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The **NORTH CAROLINA REGISTER**

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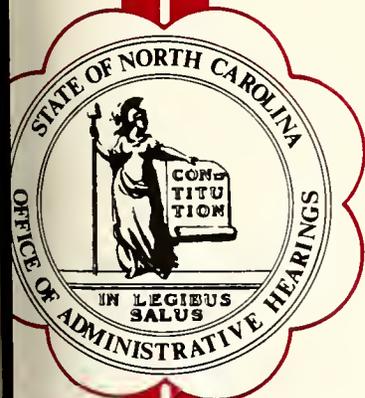
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ISSUE DATE: AUGUST 15, 1986

Volume 1 • Issue 5 • Pages 223-379



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

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

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
 Publication Deadlines and Schedules
 (April 1986 - March 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Earliest Effective Date
04/15/86	03/25/86	04/01/86	05/15/86	05/14/86	08/01/86
05/15/86	04/24/86	05/01/86	06/14/86	07/14/86	09/01/86
06/16/86	05/27/86	06/03/86	07/16/86	08/15/86	10/01/86
07/15/86	06/25/86	07/02/86	08/14/86	09/13/86	11/01/86
08/15/86	07/29/86	08/04/86	09/14/86	10/14/86	12/01/86
09/15/86	08/26/86	09/02/86	10/15/86	11/14/86	01/01/87
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12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	04/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	05/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	06/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	07/01/87

GENERAL STATUTES OF NORTH CAROLINA

[The following excerpt contains the provisions that establish the Administrative Rules Review Commission.]

CHAPTER 1028
SESSION LAWS 1985 (REGULAR SESSION 1986)

* * *

Sec. 32. Article 1 of Chapter 145B of the General Statutes is amended by adding a new Part 3 to read:

"Part 3. Administrative Rules Review Commission.

143B-30. Definitions.

--As used in this Part, the following definitions apply:

"Agency" means an agency subject to the provisions of Article 2 of Chapter 150B of the General Statutes.

"Commission" means the Administrative Rules Review Commission.

"Rule" means a "rule", as defined in G.S. 150B-2(8a).

"143B-30.1. Administrative Rules Review Commission created.

--The Administrative Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These

appointments shall be made in accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. All appointees shall serve two-year terms. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, ineligibility, death, or disability of any member shall be for the balance of the unexpired term. The chairman shall be elected by the Commission, and he shall designate the times and places at which the Commission shall meet. The Commission shall meet at least once a month. A quorum of the Commission shall consist of five members of the Commission.

Members of the Commission who are not officers or employees of the State shall receive compensation of two hundred dollars (\$200.00) for each day or part of a day of service plus reimbursement for travel and subsistence expenses at the

rates specified in G.S. 138.5. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence at the rate set out in G.S. 138-6.

The Office of Administrative Hearings shall provide administrative and support staff to the Commission to assist it in performing its duties.

143B-30.2. Review of rules.

-- (a) Rules adopted by an agency on or after September 1, 1986, shall be submitted to the Administrative Rules Review Commission, which shall review the rule to determine whether it:

- (1) Is within the authority delegated to the agency by the General Assembly;
- (2) Is clear and unambiguous;
- (3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.

The Commission shall review a rule submitted to it not later than the last day of the first calendar month following the month when the rule was submitted. The Commission, by a majority vote of the members present and voting, may extend the time for review of a rule by 60 days to obtain additional information on a rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Director of the Office of Administrative Hearings. An agency may not present a rule for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section.

(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of

Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(c) If the Commission finds that an agency did not act within the authority delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear and unambiguous, or that a rule is unnecessary, the Commission shall object and delay the filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90 days. The Commission shall send to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the director of the Office of Administrative Hearings, a written report of the objection and delay of the rule or its part and the reasons for the delay. An agency may not present a rule or part of a rule that has been delayed to the Director of the Office of Administrative Hearings for filing under G.S. 150B-59, and a rule or its part that is delayed is not "effective", as defined in G.S. 150B-2(2a).

(d) Within 30 days after receipt of the Commission's written report, the agency shall either (1) revise the rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached. The Commission shall determine whether a revision removes its objections to the rule.

(e) If the Commission determines that a revision of a rule has removed the Commission's objections, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(f) Regardless of whether the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections or whether the Commission determines that a revision of a rule has not removed its objections, the Commission shall note its approval of the rule once 90 days have passed since the Commission objected and delayed the filing of the rule or part

of the rule pursuant to G.S. 143B-30.2(c) and shall return the rule to the agency. However, if the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections, or if the Commission determines that a revision of a rule has not removed its objections, the Commission's approval shall be accompanied by a notation of the Commission's objection to the rule. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section. If the agency did not remove the Commission's objections to the rule or part of the rule, the Commission may send to the President of the Senate and the Speaker of the House of Representatives a written report of its objections to the rule. Thereafter, if the General Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.

The Legislative Services Officer shall send a copy of any law disapproving a rule to the agency and the Director of the Office of Administrative Hearings as soon as a copy is available.

(g) While the filing of a rule or its part is delayed, the agency that promulgated it may not adopt another rule, including a temporary rule, that has substantially identical provisions to those for which the Commission delayed the filing of the original rule or part of a rule.

(h) The filing of an amendment to a rule places the entire rule before the Commission for its review.

" 143B-30.3. Hearings.

-- (a) Notwithstanding G.S. 143B-30.2(a), the chairman of the Commission may at any time before the time for review set out in that subsection expires call a public hearing on any rule or part of a rule upon the recommendation of the Commission or on the motion of any member of the Commission. Within 60 days after the public hearing, the Commission may find that the agency did not act within the authority delegated to it in promulgating the rule, or that the rule is not clear and unambiguous, or that the rule is unnecessary, and object to and delay the rule in accordance with G.S. 143B-30.2.

(b) At least 15 days before the public hearing, the Commission shall give notice of the hearing to the rulemaking agency, to any person who requests a copy of the notice, and to any person who may be affected by the rule in the opinion of the chairman of the Commission.

" 143B-30.4. Evidence.

--Evidence of the Commission's failure to object to and delay the filing of a rule or its part shall be inadmissible in all civil or criminal trials or other proceedings before courts, administrative agencies, or other tribunals."

* * *

Sec. 37. Each agency subject to Articles 2 and 5 of Chapter 150B of the General Statutes shall, not later than September 1, 1986, review its rules as required by Section 3 of Chapter 746 of the 1985 Session Laws except that the report required therein shall be filed with the Administrative Rules Review

Commission and not the General Assembly. An agency that substantially complied with Section 3 of Chapter 746 of the 1985 Session Laws shall not refile the report filed with the General Assembly but shall supplement that report by filing a similar report with the Administrative Rules Review Commission as to any rules that became effective after the preparation of the original report. The Legislative Services Officer shall deliver all reports filed in compliance with Section 3 of Chapter 746 of the 1985 Session Laws to the chairman of the Administrative Rules Review Commission. The chairman may require an agency to file a new report if there is any dispute as to whether one has been filed or whether one that has been filed complies with the requirements set forth in that section.

* * *

[Effective upon ratification,
July 16, 1986.]

[Chapter 1022, Session Laws of 1985 (1986 Regular Session) made numerous technical and clarifying amendments to Chapter 7A and 150B of the General Statutes. Following is complete text of Chapter 150B and the affected sections of Chapter 7A as amended.]

CHAPTER 150B
ADMINISTRATIVE PROCEDURES ACT

150B-1. Policy and scope.

--(a) The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and adjudicatory procedures for State agencies.

(c) This Chapter shall apply to every agency, as defined in G.S. 150E-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary.

(d) The following are specifically exempted from the provisions of this Chapter: the Administrative Rules Review Commission, the Employment Security Commission, the Industrial Commission, the Occupational Safety and Health Review Board, and the Utilities Commission.

The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.

The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.

Articles 2, 3, and 3A of this Chapter shall not apply to the Department of Transportation in rule making or administrative hearings as provided for by Chapter 20 of the General Statutes or to the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of

North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter. Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce.

Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).

150B-2. Definitions.

--As used in this Chapter,

(1) "Agency" means any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of the State of North Carolina but does not include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.

(2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship or grant.

- (2a) "Effective" means that a valid rule has been filed as required by G.S. 150B-59 and, if applicable, that the time specified in that section has elapsed. A rule that is effective is enforceable to the extent permitted by law.
- (2b) "Hearing officer" means an administrative law judge appointed under G.S. 7A-753 or any agency employee or person or group of persons designated by an agency to preside in a contested case hearing under this Chapter.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. 'Licensing' does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. 'Occupational licensing agency' does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.
- (5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate; provided this subdivision shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.
- (6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business.
- (8a) "Rule" means any agency regulation, standard or statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency not inconsistent with laws enacted by the General Assembly. The term includes the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies, including policies and procedures manuals, if such a statement does not directly or substantially affect the procedural or substantive rights or duties of persons not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
 - c. Nonbinding Interpretive statements within the delegated authority of the agency that merely define, interpret or explain the meaning of a statute or

other provision of law or precedent.

