amendments,~~

~~releases and assignments the entire document will be returned with a request for the exact amount due.~~

Statutory Authority G.S. 25-9-403.

.0304 OVER THE COUNTER SEARCHES

~~Over the counter searches may be made in person. Individuals desiring an over the counter search should come directly to the UCC Division of the Department of the Secretary of State. Over the counter searches may be made from 2:00 p.m. until 4:00 p.m. Monday through Friday only. The names and addresses of the debtors to be searched must be given to a member of the UCC Division. The index will be searched by members of the UCC Division only. The documents will then be presented to the searching party for inspection. Under no circumstances will documents be removed from the UCC Division.~~

Statutory Authority G.S. 25-9-407.

.0305 FEES FOR INFORMATION FROM THE FILING OFFICER

Requests for information will be ~~processed~~ rejected if received with no money. The ~~completed~~ request will be ~~mailed~~ returned with a note stating the amount due. This should be paid promptly. Deposit accounts are not available in order to pay for fees in connection with information requests. A schedule of fees for information and copy request is available from the division.

Statutory Authority G.S. 25-9-407.

SECTION .0400 - FEDERAL TAX LIENS

.0404 TELEPHONE REQUEST FOR TAX LIENS

~~Telephone requests for information on Federal Tax Liens will not be accepted.~~

Statutory Authority G.S. 44-68.3.

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" ~~Ventures",~~ and "Qualified Grantee Businesses" as those terms are defined by G.S. 105-163.010, so that investments in such qualified businesses are eligible for the income tax credit provided for by G.S. 105-163.011. ~~These rules also establish the procedure for filing the final report required by G.S. 105-163.013 when the existence of a "qualified investment organization" is terminated.~~

Statutory Authority G.S. 105-163.013.

.1602 PROCEDURE FOR APPLICATION FOR REGISTRATION

(a) A business which seeks to register as either a ~~"qualified investment organization",~~ "qualified business venture" or "qualified grantee business" or to renew such registration 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 or organization; 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; and

(9) if the applicant business is a corporation or limited liability company, the date of and state of incorporation or organization. ~~organization, and~~

~~(10) a representation that the applicant business has disclosed or will disclose to its investors that a tax credit pursuant to G.S. 105-163.011 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. 105-163.010;~~

~~(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. 105-163.011, 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 certification that the facts set forth in G.S. 105-163.013(a)(1)(5) apply to the applicant business; 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-1 -- Schedule of Investments in Qualified Business Ventures and Qualified Grantee Businesses" available upon request from the Securities Division.~~

~~(d)~~ (c) 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~~ A-- Qualified Business Venture" available upon request from the Securities Division:

(1) a certification that the facts set forth in G.S. 105-163.013(b)(1)~~-(4)~~ (6) apply to the applicant business, and a letter which:

(A) describes the business activities in which the applicant business is or will be engaged;

(B) describes how such activities meet the requirements of G.S. 105-163.013(b)(3);

(C) states whether the applicant business is or will be engaged in any of the activities listed in G.S. 105-163.013(b)(4); and

(D) states either an estimate of the percentage of the gross revenues expected to be generated by the activities listed in G.S. 105-163.013(b)(4) (for businesses organized after January 1 of the calendar year in which the application is filed) or the actual percentage of gross revenues generated by such activities (for businesses organized prior to January 1 of the calendar year in which the application is filed).

(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. 105-163.011 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. 105-163.011 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) in initial applications for registration as a qualified business venture, a statement that the applicant business has been organized after January 1 of the calendar year in which the application is filed or 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, determined on a consolidated basis using generally accepted accounting procedures; and

(5) in applications for renewal of registration as a qualified business venture, a financial statement for the most recent fiscal year prepared in the same manner and containing the same informa-

tion as the statement described in Subparagraph (c)(4) of this Rule and, if the applicant business engages in any of the activities set forth in G.S. 105-163.013(b)(4), showing the percentage of gross revenues generated by such activities.

~~(e)~~ (d) 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~~ B -- Qualified Grantee Business" available upon request from the Securities Division:

(1) a certification that the facts set forth in G.S. 105-163.013(c) (1)-(3) apply to the applicant business, and written evidence of the receipt of the grant or funding required by G.S. 105-163.013(c)(3) within the three years preceding the date of the application for registration or for renewal of registration;

(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. 105-163.011 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. 105-163.011 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 ~~(e)~~ (d) (1) (C) of this Rule.