- d. A form, the contents or substantive requirements of which are prescribed by rule or statute or the instructions for the execution or use of the form.
- e. Statements of agency policy made in the context of another proceeding, including:
 - 1. declaratory rulings under G.S. 150B-17;
 - 2. orders establishing or fixing rates or tariffs.
- f. Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, communicated to the public by use of signs or symbols, concerning:
 - 1. the use or creation of public roads or bridges;
 - 2. the boundaries of public facilities and times when public facilities are open to the public; or
 - 3. safety in use of public facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases;
- h. Scientific, architectural, or engineering standards, forms, or procedures.

(9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it becomes effective.

150B-3. Special provisions on licensing. --(a) When an applicant or a licensee makes a timely and sufficient application for issuance or renewal of a license or occupational license, including the payment of any required license fee, the existing license or occupational license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license or occupational license are limited, until the last day for applying for judicial review of

the agency order. This subsection does not affect agency action summarily suspending a license or occupational license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for the suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of any license other than an occupational license, the agency shall give notice to the licensee, pursuant to the provisions of G.S. 150B-23. Before the commencement of such proceedings involving an occupational license, the agency shall give notice pursuant to the provisions of G.S. 150B-38. In either case, the licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license or occupational license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license.

Article 2. Rule Making.

150B-9. Minimum procedural requirements; limitations on rule-making authority; criminal sanctions authorized. --(a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for temporary rules which are provided for in G.S. 150B-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals

or diminishes additional requirements imposed by law or any summary power granted by law to the State or any State agency. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

(b) Each agency shall adopt, amend, suspend or repeal its rules in accordance with the procedures specified in this Article and pursuant to authority delegated by law and in full compliance with its duties and obligations. No agency may adopt any rule that implements or interprets any statute or other legislative enactment unless the power, duty, or authority to carry out the provisions of the statute or enactment is specifically conferred on the agency in the enactment, nor may any agency make any rule enlarging the scope of any trade or profession subject to licensing.

(c) The power to declare what shall constitute a crime and how it shall be punished and the power to establish standards for public conduct are vested exclusively in the General Assembly. No agency may adopt any rule imposing a criminal penalty for any act or failure to act, including the violation of any rule, unless the General Assembly authorizes a criminal sanction and specifies a criminal penalty for violation of the rule.

(d) No agency may adopt as a rule the verbatim text of any federal or North Carolina statute or any federal regulation, but an agency may adopt all or any part of such text by reference under G.S. 150B-14.

150B-10. Statements of organization and means of access to be published. --To assist interested persons dealing with it, each agency shall, in a manner prescribed by the Director of the Office of Administrative Hearings, prepare a description of its organization, stating the process whereby the public may obtain information or make submissions or requests. The Director of the Office of Administrative Hearings shall publish these descriptions annually.

150B-11. Special requirements. --In addition

to other rule-making requirements imposed by law, each agency shall:

(1) Adopt rules setting forth the nature and requirements of all formal and informal procedures available, including a listing of all forms that are required by the agency. Procedures concerning only internal management which do not directly affect the rights of or procedures available to the public shall not be adopted as rules.

(2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions, except those used only for internal management of the agency.

(3) Submit to the Director of the Budget a summary of any proposed rule requiring the expenditure or distribution of State funds and obtain approval of such expenditure or distribution of State funds prior to publishing the notice of public hearing required by G.S. 150B-12(2). For purposes of this subdivision the term 'State funds' shall have the same meaning as is set out in G.S. 143-1 and shall also apply to the funds of all occupational licensing boards included under G.S. 150B-1. The agency shall include a fiscal note with any proposed rule, other than a temporary rule, so submitted. The fiscal note shall state what effect, if any, the proposed rule will have on the revenues, expenditures, or fiscal liability of the State or its agencies or subdivisions. The fiscal note shall include an explanation of how such effect, if any, was computed.

150B-12. Procedure for adoption of rules. --(a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, opinions, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 30 days before the public hearing and at least 60 days before the adoption,

amendment, or repeal of the rule. The notice shall include:

- (1) A reference to the statutory authority under which the action is proposed;
- (2) The time and place of the public hearing and a statement of the manner in which data, opinions, and arguments may be submitted to the agency either at the hearing or at other times by any person; and
- (3) The text of the proposed rule, or amendment in the form required by G.S. 150B-63(d2) and the proposed effective date of the rule or amendment.

(b) The agency shall transmit copies of the notice to the Director of the Office of Administrative Hearings, the Attorney General, and the Governor.

(c) The agency shall publish the notice in the North Carolina Register and as prescribed in any applicable statute.

The agency may also publish the notice or a synopsis of the notice in other ways selected by the agency to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications.

(d) The public hearing shall not be conducted as a contested case unless a specific statute requires that the proposed rule be adopted by adjudicatory procedures.

(e) The proposed rule shall not be changed or modified after the notice required by this section is published and before the rule-making hearing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption. The record in every rule-making proceeding under this Article shall remain open at least 30 days either before

or after the hearing for the purposes of receiving written comments, and any such comments shall be included in the hearing records. All comments received, as well as any statement of reasons issued to an interested person under this section, shall be included in the rule-making record.

(f) No rule-making hearing is required for the adoption, amendment, or repeal of a rule which solely describes forms or instructions used by the agency.

(g) No rule-making hearing is required if the Director of the Office of Administrative Hearings determines that the amendment to a rule does not change the substance of the rule and that the amendment is:

- (1) A relettering or renumbering instruction; or,
- (2) The substitution of one name for another when an organization or position is renamed; or,
- (3) The correction of a citation to rules for laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or
- (4) The correction of a similar formal defect; or
- (5) A change in information that is readily available to the public such as addresses and telephone numbers.

(h) No rule-making hearing is required to repeal a rule if the repeal of the rule is specifically provided for by the Constitution of the United States, the Constitution of North Carolina, any federal or North Carolina statute, any federal regulation, or a court order.

150B-13. Temporary rules.

--(a) Except as provided in subsection (b) of this section, if an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150B-1 determines in writing that:

- (1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that
- (2) The immediate adoption, amendment, or repeal of a rule is necessitated by and related to:
 - a. A threat to public health, safety, or welfare resulting from any natural or man-made disaster or other events that

constitute a life threatening emergency;

b. The effective date of a recent act of the General Assembly or the United States Congress;

c. A federal regulation; or

d. A court order, the agency may adopt, amend, or repeal the rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practicable. The agency must accompany its rules filing with the Director of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule, together with the reasons for that finding and a copy of the notice of hearing on the proposed permanent rule.

(a) The written certification of the finding of need for the temporary rule shall be signed by:

(1) The member of the Council of State in the case of the Departments of Justice, Insurance, Public Education, Labor, Agriculture, Treasurer, State Auditor, or Secretary of State.

(2) The chairman of the board in the case of an occupational licensing board or the Director of the Office of Administrative Hearings in the case of that agency.

(3) The Governor in the case of all other agencies.

(b) If the Department of Crime Control and Public Safety, Transportation, Revenue, or Correction determines in writing that the immediate adoption, amendment, or repeal of a rule is necessitated by:

(1) The public health, safety, or welfare;

(2) The effective date of a recent act of the General Assembly or the United States Congress;

(3) A federal regulation; or

(4) A court order, the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the Director of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of

Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(c) Rules filed under subsections (a) and (b) of this section shall be effective for a period of not longer than 120 days. An agency adopting a temporary rule shall begin normal rule-making procedures on the permanent rule under this Article at the same time the temporary rule is adopted.

150B-14. Adoption by reference. --An agency may adopt by reference in its rules, without publishing the adopted matter in full:

- (1) All or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;
- (2) Any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency; or
- (3) Any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by reference in its rules job classification standards, including but not limited to those relating to qualifications and salary levels.

The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and the amount of any

charge for the copy as of the time the rule is adopted.

150B-15. Continuation of rules. --When a law authorizing or directing an agency to promulgate rules is repealed, and (i) substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law, or (ii) the function of the agency to which the rules are related is transferred to another agency by law or executive order, the existing rules of the original agency shall continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the transferred duty or function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and (i) substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and (ii) the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the law repealing the agency's rule-making power or abolishing the agency.

150B-16. Petition for adoption of rules. --Any person may petition an agency to promulgate, amend, or repeal a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with G.S. 150B-12 and G.S. 150B-13; provided, however, commissions and boards shall act on a petition at their next regularly scheduled meeting, but in any case no later than 120 days after submission of a petition. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review.

150B-17. Declaratory rulings. --On request of a person aggrieved, an agency shall issue a declaratory ruling

as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

Article 3.

Administrative Hearings.

150B-22. Settlement; contested case. --It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. Notwithstanding any other provision of law, if the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case".

150B-23. Commencement; assignment of hearing officer; hearing required; notice; intervention. --(a) All contested cases other than those conducted under Article 3A of this Chapter shall be commenced by the filing of a petition with the Office of Administrative Hearings. The party who files

the petition shall also serve a copy of the petition on all other parties and shall file a certificate of service together with the petition. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

- (1) exceeded its authority or jurisdiction;
- (2) acted erroneously;
- (3) failed to use proper procedure;
- (4) acted arbitrarily or capriciously; or
- (5) failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay.

All contested cases under Chapter 126 of the General Statutes shall be conducted in the Office of Administrative Hearings, and no party may waive the right to have the case conducted in the Office of Administrative Hearings. In other contested cases, if a non-agency party commences the case, that party may waive the right to have the case conducted in the Office of Administrative Hearings in the petition filed to commence the case. If an agency commences the contested case, a non-agency party-respondent may, within 15 days of service of the petition, waive the right to have the contested case conducted in the Office of Administrative Hearings by notifying the Director of the Office of Administrative Hearings in writing. If there is more than one non-agency party-respondent, the waiver shall not be effective unless joined by all of these parties. In the absence of a waiver, a contested case under this Article shall be presided over by the Director of the Office of Administrative Hearings or an Administrative Law Judge assigned by him. In assigning Administrative Law Judges, the Director shall attempt to use personnel having expertise in the subject to be dealt with in the hearing.

A local government employee, applicant for employment, or former employee to whom Chapter

126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the State Personnel Commission's decision shall be binding.

(b) The parties shall be given notice not less than 15 days before the hearing by the Office of Administrative Hearings or the agency, which notice shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the hearing officer.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

150B-24. Venue of hearing.
--(a) The hearing of a contested case shall be conducted:

- (1) In the county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence;
 - (2) In the county where the agency maintains its principal office if the property or rights that are the subject matter of the hearing do not affect any person or if the subject matter of the hearing is the property or rights of residents of more than one county; or
 - (3) In any county determined by the agency or hearing officer in his discretion to promote the ends of justice or better serve the convenience of witnesses.
- (b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

150B-25. Conduct of hearing; answer. --(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the agency or hearing officer may proceed with the hearing in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written response, and a copy must be mailed to all other parties not less than 10 days before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. Any party may submit rebuttal evidence.

150B-26. Consolidation.
--When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending, the Director of the Office of Administrative Hearings may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce

costs or delay in the proceedings.

150B-27. Subpoena. --After the commencement of a contested case, the agency or hearing officer may issue subpoenas upon his own motion or upon a written request. When a written request for a subpoena has been made, the agency or hearing officer shall issue the requested subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency or hearing officer shall revoke a subpoena if, upon a hearing, he finds that the evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

150B-28. Depositions and discovery. --(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in contested cases may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall promptly make the records available to a party.

150B-29. Rules of evidence.
--(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of

Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency or hearing officer in reaching his decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

150B-30. Official notice.

--Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

150B-31. Stipulations.

--(a) The parties in a contested case may, by a stipulation in writing filed with the agency or hearing officer, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

150B-32. Designation of hearing officer.

--(a) The Director of the Office of Administrative Hearings shall assign himself or a hearing

officer in the Office of Administrative Hearings to preside as hearing officer in each contested case. If a party waives the right to have a case conducted in the Office of Administrative Hearings in the petition to commence the case, an agency, one or more members of the agency, a person or group of persons designated by statute, or one or more hearing officers designated and authorized by the agency to conduct contested cases.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the Hearing Officer shall determine the matter as a part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result, in which event a new hearing shall be held or the case dismissed without prejudice.

150B-33. Powers of hearing officer.

--(a) A hearing officer shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) A hearing officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency or the Office of Administrative Hearings, as applicable, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;

- (4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;
- (6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;
- (7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and
- (8) Apply to any judge of the Superior Court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.
- (9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.

150B-34. Proposal for decision; recommended decision.

--(a) In a contested case conducted by a hearing officer other than the agency officials who will make the final decision, the hearing officer shall:

- (1) Make a proposal for decision that contains his findings of fact and conclusions of law and proposed decision, opinion, order, or report;
- (2) Deliver a copy of the proposal for decision to each party; and
- (3) Give each party an

opportunity to file exceptions and proposed findings of fact and to present written arguments to him.

(b) After considering any exceptions, proposed findings of fact, and written arguments of the parties, the hearing officer shall make a recommended decision that contains findings of fact and conclusions of law and a recommended decision, opinion, order, or report. He shall include the recommended decision in the official record prepared pursuant to G.S. 150B-37(a) and shall forward a copy of the official record to the agency.

150B-35. No ex parte communication; exceptions.

--Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case or a hearing officer shall not communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

150B-36. Final decision.

--A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the hearing officer's recommended decision as its final decision in a contested case conducted by a hearing officer, the agency shall include in its decision or order the specific reasons why the hearing officer's recommended decision is not adopted. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

150B-37. Official record.

--(a) The agency or hearing officer who conducts the hearing in a contested case shall prepare an official record of the hearing which shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) The hearing officer's proposal for decision and exceptions and proposed findings of fact; and
- (6) The hearing officer's recommended decision, opinion, order, or report.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests, and said transcript or part thereof shall be added to the official record as an exhibit.

Article 3A.

Other Administrative Hearings.

150B-38. Scope; required; notice; venue. --(a) The provisions of this Article shall apply to the following agencies:

- (1) Occupational licensing agencies;
- (2) The State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and
- (3) The Department of Insurance and the Commissioner of Insurance.

(b) Prior to any agency action in a contested case, the agency shall give the parties in the case an opportunity for a hearing without undue delay and notice not less than 15 days before the hearing. Notice to the parties shall include:

- (1) A statement of the date, hour, place, and nature of the hearing;
- (2) A reference to the particular sections of the statutes and rules involved; and
- (3) A short and plain

statement of the facts alleged.

(c) Notice shall be given personally or by certified mail. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt. If notice cannot be given personally or by certified mail, then notice shall be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) A party who has been served with a notice of hearing may file a written response with the agency. If a written response is filed, a copy of the response must be mailed to all other parties not less than 10 days before the date set for the hearing.

(e) All hearings conducted under this Article shall be open to the public. A hearing conducted by the agency shall be held in the county where the agency maintains its principal office. A hearing conducted for the agency by an Administrative Law Judge requested under G.S. 150B-40 shall be held in a county in this State where any person whose property or rights are the subject matter of the hearing resides. If a different venue would promote the ends of justice or better serve the convenience of witnesses, the agency or the Administrative Law Judge may designate another county. A person whose property or rights are the subject matter of the hearing waives his objection to venue if he proceeds in the hearing.

(f) Any person may petition to become a party by filing with the agency or hearing officer a motion to intervene in the manner provided by G.S. 1A-1, Rule 24. In addition, any person interested in a contested case under this Article may intervene and participate to the extent deemed appropriate by the agency hearing officer.

(g) When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any matters at issue in the cases, order the cases consolidated, or make other orders to reduce costs or delay in the proceedings.

(h) Every agency shall adopt rules governing the conduct of hearings that are consistent with the provisions of this Article.

150B-39. Depositions; discovery; subpoenas. --(a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) Upon a request for an identifiable agency record involving a material fact in a contested case, the agency shall promptly provide the record to a party, unless the record relates solely to the agency's internal procedures or is exempt from disclosure by law.

(c) An agency may issue subpoenas in preparation for, or in the conduct of, a contested case upon its own motion. If a written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. Upon written request, the agency shall revoke a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6.

150B-40. Conduct of hearing; presiding officer; ex parte communication. --(a) Hearings shall be conducted in a fair and impartial manner. At the hearing, the agency and the parties shall be given an opportunity to present evidence on issues of fact, examine and cross-examine witnesses, including the author of a document prepared by, on behalf of or for the use of the agency

and offered into evidence, submit rebuttal evidence, and present arguments on issues of law or policy.

If a party fails to appear in a contested case after he has been given proper notice, the agency may continue the hearing or proceed with the hearing and make its decision in the absence of the party.

(b) Except as provided under subsection (e) of this section, hearings under this Article shall be conducted by a majority of the agency. An agency shall designate one or more of its members to preside at the hearing. If a party files in good faith a timely and sufficient affidavit of the personal bias or other reason for disqualification of any member of the agency, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding. If a presiding officer is disqualified or it is impracticable for him to continue the hearing, another presiding officer shall be assigned to continue with the case, except that if assignment of a new presiding officer will cause substantial prejudice to any party, a new hearing shall be held or the case dismissed without prejudice.

(c) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;
- (3) Provide for the taking of testimony by deposition;
- (4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;
- (5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and
- (6) Apply to any judge of the superior court resident in the district or presiding at a term of court in the county where a hearing is pending for an order to show cause why any person should not be held in contempt of the agency and its processes, and the court

shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court.

(d) Unless required for disposition of an ex parte matter authorized by law, a member of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case under this Article shall not communicate, directly or indirectly, in connection with any issue of fact or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee or party representative with professional training in accounting, actuarial science, economics or financial analysis insofar as the case involves financial practices or conditions.

(e) When a majority of an agency is unable or elects not to hear a contested case, the agency shall apply to the Director of the Office of Administrative Hearings for the designation of an Administrative Law Judge to preside at the hearing of a contested case under this Article. Upon receipt of the application, the Director shall, without undue delay, assign an Administrative Law Judge to hear the case.

The provisions of this Article, rather than the provisions of Article 3, shall govern a contested case in which the agency requests an Administrative Law Judge from the Office of Administrative Hearings.

The Administrative Law Judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The Administrative Law Judge shall make a proposal for decision, which shall contain proposed

findings of fact and proposed conclusions of law.

An Administrative Law Judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

The agency may make its final decision only after the Administrative Law Judge's proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the agency.

150B-41. Evidence; stipulations; official notice.

--(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

(b) Evidence in a contested case, including records and documents shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the

copy with the original if available.

(c) The parties in a contested case under this Article by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable. Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties.

(d) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

150B-42. Final agency decision; official record.