~~(f)~~ (e) 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 oath or affirmation by the signing authorized representative: "Under penalties prescribed by law, I ~~certify and~~ hereby swear and/or affirm that to the best of my knowledge and belief this application is true and complete." This statement shall be verified by a person duly authorized to administer oaths.

~~(g)~~ (f) 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 for a 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 registration.

~~(h)~~ (g) 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~~ Suite 100
300 North Salisbury Street
Raleigh, North Carolina ~~27611~~ 27603-5909.

~~(i)~~ (h) 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. 105-163.011 will be claimed. 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.

~~(j)~~ (i) 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 by the Securities Division and shall not be construed to be the date of mailing. Recordation 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 of the application's deficiencies within 15 days. ~~An incomplete application shall be resubmitted.~~ Except as provided in Subparagraph (i)(3) of this Rule, if the applicant does not remedy such deficiencies within 60 days following a deficiency notice from the Division, the application shall be rejected.

(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 ~~venture,~~ or

qualified grantee business, as the case may be. If an applicant for registration as a qualified business venture was organized prior to January 1 of the calendar year in which the application is filed and is unable to produce the financial statement described in Subparagraph (c)(4) of this Rule without undue hardship, the Division may grant a conditional registration to the applicant, subject to the applicant's furnishing to the Division a financial statement meeting the requirements of Subparagraph (c)(5) of this Rule within five months following the end of the applicant's current fiscal year. If such a financial statement is not filed with the Division within the period provided by this Rule, the applicant's conditional registration shall be cancelled as of its initial effective date. 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.

Statutory Authority G.S. 105-163.013.

.1604 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~~ Suite 100
300 North Salisbury Street
Raleigh, North Carolina ~~27611~~ 27603-5909.

Statutory Authority G.S. 105-163.013.

.1605 REPORTING REQUIREMENT/ TERMINATION/QUALIFIED INVEST ORG

~~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.~~

Statutory Authority G.S. 105-163.013(a).

.1607 FORMS

For use in registering as a qualified business or in renewing a registration as a qualified business pursuant to G.S. 105-163.013, the following form is available from the Securities Division upon request: Application For Registration As ~~A Qualified Investment Organization/~~ Qualified Business Venture/Qualified Grantee Business.

Statutory Authority G.S. 105-163.013(d).

CHAPTER 7 - NOTARY PUBLIC DIVISION

SECTION .0300 - NOTARY PUBLIC EDUCATION PROGRAM

.0302 INSTRUCTORS

(a) In order to be certified to teach a course of study for notaries public, an instructor must:

(1) ~~complete a six hour instructor's course taught by the notaries public deputy or other person approved by the Secretary of State with a grade of not less than 80;~~ transmit a written request for certification as a notary public instructor to the notaries public deputy, together with evidence of six months of active experience as a notary public;

(2) ~~have six months active experience as a notary public; provided that registers of deeds, their assistants and deputies, clerks of court, their assistants and deputies and practicing attorneys~~

~~at law shall be exempt from this requirement;~~ pay a fee to the Notary Public Division for participation as a student in the notary public instructor course taught pursuant to G.S. 10A-4(d)(1), which fee shall reflect the cost of materials, facilities, and meals, if any, related to the giving of that course of instruction; and

(3) ~~purchase an approved notary public manual.~~ achieve a passing grade of at least 80 per cent correct responses on a test administered in conjunction with the notary public instructor course.

(b) ~~Certification shall be effective for two years and may be renewed by taking a recertification course taught by the notaries public deputy or other person approved by the Secretary of State.~~ Persons who fail to achieve a passing grade on the final test administered in conjunction with the notary public instructor course may reapply to take the test one additional time.

(c) Persons seeking recertification as a notary public instructor must apply to the notaries public director for recertification and must again satisfy the requirements of G.S. 10A-4(d) and Paragraph (a) of this Rule.

Statutory Authority G.S. 10A-4.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to amend rules cited as 21 NCAC 18B .0103, .0207, .0303, .0402, .0601, .0902; repeal 18B .0903 and .0905.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 8:30 a.m. on December 7, 1995 at the State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609.*

Reason for Proposed Action:
21 NCAC 18B .0103 - To delete provisions now addressed by statute and to correct time of meetings.
21 NCAC 18B .0207 - To change examination application filing deadline.
21 NCAC 18B .0303, .0601 and .0902 - Update to conform with statutory changes.
21 NCAC 18B .0402 - To add provision for notice of address and telephone change.
21 NCAC 18B .0903 and .0905 - Consolidated with Rule .0902.