--(a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in subsection (b) of this section, an agency shall make a written final decision or order in a contested case. The decision or order shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150B-41. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency

and a copy shall be furnished to his attorney of record.

(b) An agency shall prepare an official record of a hearing that shall include:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
- (5) Proposed findings and exceptions; and
- (6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(c) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests.

Article 4.

Judicial Review.

150B-43. Right to judicial review. --Any person who is aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.

150B-44. Right to judicial intervention when decision unreasonably delayed.

--Unreasonable delay on the part of any agency or hearing officer in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or hearing officer. An agency's failure to make a final decision within 60 days of receiving the official record from the hearing officer constitutes an unreasonable delay; provided that boards and commissions shall make a final

decision at their next regularly scheduled meeting, but in any case no later than 120 days after the official record is received.

150B-45. Manner of seeking review; time for filing petition; waiver. --In order to obtain judicial review of a final decision under this Chapter, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the petitioner resides. The petition may be filed at any time after final decision but must be filed not later than 30 days after a written copy of the decision is served upon the party seeking the review by personal service or by certified mail. Failure to file a petition within the time stated shall operate as a waiver of the right of such party to review under this Chapter, except that, for good cause shown, a judge of the superior court resident in the district or holding court in the county where venue is proper may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver.

150B-46. Contents of petition; copies served on all parties; intervention. --The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24.

150B-47. Records filed with clerk of superior court; contents of records; costs. --Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the Office of Administrative Hearings, or if

that office did not conduct the contested case, the agency shall transmit to the reviewing court the original or a certified copy of the official record of the hearing in the contested case under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

150B-48. Stay of decision. --At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the administrative decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65.

150B-49. New evidence. --In a review proceeding under this Article, any party may present evidence not contained in the record that is not repetitive.

150B-50. Review by court without jury. --The review of agency decisions under this Chapter shall be conducted by the court without a jury.

150B-51. Scope of review; power of court in disposing of case. --Based on the record and the evidence presented to the court, the court may affirm, reverse, or modify the decision or remand the case to the agency for further proceedings.

150B-52. Appeal to appellate division; obtaining stay of court's decision. --Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division.

Article 5.

Publication of Administrative Rules.

150B-58. Short title.

--This Article may be cited as 'The Registration of State Administrative Rules Act'.

150B-59. Filing of rules and executive orders. --(a) Rules adopted by an agency and executive orders of the Governor shall be filed with the Director of the Office of Administrative Hearings. No rule, except temporary rules adopted under the provisions of G.S. 150B-13 or rules approved under G.S. 143B-30.2(e) or (f), shall become effective earlier than the first day of the second calendar month after that filing.

(b) The acceptance for filing of a rule by the Director, by his notation on its face, shall constitute *in prima facie* evidence of compliance with this Article.

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that conflict with or violate the provisions of G.S. 150B-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on September 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until June 30, 1988. These rules are repealed effective July 1, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a). Review of these rules shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter.

150B-60. Form of rules; responsibilities of agencies; assistance to agencies. --(a) In order to be acceptable for filing, the rule must:

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;
- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;
- (4) Be in the physical form specified by the Director of the Office of Administrative Hearings; and
- (5) Bear a notation from the Administrative Rules Review Commission that it has

reviewed and approved the rule in accordance with G.S. 143B-30.2.

(b) Each agency shall designate one or more administrative procedure coordinators whose duties shall be to oversee all departmental functions required by this Chapter. The coordinator's duties shall include providing notice of public hearings; serving as liaison between the agency and the Office of Administrative Hearings, the Administrative Rules Review Commission and the public; and coordinating access to agency rules.

(c) The Director of the Office of Administrative Hearings shall:

- (1) Maintain an agency rule-drafting section in the Office of Administrative Hearings to draft or aid in the drafting of rules or amendments to rules for any agency; and
- (2) Prepare and publish an agency rule-drafting guide which sets out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

150B-61. Authority to revise form. --(a) The Director of the Office of Administrative Hearings shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, Chapters, Subchapters, Articles, sections, paragraphs, and other divisions or subdivisions;
- (2) To provide or revise titles or catch lines;
- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists; and
- (5) To make other changes in arrangement or in form that do not alter the substance of the rule and that are necessary or desirable for an accurate, clear, and orderly arrangement of the rules.

Revision of form by the Director shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule. No later than the close of the fifth working day after the filing of a rule by an

agency, the Director shall return to the agency that filed the rule a copy of the rule in any revised form made by the Director, together with his certification of the date of the rule's filing.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

(b) In determining the drafting form of rules the Director shall:

- (1) Minimize duplication of statutory language;
- (2) Not permit incorporations into the rules by reference to publications or other documents which are not conveniently available to the public; and
- (3) To the extent practicable, use plain language in rules and avoid technical language.

150B-62. Public inspection and notification of current and replaced rules.

--(a) Immediately upon notation of a filing as specified in G.S. 150B-59(b), the Director of the Office of Administrative Hearings shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150B-61(a).

(b) The Director shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 50 days of the acceptance by the Director of a rule for filing, the agency filing the rule:

- (1) Shall publish the rule as prescribed in any applicable statute; and
- (2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule.

The rule so published or distributed shall contain the legend: 'The form of this rule may be revised by the Director pursuant to the provisions of G.S. 150B-61.'

150B-63. Publication of executive orders and rules; the North Carolina Register.

The chief hearing officer of the Office of Administrative Hearings shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Director determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after July 1, 1985, the Director shall publish, in print or other form, a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually or more frequently in the discretion of the Director. Recompilations shall be made in the Director's discretion.

(d1) The Director shall also publish at periodic intervals, but not less often than once each month, the North Carolina Register which shall contain information relating to agency, executive, legislative or judicial actions that are performed under the authority of, or are required by, or are issued to interpret, or that otherwise affect, this Chapter.

(d2) In publishing proposed amendments to rules, the Director shall show the portion of the rule being amended as it is to the degree necessary to provide adequate notice of the nature of the proposed amendment, with changes shown by striking through portions to be deleted and underlining portions to be added.

(e) Notwithstanding G.S. 147-50, reference copies of the compilation, supplements, and recompilations of the rules, and the North Carolina Register shall be distributed by the Director as soon after publication as practicable, without charge, only to the following officials and departments:

- (1) One copy to each county of the State, which copy may be maintained for public inspection in the county in a place determined by the county commissioners; one copy each to the clerk of the Supreme Court of North

Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;

- (2) One copy to each State official and department to which copies of the appellate division reports are furnished under G.S. 7A-343.1;
- (3) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1; and
- (4) One copy of the North Carolina Register to each member of the General Assembly.

(f) The Director shall make available copies of the compilation, supplements and recomputations of the rules and the North Carolina Register to other persons at a price determined by him to cover publication and mailing costs. All monies received by the Office of Administrative Hearings pursuant to this section from the sale of copies of said publications shall be deposited in the State treasury in a special funds account to be held in trust for the Office of Administrative Hearings to defray the expense of future recompilation, publication, and distribution of such documents. All monies involved shall be subject to audit by the State Auditor.

(g) Notwithstanding any other provision of law, the Employment Security Commission shall, within 15 days of adoption, file all rules adopted by it with the Director for public inspection and publication purposes only. The Director shall compile, make available for inspection, and publish the rules filed under this subsection in the same manner as is provided for other rules.

150B-64. Judicial and official notice. --Judicial or official notice shall be taken of any rule effective under this Article.

CHAPTER 7A, SUBCHAPTER XII
ADMINISTRATIVE HEARINGS
Office of Administrative
Hearings.

7A-750. Creation; status; purpose. --There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Section 11 of the Constitution and, in accordance with Article IV, Section 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established to provide a source of independent hearing officers to preside in administrative cases and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules.

7A-751. Director; powers and duties. --The head of the Office of Administrative Hearings is the Director. He shall serve as the Director of the Office of Administrative Hearings and shall have the powers and duties conferred on him by this Chapter and the Constitution and laws of this State.

The Office of Administrative Hearings is designated the official deferral agency under Section 706 of the Civil Rights Act of 1964, as amended, for all charges filed on a timely basis with the Equal Employment Opportunity Commission by any State or local government employee covered under Chapter 126 of the General Statutes. The Office of Administrative Hearings may contract with the Equal Employment Opportunity Commission to become a 706 deferral agency and may conduct necessary investigations and informal hearings or fact-finding proceedings. The Office of Administrative Hearings may prepare investigation reports with the findings, conclusions, and determinations of probable cause that a 706 deferral agency is required to make and may take other actions required for it to function as a 706 deferral agency for State and local employees covered under Chapter 126 of the General Statutes. Proceedings conducted by the Office of Administrative

Hearings as a 706 deferral agency are not contested cases as defined in G.S. 150B-2(2).

7A-752. Director; appointments; vacancy. --The Director of the Office of Administrative Hearings shall be appointed by the Chief Justice for a term of office of four years. The first Director shall be appointed as soon as practicable for a term to begin on the day of his appointment and to end on June 30, 1989. Successors to the first Director shall be appointed for a term to begin on July 1 of the year the preceding term ends and to end on June 30 four years later. A Director may continue to serve beyond his term until his successor is duly appointed and sworn, but any holdover shall not affect the expiration date of the succeeding term.

If the Director is absent or unable to serve temporarily for any reason, the Senior Administrative Law Judge present may perform the duties of Director. Seniority among Administrative Law Judges shall be determined by length of service as Administrative Law Judge, date of admission to practice law in the General Court of Justice, and age, in that order.

7A-753. Additional Administrative Law Judges; appointment; specialization. --The Director shall appoint additional Administrative Law Judges to serve in the Office of Administrative Hearings in such numbers as the General Assembly provides.

The Director may designate certain Administrative Law Judges as having the experience and expertise to preside at specific types of contested cases and assign only these designated Administrative Law Judges to preside at those cases.

7A-754. Qualifications; standards of conduct; removal. --Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and Chief Administrative Law Judge or as an Administrative Law Judge in the Office of Administrative Hearings. Neither the Chief Administrative Law Judge nor any Administrative Law Judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall be grounds for removal. Each

Administrative Law Judge shall take the oaths required by Chapter 11 of the General Statutes. An Administrative Law Judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35.

7A-755. Expenses reimbursed. --The Director of the Office of Administrative Hearings and all Administrative Law Judges shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

7A-756. Power to administer oaths and issue subpoenas. --The Chief Administrative Law Judge and all Administrative Law Judges in the Office of Administrative Hearings may, in connection with any pending or potential contested case under Chapter 150B:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the Office of Administrative Hearings requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence; and
- (3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this Article.

7A-757. Temporary hearing officers; appointments; powers and standards; fees. --When regularly appointed hearing officers are unavailable, the Director of the Office of Administrative Hearings may contract with qualified individuals to serve as hearing officers for specific assignments. A temporary hearing officer shall have the same powers and adhere to the same standards as a regular hearing officer in the conduct of a hearing. A temporary hearing officer shall not be considered a state employee by virtue of this assignment, and shall be remunerated for his service at a rate not to exceed three hundred dollars (\$300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 138-6(a). The Director may also designate a full-time state employee to serve as a temporary hearing officer with the consent of the employee and his supervisor; however, the

employee is not entitled to any additional pay for this service.
7A-758. Availability of hearing officer to exempt agencies. --The Director of the Office of Administrative Hearings may, upon request of the head of the agency, provide a hearing officer to preside at hearings of public bodies not otherwise authorized or required

by statute to utilize a hearing officer from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150B, municipal corporations or other subdivisions of the State, and agencies of such subdivisions.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 26

EMERGENCY DROUGHT RELIEF

The drought conditions which have prevailed recently throughout North Carolina have caused extensive damage to the State's agricultural resources. I have determined that the damage has caused a state of emergency to exist and that it is so extensive that it exceeds the ability of local authorities to deal with it. In response to this damage, and the threat of greater harm as a result of the loss of crops, and with the gracious assistance of several other states in the Union, I have developed "Operation Hay" to provide assistance to the farmers and livestock in our state. Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina it is ORDERED:

SECTION 1: COORDINATING AGENCIES

The Department of Commerce and the Department of Agriculture are designated as the Coordinating Agencies for "Operation Hay" and are jointly charged with the duty to implement every phase of the program, and shall work under the aegis of the State Emergency Response Team (S.E.R.T.), who shall provide staff, facilities and other support as may be required by the Coordinating Agencies. The Departments of Commerce and Agriculture shall coordinate the efforts of all cooperating agencies in the receipt and distribution of hay and livestock feed products from other states. These departments shall take care that this food and assistance is fairly distributed to the state's cattle and dairy farms.

SECTION 2: COOPERATING AGENCIES

The Departments of Crime Control and Public Safety, Transportation, Correction, Natural Resources and Community Development, and the Governor's Communication Office are hereby instructed to provide assistance, as directed, to the Coordinating Agencies.

The National Guard and the Air National Guard are also directed to provide such services and assistance as the Coordinating Agencies shall require and as I shall approve.

The North Carolina Extension Service, the Farm Bureau, The Grange, and the A.S.C.S. and the FmHA are requested to give full cooperation to the Coordinating Agencies in providing farm information, locating proper recipients, and such other services that may be helpful to the state's farmers.

SECTION 3: OUT-OF-STATE VEHICLES USED IN TRANSPORT

Vehicles which are transporting emergency supplies, hay, grain, farm supplies and other items to aid in the relief of this emergency and which are displaying valid license plates shall be permitted to carry the maximum weights as provided in N.C.G.S. 20-118, notwithstanding the local limit prescribed by the license procured for the vehicle.

The vehicles described in this section are exempt from the vehicle registration and tax requirements in Article 36B, subchapter 5 of the North Carolina Revenue Laws.

The Commissioner of the Division of Motor Vehicles of the Department of Transportation is directed to administer this section of this Order.

This Order is effective immediately and shall remain in effect until rescinded.

This the 23rd day of July, 1986.

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA
WAKE COUNTY

In the Office of
Administrative Hearings

ORDER

Under the provisions of G.S. 7A-753, as amended by Sections 4 and 6 of Chapter 1022, Session Laws of 1985 (Regular Session, 1986) the following Hearing Officers of the Office of Administrative Hearings are reappointed and redesignated Administrative Law Judges:

Beecher Reynolds Gray

Fred Gilbert Morrison, Jr.

Angela Rebecca Bryant

Thomas Roswell West

Abraham Penn Jones

This the 15th day of July, 1986.

s/Robert A. Melett
Director

VOTING RIGHTS ACT FINAL DECISION LETTER

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

July 22, 1986

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

Dear Mr. Crowell:

This refers to Chapter 778, H.B. No. 772 (1967), which provides for an increase in the size of the county commission from five to six members, the addition of an at-large position to the Greenville residency district, the staggering of the terms of the Greenville residency district, and the allocation to the commission of the power to fill the new seat by appointment until the 1968 election in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on May 23, 1986.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.48).

Because our review has disclosed that a number of the factors leading to a possible violation of Section 2 of the Voting Rights Act may be involved with respect to the underlying at-large method of election, the Voting Section is considering the appropriateness of litigation to determine the Section 2 issues. We will be in further contact with you in the near future concerning this matter. In the meantime, if you have any questions regarding the concerns raised in this letter, feel free to call Poli A. Marmolejos (202-724-3111), Attorney/Reviewer in our Section 5 Unit.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By: Gerald W. Jones
Chief, Voting Section

STATEMENT OF ORGANIZATION

Raleigh, NC 27611
Telephone: (919) 733-7293

NORTH CAROLINA
DEPARTMENT OF AGRICULTURE

The North Carolina Department of Agriculture is a statutorily created agency G.S. 106-2, within the executive branch of the state government. The Commissioner of Agriculture, a statewide elected official as provided for in Article III, Section 7(1) of the North Carolina Constitution, is the head of the Department of Agriculture. The Department of Agriculture is organized into thirteen divisions. A number of boards and commissions are administratively located in the department.

A. Departmental Divisions:

1) Agronomic Services

The Agronomic Services Division performs laboratory analysis of soil and plant samples for farmers and homeowners. Tests determine the fertility of soil and the nutrient quantity and balance of plants through tissue analysis. Nematodes are quantified from soil and plant root samples and diseases are diagnosed. Fertilizer application and nematode management recommendations are made based on test results. Growers are assisted in the field with problem diagnosis and optimum crop production strategies by Regional Agronomists.

Mailing Address:
Agronomic Services Division
N. C. Department of Agriculture
Blue Ridge Road Center
Raleigh, NC 27611
Telephone: (919) 733-2657

2) Crop & Livestock
Reporting Service

The Crop and Livestock Reporting Service Division is responsible for collecting, preparing, and disseminating regular series of official crop, livestock and price estimates along with other statistics relative to agriculture in North Carolina and the nation.

Mailing Address:
Crop & Livestock Reporting
Service Division
N. C. Department of Agriculture
P. O. Box 27647

3) Food Distribution

The Food Distribution Division operates in cooperation with the USDA to provide food at no cost for distribution to schools of high school grade or under, charitable institutions and needy persons. It is the responsibility of this division to requisition, store, and deliver the food.

Mailing Address:
Food Distribution Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, N. C. 27611
Telephone: (919) 733-7661

4) Food and Drug Protection

The Food and Drug Protection Division assures consumers that foods, feeds, drugs, cosmetics, pesticides, and automotive antifreezers are safe, wholesome and properly labeled. Statewide inspections and chemical analyses offer protection against unsafe, deceptive and fraudulent products. Annual registration of pesticides offered for sale within North Carolina and pesticide applicator licensing and certification is administered by the Pesticide Section.

Mailing Address:
Food and Drug Protection
Division
N. C. Department of Agriculture
4000 Reedy Creek Road
Raleigh, NC 27607
Telephone: (919) 733-7366

Mailing Address:
Pesticide Section
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3556

5) Marketing

The Marketing Division promotes the sale of North Carolina agriculture food products, reports farm prices on major commodities and determines and certifies the official grade of farm products. The Marketing Division also organizes special livestock sales, arranges buyer-seller contacts, provides marketing advice and assistance to producers, processors and handlers and administers the N. C. Egg Law and the Farm Products marketing and branding law.

Regional Farmers' Markets in Raleigh, Charlotte and Asheville are also operated by the Marketing Division.