Comment Procedures: *Persons interested may present written or oral statements at the public hearing or in writing prior to the hearing by mail addressed to: Robert L. Brooks, Jr., State Board of Examiners of Electrical Contractors, PO Box 18727, Raleigh, NC 27619.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds.*

SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT

SECTION .0100 - GENERAL PROVISIONS

.0103 ORGANIZATION

~~(a) Terms of Officers. The one-year term of the chairman, vice chairman and secretary-treasurer shall commence on July 1. If the appointment or designation of a new member of the Board is delayed beyond this date, these officers shall continue in office during the interim, and the election of new officers shall be for only the balance of the year remaining after the appointment or designation is made.~~

(a) ~~(b)~~Executive Director. The Board shall employ a full-time executive director whose duties shall be to manage and supervise the office and staff in carrying out the policies and directives of the Board. The executive director shall handle all administrative duties of the Board and such other duties as the Board may from time to time assign. The executive director is designated the legal process agent for the Board upon whom all legal process may be served. The compensation of the executive director shall be fixed by the Board.

(b) ~~(c)~~Committees. The chairman of the Board may appoint regular, special, and special advisory committees. Regular committees facilitate prescribed phases of the Board's duties and operations. Special committees undertake specific assignments of the Board. Special advisory committees assist the Board's regular or special committees with specific board assignments.

(c) ~~(d)~~Meetings. The regular quarterly meetings of the Board shall begin at ~~9:00~~ 8:30 a.m., unless some other place or time is set by the Board. Special meetings may be held at places and times deemed by the chairman to be suitable to accomplish the necessary purposes for which the meetings are held.

Statutory Authority G.S. 87-39; 87-40; 87-42.

SECTION .0200 - EXAMINATIONS

.0207 APPLICATION FOR REGULAR SEMI-ANNUAL EXAMINATIONS

(a) To be eligible for consideration, applications for regular semi-annual examinations must be filed with the Board not later than January ~~15~~ 1 for the March semi-annual

examination and not later than July ~~15~~ 1 for the September semi-annual examination.

(b) The Board's staff is empowered to determine whether or not applications are duly filed in accordance with Rule .0210 of this Section, to process all duly filed applications, and to return all applications not duly filed.

Statutory Authority G.S. 87-42; 87-43.3; 87-43.4.

SECTION .0300 - DEFINITIONS AND EXPLANATIONS OF TERMS APPLICABLE TO LICENSING

.0303 ELECTRICAL INSTALLATION: PROJECT: PROJECT VALUE-LIMITATION

For the purpose of implementing G.S. 87-43.3 pertaining to the limited and intermediate electrical contracting license classifications, the following provisions shall apply:

(1) Electrical Installation. Electrical work is construed to be an electrical installation when the work is made or is to be made:
- (a) in or on a new building or structure;
- (b) in or on an addition to an existing building or structure;
- (c) in or on an existing building or structure, including electrical work in connection with lighting or power rewiring or with the addition or replacement of machines, equipment or fixtures; or
- (d) in an area outside of buildings or structures, either overhead or underground or both.

(2) Project. An electrical installation is construed to be a separate electrical contracting project if all the following conditions are met:
- (a) the installation is, or will be, separate and independently supplied by a separate service, feeder or feeder system; and
- (b) the installation is for:
  - (i) an individual building or structure which is separated from other buildings or structures by a lot line or, if located on the same lot with other buildings or structures, is physically separated from such other buildings or structures by an open space or ~~by a 75 percent solid masonry fire wall at least 12 inches thick~~ an area separation fire wall;
  - (ii) an individual townhouse single-family dwelling unit constructed in a series or group of attached units with property lines separating such units;
  - (iii) an individual tenant space in a mall-type shopping center;
  - (iv) an addition to an existing building or structure;
  - (v) an existing building or structure, including electrical work in connection with lighting or power rewiring or with the addition or replacement of machines, equipment or fixtures; or
  - (vi) an outdoor area either overhead or underground or both.
- (c) the negotiations or bidding procedures for the installation are carried out in a manner totally separate and apart from the negotiations or bidding procedures of any other electrical installation or part thereof;
- (d) except for new additions, alterations, repairs or changes to a pre-existing electrical installation, no electrical interconnection or relationship whatsoever will exist between the installation and any other electrical installation or part thereof;
- (e) a separate permit is to be obtained for each individual building structure or outdoor area involved from the governmental agency having jurisdiction; and
- (f) if a question is raised by a party at interest or if requested by the Board or Board's staff for any reason, the owner or the awarding authority or an agent of either furnishes to the Board, and to the inspections department having jurisdiction, a sworn affidavit confirming that each and every one of the conditions set forth in (2)(a) through (e) of this Rule are satisfied.