Mailing Address:
Marketing Division
N.C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-7887

6) Museum of Natural History

The Museum of Natural History Division maintains collections and disseminates knowledge concerning the natural history (flora, fauna, minerals, fossils and ecology) of North Carolina through (1) temporary and permanent exhibits; (2) systematic collections and data files in the charge of taxonomic specialists trained to solve problems of identification and classification; (3) ecological and other field studies of southeastern biota; (4) educational services including teacher education programs, vocational training, curriculum and program development, classes, lectures and preparation of popular and educational materials on natural history topics; (5) publication of natural history books, papers, articles, pamphlets, and similar materials; and (6) operation of the N. C. Maritime Museum.

Mailing Address:
Museum of Natural
History Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-7450

Mailing Address:
N. C. Maritime Museum
N. C. Department of Agriculture
315 Front Street
Beaufort, NC 28516
Telephone: (919) 728-7317

7) North Carolina State Fair

The North Carolina State Fair Division is responsible for the annual North Carolina State Fair in October. During non-Fair time, the North Carolina State Fair rents various Fair Facilities to the general public for special events.

Mailing Address:
N. C. State Fair Division
N. C. Department of Agriculture
1025 Blue Ridge Blvd.

Raleigh, NC 27607
Telephone: (919) 733-2145

8) Plant Industry

The Plant Industry Division performs fertilizer and seed examinations to check for accuracy in labeling and quality of product. The division also administers Plant Pest laws.

Mailing Address:
Plant Industry Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3930

9) Public Affairs

The Public Affairs Division is responsible for disseminating pertinent information to the public through news releases and other media contacts. The division is also responsible for publishing "Agriculture Review." Media questions may be directed to the division, and they will be channeled to the proper individual if further expertise is required.

Mailing Address:
Public Affairs Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-4216

10) Research Stations

Fifteen stations, (9 owned by NCDA, 6 owned by NCSU and operated by NCDA) comprise the Research Stations Division of the Department of Agriculture. The research stations cooperate with scientists at the land-grant universities to develop new agronomic products and trends, working in conventional crops but also working in new crops to the state. Research is also conducted on the State Farms, whose primary purpose is to produce food for state institutions.

Mailing Address:
Research Stations Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3236

11) Standards

The Standards Division administers the weights and measures program which includes the verification of the accuracy

of commercial weighing and measuring devices and the inspection of packaged items for compliance with net contents statements. The division also tests petroleum products and inspects LP Gas installations.

Mailing Address:
Standards Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3313

12) Structural Pest Control

The Structural Pest Control Division is responsible for licensing commercial pest control operators within North Carolina. It is also the responsibility of the division to inspect the quality of work performed by licensed operators, and to enforce pesticide safety requirements.

Mailing Address:
Structural Pest Control Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-6100

13) Veterinary

The Veterinary Division monitors all animal disease outbreaks and administers animal health programs in North Carolina. The division also provides veterinary diagnostic services and animal health inspections. All processing and slaughter facilities in the state are inspected by the division to insure cleanliness of the operation and wholesomeness of the finished product. The division also regulates dog and cat dealers under the Animal Welfare Act.

Mailing Address:
Veterinary Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-7601

Mailing Address:
Rollins Diagnostic Laboratory
2101 Blue Ridge Road
P. O. Box 12223
Cameron Village Station
Raleigh, NC 27605
Telephone: (919) 733-3986

B. Boards and/or Commissions

1) North Carolina Agricultural Hall of Fame Board of Directors

The North Carolina Agricultural Hall of Fame Board of Directors was created by G.S. 106-568.14. The eight-member Board of Directors is composed of the Commissioner of Agriculture, the Director of the North Carolina Extension Service, the State Supervisor of Vocational Agriculture, the President of the North Carolina Farm Bureau, and the Master of the State Grange, as ex-officio members, and three members appointed by the Governor.

The Board of Directors is authorized to adopt rules and regulations which govern the acceptance and admission of candidates to the North Carolina Agricultural Hall of Fame Rules promulgated by the board are codified in 2 NCAC 31.

Mailing Address:
Public Affairs Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-4216

2) Board of Agriculture

The Board of Agriculture was created by G.S. 106-2. The eleven-member Board of Agriculture is composed of the Commissioner of Agriculture, an ex-officio member who serves as the board's Chairman, and ten members appointed by the Governor.

The Board of Agriculture is a policymaking body with respect to the improvement of agriculture and a rulemaking body with respect to all programs administered by the Department of Agriculture, exclusive of Pesticides, Plant Conservation, Gasoline and Oil Inspection and Structural Pest Control. Rules promulgated by the board are codified in 2 NCAC.

Mailing Address:
Secretary, Board of Agriculture
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-7125

3) Board of Crop Seed Improvement

The Board of Crop Seed Improvement was created by G.S. 106-269. The board promotes the development and distribution of pure strains of crop seed to

North Carolina farmers. The board is authorized to adopt rules and regulations which relate to the certification of pure crops seeds. Rules promulgated by the board are codified in 2 NCAC 29.

Mailing Address:
Board of Crop Seed Improvement
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3930

4) State Farm Operations
Commission

The State Farm Operations Commission was created by G.S. 106-26.13. The seven-member committee develops policies for the use and operation of the State Farm Units.

Mailing Address:
State Farm Operations Commission
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3236

5) Gasoline and Oil Inspection
Inspection Board

The Gasoline and Oil Inspection Board was created by G.S. 119-26. The five-member board is composed of the Commissioner of Agriculture, the Director of the Standards Division and three members appointed by the Governor.

The board is authorized to adopt rules and regulations which govern the quality, labeling, transportation and inspection of liquid motor fuels, kerosene and other heating oils. Rules promulgated by the board are codified in 2 NCAC 42.

Mailing Address:
Standards Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3313

6) North Carolina Public
Livestock Market
Advisory Board

The North Carolina Public Livestock Market Advisory Board was created by G.S. 106-407.1. The eight-member board serves in an advisory capacity to the Commissioner of Agriculture and the Board of Agriculture on issues which relate to the livestock markets and proposes

rule changes related to this area. The board also is required to attend any hearing for a license to operate a public livestock market.

Mailing Address:
Veterinary Division
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-7601

7) Advisory Commission for the
Museum of Natural History

The Advisory Commission for the Museum of Natural History was created by G.S. 143-370. The nine-member commission establishes policies for the Museum and works to promote and develop the Museum and its resources.

Mailing Address:
Museum of Natural History
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-7430

8) Structural Pest
Control Committee

The Structural Pest Control Committee was created by G.S. 106-65.23. The five-member committee is authorized to adopt rules and regulations which regulate Structural Pest Control activities. The committee is an occupational licensing board with respect to Structural Pest Control operators in North Carolina. Rules promulgated by the committee are codified in 2 NCAC 34.

The committee has the authority to deny, revoke, suspend or modify the license, certified applicator's card or identification card of any person adjudged to have violated the Law or Regulations.

Mailing Address:
Secretary, Structural Pest
Control
Committee
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-6100

9) North Carolina
Pesticide Board

The Pesticide Board was created by G.S. 143-436. The seven-member board is authorized to adopt rules and regulations which govern the nonstructural

application, sale, disposal, and registration of pesticides and the licensing and certification of pesticide applicators. The board is an occupational licensing board with respect to commercial pesticide applicators and private pesticide applicators. Rules promulgated by the board are codified in 2 NCAC 9L. The board has the authority to access civil penalties against any person adjudged to have violated the Law or Regulations and to suspend, revoke, deny or modify the licenses of persons adjudged to have violated the Law or Regulations.

Mailing Address:
Secretary, North Carolina
Pesticide Board
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3556

10) Pesticide Advisory
Committee

The Pesticide Advisory Committee was created by G.S. 143-439. The seventeen-member committee is appointed by the Pesticide Board. The committee serves in an advisory capacity to the Commissioner of Agriculture and the Pesticide Board on technical questions submitted to it and the development of rules and regulations which relate to pesticides.

Mailing Address:
Pesticide Advisory Committee
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-3556

11) North Carolina Plant
Conservation Board

The North Carolina Plant Conservation Board was created by G.S. 106-202.14. Four members of the seven-member board are appointed by the Governor and the remaining members are appointed by the Commissioner of Agriculture. The board is authorized to adopt rules and regulations which classify plant species as either endangered, threatened or of special concern when necessary, and regulate the handling of classified plants. Rules promulgated by the board are codified in 2 NCAC 10.

Mailing Address:
Plant Protection Section
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-6930

12) North Carolina Plant
Conservation Scientific
Committee

The North Carolina Plant Conservation Scientific Committee was created by G.S. 106-202.17. The ten-member committee serves in an advisory capacity to the North Carolina Plant Conservation Board on matters relating to plant species classified as either endangered, threatened or of special concern.

Mailing Address:
Plant Protection Section
N. C. Department of Agriculture
P. O. Box 27647
Raleigh, NC 27611
Telephone: (919) 733-6930

PROPOSED RULES

TITLE 2 - AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulation cited as 2 NCAC 9B .0022(7) & (8). The purpose of the proposed regulation is to update adoption by reference to include federal infant formula standards.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-139; 150B-14.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

CHAPTER 9 - FOOD AND
DRUG PROTECTION DIVISION

SUBCHAPTER 9B - RULES AND
STANDARDS ADOPTED BY REFERENCE

.0022 FOOD FOR HUMAN
CONSUMPTION

- (7) 106 Infant Formula
Quality Control Procedures
- (8) 107 Infant Formula

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to adopt regulations cited as 2 NCAC 9B .0032 and .0033. The purpose of the proposed regulations is to establish a uniform date for rules adopted by reference and provides public with information concerning access to documents adopted by reference.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-139; 150B-14.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room,

Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

SUBCHAPTER 9B - RULES AND
STANDARDS ADOPTED BY REFERENCE

.0032 EFFECTIVE DATE FOR
ADOPTIONS BY REFERENCE

All documents adopted by reference in 2 NCAC 9B shall be those documents in effect as of July 1, 1986.