(3) Relationship of Plans and Specifications to Definition of Project. Even though such electrical work may not fully comply with each and every condition set out in Subparagraph (2) of this Rule, the entire electrical work, wiring, devices, appliances or equipment covered by one set of plans or specifications is construed to be a single electrical contracting project.

(4) Project Value Limitation. In determining the value of a given electrical contracting project, the total known or reasonable estimated costs of all electrical wiring materials, equipment, fixtures, devices, and installation must be included in arriving at this value, regardless of who furnishes all or part of same, and regardless of the form or type of contract or subcontract involved. As an example, on a given electrical contracting project, the owner or general contractor will furnish all or part of the electrical wiring, material, etc. and
- (a) if the total cost of the wiring, materials, etc., including that furnished by others, plus the total cost of the installation involved, will be more than ~~seventeen thousand five hundred dollars ($17,500)~~ twenty-five thousand dollars ($25,000) but not more than seventy-five thousand dollars ($75,000), then only an electrical contractor holding either an intermediate or unlimited license ~~will~~ shall be eligible to submit a proposal or engage in the project.
- (b) if the total cost of the wiring, materials, etc., including that furnished by others, plus the total cost of the installation involved, will exceed

seventy-five thousand dollars ($75,000), then only an electrical contractor holding an unlimited license ~~will~~ shall be eligible to submit a proposal or engage in the project.

If a given electrical contracting project is subdivided into two or more contracts or subcontracts for any reason, then the total value of the combined contracts or subcontracts which can be awarded to or accepted by any one licensee of the Board must be within the total project value in accordance with this Rule.

The Board's staff is empowered to make a determination of what constitutes a project in any given situation, and any party at interest shall have the right to appeal any staff determination to the Board for a final binding decision.

Statutory Authority G.S. 87-42; 87-43; 150B-11(1).

SECTION .0400 - LICENSING REQUIREMENTS

.0402 LICENSE NAME REQUIREMENTS

(a) Issuance of License. No license shall be issued by the Board in a name which is the same as or similar to the name in which a license has already been issued. The Board's staff is empowered to determine whether or not the name requested on a license application is the same as or similar to the name in which a license has already been issue. If any license applicant objects to the staff's determination, he may appeal to the Board for a final determination.

(b) Name In Which Business Must Be Conducted. All electrical contracting business, including all business advertising and the submission of all documents and papers, conducted in the state of North Carolina by a licensee of the Board shall be conducted in the exact name in which the electrical contracting license is issued.

(c) Notification of Address and Telephone Change. All licensees shall notify the Board in writing within 30 days of any change in location or mailing address and telephone number.

Statutory Authority G.S. 87-42.

SECTION .0600 - RECLASSIFICATION OF FORMER CLASS I AND CLASS II LICENSES AND QUALIFIED INDIVIDUALS

.0601 LICENSES EXPIRING AND INDIVIDUALS QUALIFIED/JULY 1, 1970

(a) Inactive Class I Licensee or Individual. Subject to Section .0400 of this Subchapter, any licensee whose last active license was a Class I license that expired on or before June 30, 1970, or any listed qualified individual who was last indicated as such on a Class I license that expired on or before June 30, 1970, and currently has Class I license qualifications is entitled to receive, without written examination, a license in either the limited, intermediate or unlimited classification upon:

(1) filing an application with the Board designation the class license desired; and

(2) paying the annual license fee for the license classification desired.

(b) Initial Choice of License Classification. The inactive Class I licensee or Class I qualified individual is entitled to initially choose either the limited, intermediate or unlimited license. Thereafter the same requirements which apply to new applicants must be met to obtain a license in a classification higher than the license initially chosen.

(c) Inactive Class II Licensee or Individual. Subject to Section .0400 of this Subchapter, any licensee whose last active license was a Class II license that expired on or before June 30, 1970, or any listed qualified individual who was last indicated as such on a Class II license that expired on or before June 30, 1970, and currently has Class II license qualifications is entitled to a license in either the limited, intermediate or unlimited license classification without written examination upon meeting the requirements for the particular license classification as follows:

(1) To obtain a limited license, the applicant must:
   (A) file an application with the Board requesting a limited license; and
   (B) pay the annual fee for the limited license.

(2) To obtain an intermediate license, the applicant must:
   (A) file an application with the Board requesting an intermediate license;
   (B) pay the annual fee for the intermediate license; and
   (C) furnish to the Board, on a form provided by the Board, a statement from a bonding company licensed to do business in North Carolina certifying the applicant's ability to furnish a performance bond for electrical contracting projects in excess of ~~seventeen thousand five hundred dollars ($17,500)~~ twenty five thousand dollars ($25,000) or submit other information regarding ~~his~~ the applicant's financial and business qualifications for evaluation by the Board.

(3) To obtain an unlimited license, the applicant must:
   (A) file an application with the Board requesting an unlimited license;
   (B) pay the annual fee for the unlimited license; and
   (C) furnish to the Board, on a form provided by the Board, a statement from a bonding company licensed to do business in North Carolina certifying the applicant's ability to furnish a ~~performing~~ performance bond for electrical contracting purposes in excess of seventy-five thousand dollars ($75,000) or submit other information regarding ~~his~~ the applicant's financial and business qualifications for evaluation by the Board.

Statutory Authority G.S. 87-42; 87-49.

SECTION .0900 - VIOLATIONS AND CONTESTED CASE HEARINGS

.0902 CHARGES AND PRELIMINARY PROCEDURES

~~Any person who believes that any applicant, qualified individual or licensee of the Board is in violation of the provisions of G.S. Chapter 87, Article 4, or Title 21, Subchapter 18B, of the North Carolina Administrative Code may prefer charges by filing a written statement with the Board's staff in the Board's office, setting out the particulars of the charges, including, but not limited to, the nature, date and place of the alleged violation.~~

(a) The authority given to the Board's executive director in this Rule shall include the executive director's authority to delegate to other members of the Board's staff.

(b) Charges filed pursuant to G.S. 87-47(a4) shall be handled according to the progressive steps set out in Paragraphs (c) through (f) of this Rule.

(c) A charge shall be handled initially by the executive director. The executive director may, without a hearing, dismiss it as unfounded or trivial. Unless it is dismissed, the executive director shall:

(1) issue and cause to be served on the accused a written notice of violation, including a reprimand, or including an assessment of a civil penalty in a specific amount pursuant to G.S. 87-47(a3) and a reprimand; or

(2) give the accused written notice of the charge, including a request that the accused respond to it in writing within 20 days.

(d) The executive director may, upon receipt and evaluation of the response, dismiss the charge as unfounded or trivial without a hearing, or the executive director may turn the matter over to the Board's disciplinary review committee.

(e) The disciplinary review committee may, without a hearing, dismiss the charge as unfounded or trivial. Unless it is dismissed, the committee shall:

(1) issue and cause to be served on the accused a written notice of violation, including a reprimand, or including an assessment of a civil penalty in a specific amount pursuant to G.S. 87-47(a3) and a reprimand; or

(2) recommend to the Board that a penalty or penalties be imposed pursuant to G.S. 87-47(a2) and (a3) or that an offer in compromise pursuant to G.S. 87-47(e) be accepted.

(f) The Board may, without a hearing, dismiss the charge as unfounded or trivial. Unless it is dismissed, the Board shall:

(1) issue and cause to be served on the accused a written notice of violation, which shall include the imposition of a penalty or penalties pursuant to G.S. 87-47(a2) and (a3), and which may include notice that the Board will accept an offer in compromise pursuant to G.S. 87-47(e); or

(2) set an administrative hearing on the charge, notice of which may include a statement that the Board will accept an offer in compromise pursuant to G.S. 87-47(e).

(g) Before an administrative hearing is held, the Board may direct the disciplinary review committee to meet with the accused and the complainant in a final effort to effect a settlement.

(h) Each notice of violation shall include a statement of the right to request a hearing, pursuant to G.S. 87-47(a4).

Statutory Authority G.S. 87-42; 87-47.

.0903 PRELIMINARY DETERMINATION

~~(a) A charge filed in accordance with Rule .0902 of this Section shall be handled initially by the Board's executive director or his staff designee, who may dismiss it as unfounded, frivolous, or trivial.~~

~~(b) Unless the charge is dismissed pursuant to Paragraph (a) of this Rule, the executive director or his staff designee shall notify the accused in writing. Such written notice shall set forth the alleged facts and circumstances as contained in the written statement filed with the Board and shall be given personally or by certified mail, return receipt requested. Such written notice shall contain a request for the accused to answer in writing within 20 days from the date the notice of charges is received, as shown on the returned receipt or from the date of personal delivery of the notice of charges.~~