.0033 DOCUMENT AVAILABILITY

Copies of documents adopted by reference in 2 NCAC 9B .0021 through .0030 are available for inspection in the Office of the Director of the Food and Drug Protection Division and may be obtained at a cost as determined by the publisher by contacting the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to repeal regulations cited as 2 NCAC 9E .0012. The purpose of the proposed regulation is to delete unnecessary regulations.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-28.41.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

SUBCHAPTER 9E - FEED

.0012 GOOD MANUFACTURING
PRACTICES (REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulations cited as 2 NCAC 9G .0101(1). The purpose of the proposed regulation is to update adoption by reference.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-139; 106-267; 106-267.2.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

SUBCHAPTER 9G - MILK AND MILK PRODUCTS

SECTION .0100 - PASTEURIZED MILK ORDINANCE

.0101 ADOPTION BY REFERENCE

- (1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," ~~U.S. Department of Agriculture,~~ 37 Fed. Reg. 7046 (1972) as amended in 50 Fed. Reg. 34726 (1985).

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulations cited as 2 NCAC 9K .0212. The purpose of the proposed regulation is to adopt coliform count for sherbet.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-248; 106-253; 106-267.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing

prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, North Carolina 27611.

SUBCHAPTER 9K - SAMPLING AND TESTING OF MILK AND CREAM: FROZEN DESSERTS

SECTION .0200 - FROZEN DESSERTS

.0212 BACTERIAL PLATE COUNT AND COLIFORM COUNTS

Ice cream, other frozen milk products, water ices, and all mixes in dry form, shall at no time after pasteurization and until delivery for consumption, show a bacterial plate count in excess of 50,000 bacteria per gram; provided, frozen yogurt mix products are not subject to the 50,000 bacteria per gram. Coliform counts shall not exceed 10 colonies per gram for plain or 20 colonies per gram for chocolate, fruit, nut or other flavors; and coliform count for all sherbet shall not exceed 10 colonies per gram.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulation cited as 2 NCAC 48A .0608. The purpose of the proposed regulation is to establish procedures for reporting cotton acreage and change reporting date.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-65.77; 106-65.91.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

CHAPTER 4B - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .0600 - BOLL WEEVIL

.0608 REPORTING OF ACREAGE:
LOCATION OF COTTON ACREAGE

All cotton farm operators and growers of noncommercial cotton in an elimination zone shall submit a Cotton Acreage Reporting Form by the 15th of April June 15 of the current growing season to the county ASCS office. A report shall be filed for each year of participation in the program.

(1) Noncommercial cotton shall not be planted in an elimination zone. Growers of noncommercial cotton in an elimination zone may apply for a waiver to grow cotton in an elimination zone. Applications, in writing, shall be made to the plant pest administrator stating the conditions under which he requests such waiver. The decision whether or not to waive all or part of these requirements shall be based on the following:

- (a) location of growing area;
- (b) size of growing area;
- (c) pest conditions in the growing area;
- (d) accessibility of growing area;
- (e) any stipulations set forth in a compliance agreement between the individual and the Department of Agriculture that are necessary for the effectuation of the program.

(2) Written application for waivers shall be made to the plant pest administrator for review.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulation cited as 2 NCAC 48A .0610. The purpose of the proposed regulation is to designate the State of North Carolina as an elimination zone for the boll weevil eradication program.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-65.77; 106-65.91.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing

prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, North Carolina 27611.

SECTION .0600 - BOLL WEEVIL

.0610 DESIGNATED AREAS FOR
BOLL WEEVIL CONTROL

The following areas are regulated under the provisions of this Section:

(1) The Northern Elimination Zone consists of that portion of North Carolina lying east and northeast of a line beginning at a point where the Rockingham-Gaswell County line intersects the Virginia State line, thence south along said line to its junction with the Randolph-Alamance County line, thence south along said line to its junction with the Randolph-Chatham County line, thence south along said line to its junction with the Moore-Chatham County line, thence east along said line to its junction with the Moore-Lee County line, thence south and east along said line to its junction with the Moore-Harnett County line, thence south and west along said line to its junction with the Hoke-Harnett County line, thence south and east along said county line to its junction with the Cumberland-Harnett County line, thence north and east along said line to its junction with State Highway 67, thence south and east along said road to its junction with the Bladen-Cumberland County line, thence north and east along said line to its junction with the Bladen-Sampson County line, thence south and east along said line to its junction with the Bladen-Pender County line, thence south along said line to its junction with the Columbus-Pender County line, thence east along said line to its junction with the Brunswick-Pender County line, thence east along said line to its junction with the New Hanover-Pender County line, thence northeast and southwest on said line to its junction with the Atlantic Ocean. That portion of North Carolina east and northeast of the line includes the entire counties of Alamance,

Beaufort, Bertie, Camden,
 Carteret, Caswell, Chatham,
 Chowan, Craven, Currituck,
 Dare, Duplin, Durham,
 Edgecombe, Franklin, Gates,
 Granville, Greene, Halifax,
 Harnett, Hertford, Hyde,
 Johnson, Jones, Lee, Lenoir,
 Martin, Nash, Northampton,
 Onslow, Orange, Pamlico,
 Pasquotank, Pender,
 Perquimans, Person, Pitt,
 Sampson, Tyrrell, Vance,
 Wake, Warren, Washington,
 Wayne, Wilson, and that area
 of Cumberland County east of
 State Highway 87.

(2) The Southern Elimination
 Zone consists of Anson,
 Bladen, Cleveland,
 Cumberland, Davie, Gaston,
 Hoke, Iredell, Mecklenburg,
 Robeson, Rutherford,
 Scotland, and Union Counties.

(3) The noninfested area of
 this state consists of all
 parts of this state not
 included in the northern or
 southern elimination zone.

(a) For the purposes of this
Section, the entire state of
North Carolina shall
constitute an elimination
zone.

(4) (b) A regulated area
 consists of any other state
 or any portion of such state
 infested with boll weevil.

Notice is hereby given in
 accordance with G.S. 150B-12
 that the N.C. Board of
 Agriculture intends to amend
 regulation cited as 2 NCAC 48A
 .0611. The purpose of the
 proposed regulation is to
 establish the requirements for
 participation in the boll weevil
 eradication program; change the
 acreage fee, and change the
 acreage reporting date.

The proposed effective date of
 this action is December 1, 1986.

Statutory Authority: G.S.
 106-65.77; 106-65.91.

The public hearing will be
 conducted at 2:00 p.m. on
 October 16, 1986 at Board Room,
 Agriculture Bldg., 1 W. Edenton
 St., Raleigh, N.C.

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

27647, Raleigh, North Carolina
 27611.

.0611 REQUIREMENTS FOR PROGRAM PARTICIPATION

All cotton farm operators in
 the state are hereby required to
 participate in the eradication
 program. Participation shall
 include timely reporting of
 acreage and field locations,
 compliance with regulations, and
 payment of fees. Farm operators
 within the elimination zone,
 shall be notified through the
 extension offices or newspapers
 of their program costs on a per
 acre basis on or before March
 15. The following procedures
 are required for participation
 in the program:

(1) Filling out a Cotton
 Acreage Reporting Form at the
 ASCS office by April June 15
 of the current growing season
 for which participation is
 desired. At this time a
 nonrefundable fee of five ten
 dollars ~~(\$5.00)~~ ~~(\$10.00)~~ per
 acre in the northern
 elimination zone and five
 dollars ~~(\$5.00)~~ per acre in
 the southern elimination
 zone based on that certified
 acreage reported by the farm
 operator, shall be paid. Those
 farm operators not
 reporting their acreage by
 April June 15 will not be
 considered as a program
 participant. All acreage
 reported by such
 non-participants after April
 June 15 will be considered in
 excess and subject to
 penalty.

(2) On or before the 1st of
 July, the remaining share of
 the farm operators payment of
 five dollars ~~(\$5.00)~~ for
 those acreages in the
 northern elimination zone and
 ten dollars ~~(\$10.00)~~ for
 acreage in southern
 elimination zone shall be
 paid. Final adjustment will
 be based on ASCS measured
 acreage of reported fields.
 If measured acreage is not
 available by July the
 remaining share shall be
 based on the ASCS certified
 acreage. Any final
 adjustment based on measured
 acreage shall be made upon
 notification of actual
 measured acreage by ASCS or
 program personnel.