~~(c) If the accused admits to the charges and if, in the opinion of the executive director or his staff designee, the charges do not merit review by the Board's disciplinary review committee, the executive director or his staff designee shall accept the accused's admission of guilt and issue a reprimand on behalf of the Board. The reprimand shall include an order to the accused to refrain from violating G.S. Chapter 87, Article 4, or 21 NCAC Subchapter 18B in the future.~~

~~(d) If the accused admits to the charges and if, in the opinion of the executive director or his staff designee, the charges merit review by the Board's disciplinary review committee, the executive director or his staff designee shall refer the charges to the committee. After reviewing the charges, the committee shall make a preliminary determination of the charges and recommend to the Board which, if any, of the actions listed in Paragraph (g) should be taken against the accused.~~

~~(e) If the accused does not respond to or denies the charges, the Board's executive director, his staff designee or other designated investigative personnel shall investigate the allegations contained in the charges and the executive director or his staff designee may dismiss them as unfounded, frivolous or trivial, or may refer the charges, investigative findings and all available evidence to the Board's disciplinary review committee for review. From such review, the disciplinary review committee shall make~~

~~a preliminary determination of the charges and recommend to the Board which, if any, of the actions listed in Paragraph (g) should be taken against the accused.~~

~~(f) The charges, investigative findings, evidence and disposition of each case shall be placed in a permanent file of the accused. When a second charge is filed against the accused during a period of 12 months or a third charge is filed against the accused during any period of time, the executive director or his staff designee shall present the accused's file to the Board's disciplinary review committee for a detailed review. From such review, the disciplinary review committee shall make a preliminary determination of the new charges filed against the accused and recommend to the Board what action, if any, should be taken against the accused as prescribed in Paragraph (g) of this Rule.~~

~~(g) In accordance with Paragraphs (d) - (f) of this Rule, the Board's disciplinary review committee shall receive and review the accused's file and from such review the committee shall make a preliminary determination and recommend to the Board that one or more of the following actions be taken:~~

~~(1) the charges be dismissed as unfounded, frivolous, or trivial;~~

~~(2) a letter of caution be issued to the licensee by the Board;~~

~~(3) in a case of admission of guilt, a letter of reprimand be issued to the licensee by the Board; or~~

~~(4) the case be presented to the Board, excluding board members who participated in the preliminary determination, for an administrative hearing to be conducted in accordance with G.S. 87-47 and Chapter 150B, Article 3A, of the North Carolina General Statues and the rules adopted by the Board pursuant thereto, or for the acceptance of an offer in compromise of the charge, as provided by G.S. 87-47(e).~~

Statutory Authority G.S. 87-42; 87-47; 150B, Article 3A.

.0905 JUDICIAL REVIEW

~~Any applicant, qualified individual or licensee who is aggrieved by a final decision of the Board after a contested case hearing is entitled to judicial review of the decision as provided by G.S. Chapter 150B, Article 4.~~

Statutory Authority G. S. 87-47; 150B-43.

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CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Landscape Architects intends to amend rule cited as 21 NCAC 26 .0307.

Proposed Effective Date: *February 1, 1996.*

A Public Hearing *will be conducted at 10:00 a.m. on November 20, 1995 at the North Carolina Board of Landscape Architects, 3733 Benson Drive, Raleigh, NC 27609.*

Reason for Proposed Action: *To simplify Continuing Education requirement. Also, easier maintenance of record keeping.*

Comment Procedures: *Any interested person may present comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentation should contact Mr. Robert Upton, 3733 Benson Dr., Raleigh, NC 27609. Telephone #919-850-9088. In order to allow the commission sufficient time to review and evaluate your written comments, please submit your comments to Robert Upton at the above address, no later than the close of business on December 1, 1995.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of state or local government funds.*

SECTION .0300 - EXAMINATION AND LICENSING PROCEDURES

.0307 CONTINUING EDUCATION AS A CONDITION OF ANNUAL RENEWAL

(a) In order for a licensee to qualify for license renewal as a Landscape Architect in North Carolina, the licensee must have completed ~~20~~ 10 contact hours of continuing education within the previous year, ~~two years,~~ or be granted an exception by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions or programs approved by the Board.

(b) To be acceptable for credit toward this requirement, all courses, seminars, sessions or programs shall first be submitted to a five member Advisory Committee of North Carolina licensed Landscape Architects appointed by the Chairman of the Board with the advice and consent of the Board. The Continuing Education Advisory Committee shall recommend any course, seminar, session or program for continuing education credit to the Board that the Advisory Committee finds to meet the criteria in Paragraph (b)(1)(2) of this Rule. Advisory Committee members shall be reimbursed per diem and travel expenses for official meetings at rates equivalent to rates allowed for Board members. Advisory Committee members shall serve at the discretion of the Board.

(1) Each course, seminar, session or program to be recommended for approval by the Board shall, in the opinion of ~~at least four~~ a majority of the members of the Advisory Committee, have a direct relationship to the practice of Landscape Architecture as defined in Chapter 89A of the General Statutes of North Carolina and contain

elements which will enhance the health, safety and welfare of the citizens of North Carolina served by North Carolina licensed Landscape Architects.

(2) The Continuing Education Advisory Committee shall meet at least once during each three month quarter of the year and act on each course, seminar, session or program properly submitted for its review. Each program shall be recommended for approval, recommended for disapproval or deferred for lack of information. Programs recommended for approval shall be accompanied by a brief statement of findings by the committee of how the program meets the criteria established by this Rule. Programs deferred for lack of information shall be deferred only once; and if information is still lacking when next considered, the program shall be recommended for disapproval. Programs may be recommended for pre-approval by the Advisory Committee before they actually occur.

(c) Documentation of compliance with this Section shall be by affidavit provided on the application for license renewal. Erroneous or false information attested to by the licensee shall be deemed as grounds for denial of license renewal and possible suspension of license or denial of consideration for future license reinstatement, at the discretion of the Board.

(d) ~~Requirements of this Section for license renewal shall become effective for license renewal on July 1, 1993. The Continuing Education Advisory Committee shall be appointed and ready to serve no later than June 1, 1990.~~ Twenty contact hours within the previous two years shall be allowed for license renewals during the period of July 1, 1995 to June 30, 1996.

Statutory Authority G.S. 89A-3(c); 89A-5.

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation	=	*Title, Chapter, Subchapter and Rule(s)*
AD	=	*Adopt*
AM	=	*Amend*
RP	=	*Repeal*
With Chgs	=	*Final text differs from proposed text*
Corr	=	*Typographical errors or changes that requires no rulemaking*
Eff. Date	=	*Date rule becomes effective*
Temp. Expires	=	*Rule was filed as a temporary rule and expires on this date or 180 days*

NORTH CAROLINA ADMINISTRATIVE CODE

SEPTEMBER 95

TITLE	DEPARTMENT
5	Correction
10	Human Resources
12	Justice
13	Secretary of State
15A	Environment, Health, and Natural Resources
19A	Transportation
21	Occupational Licensing Boards
	2 - Architecture
	32 - Medical Examiners
	46 - Pharmacy
	48 - Physical Therapy Examiners
	54 - Practicing Psychologists
	60 - Refrigeration Examiners
24	Independent Agencies
	5 - State Health Purchasing Alliance
25	State Personnel

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
5 NCAC 2B .0100					✓		
10 NCAC 3U .0602					✓		
26B .0110		✓		✓		10/01/95	
26H .0212 - .0213		✓				09/15/95	180 DAYS
.0213		✓				09/29/95	180 DAYS
42B .1209	✓					10/01/95	180 DAYS
42C .2010	✓					10/01/95	180 DAYS
42D .1409	✓					10/01/95	180 DAYS
12 NCAC 4E .0104		✓		✓		10/01/95	
11 .0210		✓				10/01/95	
13 NCAC 7F .0101		✓				09/06/95	
.0201		✓				09/06/95	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
13 NCAC 7F .0501		✓				09/06/95	
15A NCAC 2B .0201		✓				10/01/95	
.0211 - .0212		✓		✓		10/01/95	
.0214 - .0216		✓		✓		10/01/95	
.0218 - .0219		✓		✓		10/01/95	
.0220 - .0228	✓			✓		10/01/95	
4A .0001		✓				10/01/95	
.0005		✓		✓		10/01/95	
.0016		✓		✓		10/01/95	
.0020		✓		✓		10/01/95	
.0029 - .0030	✓					10/01/95	
4C .0007 - .0008		✓				10/01/95	
.0010		✓				10/01/95	
4D .0002		✓				10/01/95	
.0003			✓			10/01/95	
13B .0101		✓		✓		10/01/95	
.0103		✓				10/01/95	
.0503		✓		✓		10/01/95	
.0802 - .0814			✓			10/01/95	
.0815	✓					10/01/95	
.0816 - .0817	✓			✓		10/01/95	
.0818	✓					10/01/95	
.0819 - .0822	✓			✓		10/01/95	
.0823 - .0824	✓					10/01/95	
.0825 - .0826	✓			✓		10/01/95	
.0827 - .0829	✓					10/01/95	
18A .2508		✓				01/01/96	
.2510 - .2511		✓		✓		01/01/96	
.2516 - .2518		✓		✓		01/01/96	
.2519		✓				01/01/96	
.2521		✓		✓		01/01/96	
.2522 - .2524		✓				01/01/96	
.2526		✓		✓		01/01/96	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
15A NCAC 18A .2528		✓		✓		01/01/96	
.2529 - .2530		✓				01/01/96	
.2531 - .2532		✓		✓		01/01/96	
.2533 - .2534		✓				01/01/96	
.2535		✓		✓		01/01/96	
.2537		✓		✓		01/01/96	
.2540 - .2542	✓					01/01/96	
19A .0401		✓				10/01/95	
.0406		✓				10/01/95	
.0502		✓				10/01/95	
24A .0404		✓				10/01/95	
19A NCAC 2D .0801		✓				10/01/95	
21 NCAC 2 .0206		✓		✓		10/01/95	
.0303		✓		✓		10/01/95	
32H .0506	✓			✓		07/01/96	
46 .2601		✓		✓		10/01/95	
.1603 - .1605					✓		
.1608					✓		
.1610					✓		
.2102					✓		
.2109					✓		
.2504					✓		
.2603 - .2606					✓		
48D .0006		✓				10/01/95	
.0008			✓			10/01/95	
.0011	✓			✓		10/01/95	
48E .0110		✓		✓		10/01/95	
48F .0002		✓		✓		10/01/95	
48G .0501 - .0503	✓					10/01/95	
.0504	✓			✓		10/01/95	
.0505 - .0506	✓					10/01/95	
.0507	✓			✓		10/01/95	
.0508	✓					10/01/95	

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
21 NCAC 48G .0509	✓			✓		10/01/95	
.0510 - .0513	✓					10/01/95	
.0514	✓			✓		10/01/95	
.0515 - .0516	✓					10/01/95	
.0601	✓			✓		10/01/95	
48H .0104			✓			10/01/95	
.0701	✓			✓		10/01/95	
.0702	✓					10/01/95	
.0703 - .0704	✓			✓		10/01/95	
54 .1602		✓				10/01/95	
.1702		✓				10/01/95	
60 .0103		✓				10/01/95	
24 NCAC 5 .0419	✓			✓		10/01/95	
25 NCAC 1D .0509		✓		✓		10/01/95	
1E .1402 - .1404		✓		✓		10/01/95	
.1405		✓				10/01/95	
.1406 - .1408		✓		✓		10/01/95	
.1409		✓				10/01/95	
.1410 - .1411	✓			✓		10/01/95	
1J .0604 - .0605		✓		✓		10/01/95	
.0606		✓				10/01/95	
.0608		✓		✓		10/01/95	
.0610 - .0612		✓		✓		10/01/95	
.0613 - .0615	✓			✓		10/01/95	

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

15A NCAC 18A .2509 - Plan Review and Approval		
Rule Withdrawn by Agency		*09/21/95*
15A NCAC 18A .2531 - Wading Pools	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 18A .2531 - Spas and Hot Tubs	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*

Environmental Management

15A NCAC 2B .0212 - Fresh Surface Water Quality Standards for Class WS-I Waters	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 2B .0214 - Fresh Surface Water Quality Standards for Class WS-II Waters	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 2B .0215 - Fresh Surface Water Quality Standards for Class WS-III Waters	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 2B .0219 - Fresh Surface Water Quality Standards for Class B Waters	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 2B .0222 - Tidal Salt Water Quality Standards for Class SB Waters	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 2B .0224 - High Quality Waters	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*

Health: Epidemiology

15A NCAC 19H .0702 - Research Requests		
Rule Withdrawn by Agency		*09/21/95*

Sedimentation Control

15A NCAC 4B .0020 - Inspections and Investigations	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*

Solid Waste Management

15A NCAC 13B .0815 - Incorporation by Reference	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 13B .0817 - Septage Management Firm Permits	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 13B .0819 - Septage Land Application Site Permits	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 13B .0820 - Septage Detention and Treatment Facility Permits	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 13B .0821 - Location of Septage Land Application Sites	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 13B .0822 - Management of Septage Land Application Sites	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*
15A NCAC 13B .0825 - Standards for Septage Treatment and Detention Facilities	*RRC Objection*	*09/21/95*
Agency Revised Rule	*Obj. Removed*	*09/21/95*