(3) (2) All fees shall be paid
 by the farm operator. Fees
 shall be made payable to and
 collected by ASCS.
 Farm operators in

the elimination zone whose ASCS measured acreage exceeds the grower reported acreage by more than 10 percent, shall be assessed a penalty fee of five dollars (\$5.00) per acre on that acreage in excess of the reported acreage. Any person whose reported acreage exceeds the ASCS measured acreage by more than 10 percent due to emergency or hardship conditions may apply for a waiver. Any farm operator applying for a waiver shall make application in writing to the plant pest administrator stating the conditions under which he requests such waiver. Waiver requests involving financial hardship must be accompanied by a financial statement from a bank or lending agency. All farm operators granted waiver requests for financial hardship will be charged interest payable at a rate equal to 15 percent per annum. The decision whether or not to waive all or part of these requirements shall be made by the plant pest administrator and notification given to the farm operator within two weeks after receipt of such application. Decision shall be based on the following: meteorological conditions, economic conditions, and any other uncontrollable destructive forces.

Failure to pay all remaining fees on or before July 1 of the current growing season will result in a penalty fee of ten dollars (\$10.00) per acre. Failure by a farm operator to pay all program costs as of July 1 or upon notification of ASCS measured acreage, whichever is later, shall be a violation of this Section. The farm operator when found in violation of this Section and upon notification shall completely destroy all cotton not found to be in compliance with the provisions of this Section. If such farm operator fails to comply with these Regulations, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to destroy such cotton, and shall compute the actual costs of labor and materials used, and the farm operator shall pay to the Commissioner of Agriculture such assessed costs. No damage shall be awarded the grower of such cotton for entering thereon and destroying any cotton when done by the order of the Commissioner of Agriculture, in accordance with the provisions of Article 4

and Article 36 of Chapter 106 of the North Carolina General Statutes.

Acreage subject to hardship conditions after all the growers' share of the program have been paid and prior to the initiation of program field operations may be considered for a refund. The refund amount will be determined by the actual program cost per acre up to the time of hardship.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulation cited as 2 NCAC 48A .0612(a), (b), (c) & (d). The purpose of the proposed regulation is to require certain cotton growers to destroy stalks before February 1.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-65.73; 106-65.74; 106-65.77.

The public hearing will be conducted at 2.00 p.m. on October 16, 1986 at Board Room, Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

.0612 COTTON STALK DESTRUCTION

(a) All cotton farm operators shall destroy all cotton stalks in their fields before February 1 of each year. Upon notification in writing by the Commissioner of Agriculture, any farm operator may be ordered to destroy standing cotton stalks in his fields when it is deemed that such cotton stalks constitute a potential for harboring overwintering population of boll weevils. Such cotton stalk destruction shall consist of shredding or discing as necessary to eliminate standing cotton stalks. Such notification will designate which fields are subject to stalk destruction. Designation of fields subject to stalk destruction will be based on the capturing of at least two adult boll weevils between

September 15 and December 15 of a calendar year. Any field which is adjacent to a designated field may also be subject to stalk destruction upon notification by the commissioner.

(b) Any farm operator subject to the provisions of (a) shall destroy the cotton stalks before February 1 of the following calendar year. Any cotton stalks not destroyed before February 1 shall be treated as regulated articles for the purposes of G.S. 106-65.73. Any fields field containing such stalks after January 31 on February 1 shall be quarantined until such stalks are destroyed. Any farm operator who fails to comply with this Rule, absent a waiver as provided in (c), shall be assessed a penalty fee of five dollars (\$5.00) per acre.

(c) Any farm operator subject to the provisions of (a) who cannot destroy cotton stalks before February 1 due to emergency or hardship may apply for a waiver. The application shall be made in writing before January 1 to the plant pest administrator stating the conditions justifying the waiver. The plant pest administrator shall notify the farm operator of his decision within two weeks after receipt of such application. Waivers shall be approved only if justified by emergency or hardship due to meteorological conditions, economic conditions, or other causes beyond the control of the farm operator.

(d) Any grower who fails to comply with this Rule shall be assessed a penalty fee of five dollars (\$5.00) per acre.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend regulations cited as 2 NCAC 48A .0901(2). The purpose of the proposed regulation is to designate regulated areas for the sweet potato program.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

The public hearing will be conducted at 2:00 p.m. on October 16, 1986 at Board Room,

Agriculture Bldg., 1 W. Edenton St., Raleigh, N.C.

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

SECTION .0900 - SWEET POTATO WEEVIL

.0901 REGULATED AREAS (2) North Carolina.

New Hanover County: The entire peninsula island bordered on the west by the Cape Fear River and on the east by the Atlantic Ocean and south of that line established from the Carolina Beach Inlet from the Atlantic Ocean along Johnson Landing Road west to NC 432, thence south along US 421 approximately one mile to that secondary road connecting US 421 and NC 440, thence west along said secondary road to NC 440, thence north along NC 440 until NC 440 intersects with Mott Creek, thence west along Mott Creek the Intra Coastal Waterway at Snow Canal until it reaches the Cape Fear River;

TITLE 4 - COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Milk Commission intends to amend regulations cited as 4 NCAC 7 .0507(a) and (b)(5). The purpose of the proposed regulations is to change (a) to revise the differential in the Class I formula from four dollars (\$4.00) to five dollars (\$5.00) per hundredweight which is added to the Minnesota-Wisconsin average price to determine the Class I price. The addition of the new paragraph (5) to (b) is to provide for flexibility in the auditing procedure when the cooperative groups of producers have agreed upon and announced a price for milk sold in other states or markets.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 106-266.8(7), (10).

The public hearing will be conducted at 10:00 a.m. on September 23, 1986, at The North Carolina ABC Commission Office and Warehouse, 3322 Garner Rd., Raleigh, NC.

Comment Procedures: Data, opinions and arguments concerning these amendments must be submitted by October 14, 1986, to the N. C. Milk Commission, 430 N. Salisbury Street, Raleigh, NC 27611, Attn: Grady Cooper, Jr., Executive Secretary.

CHAPTER 7 - MILK COMMISSION

SECTION .0500 - MARKETING REGULATIONS

.0507 MINIMUM CLASS PRICES AND BUTTERFAT DIFFERENTIALS

(a) Class I price for North Carolina Sales. Effective May 3, 1986, ~~August 4, 1986~~, the minimum price to be paid North Carolina producers and/or associations of producers for all milk which is processed in North Carolina and sold or disposed of for consumption or use as processed fluid milk products in North Carolina and classified as Class I, shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, adjusted to a 3.5% butterfat basis as reported by the U.S. Department of Agriculture for the second preceding month plus ~~four dollars (\$4.00)~~ five dollars (\$5.00) per hundredweight. The price generated under this procedure shall be adjusted according to the procedures outlined in subparagraphs (a)(1) and (a)(2) of this Rule and the resulting price shall be announced in accordance with the procedure outlined in paragraph (a)(3) of this Rule.

(b)

(5) Adjustment. The prices for milk sold in other states or markets shall be adjusted downward for the purposes of auditing to the price agreed upon and announced by the cooperative groups of producers selling milk in the markets affected.

TITLE 7 - CULTURAL RESOURCES

Notice is hereby given in

accordance with G.S. 150B-12 that Cultural Resources intends to adopt regulations cited as 7 NCAC 11 .0100 - .0600. The purpose of the proposed regulations is to adopt regulations to effect and encourage restoration, preservation and enhancement of the appearance and aesthetic quality of the U.S. Highway 64 and 264 travel corridor through Roanoke Island.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: 1981 Session Laws, Chapter 1194; 1984 Session Laws, Chapter 1115; 1985 Session Laws, Chapter 673.

The public hearing will be conducted at 10:00 a.m. on October 17, 1986 at Elizabeth II Visitors Center, Ice Plant Island - Manteo Waterfront, Manteo, North Carolina.

Comment Procedures: Mr. Bart M. Bauers, Chairman, Roanoke Voyages and Elizabeth II Commission, P. O. Box 155, Manteo, North Carolina 27954.

CHAPTER 11 - ROANOKE VOYAGES AND ELIZABETH II COMMISSION

SECTION .0100 - GENERAL REGULATIONS

.0101 PURPOSE

The purpose of the Roanoke Voyages and Elizabeth II Commission is to effect and encourage restoration, preservation and enhancement of the appearance and aesthetic quality of the U.S. 64 and 264 Corridor through Roanoke Island and to advise the Secretary of Cultural Resources pertinent to the operation and maintenance of Ice Plant Island, the Elizabeth II State Historic Site and Visitors Center and the Elizabeth II.

.0102 MEMBERS AND SELECTION

The Roanoke Voyages and Elizabeth II Commission shall consist of twenty-six voting members: twelve appointed by the Governor, six of whom shall be residents of Dare County; one member appointed by the Dare County Board of Commissioners to represent the business community; one member appointed by the governing board of the Town of Manteo to represent the business community; eight voting

ex officio members who are the Secretary of the Department of Cultural Resources; the Secretary of the Department of Transportation; the Secretary of the Department of Natural Resources and Community Development; the Chairman of the Dare County Board of Commissioners; the Mayor of the Town of Manteo; the Chairman of the Board of Directors of the Friends of Elizabeth II; the Site Manager of the Elizabeth II State Historic Site; and the Chairman of the Roanoke Island Historical Association and four members appointed by the Commission.

.0103 TERM OF MEMBERS

Members appointed by the Governor shall serve for four-year terms, except that of the initial appointment, six shall be for two-year terms and six for four-year terms. Members appointed by the Dare County Board of Commissioners and the governing board of the Town of Manteo shall serve for four-year terms. Ex officio members may designate a person to serve in their stead as a member of the commission.

.0104 VACANCY

The commission shall appoint someone to fill a vacancy on the commission created by the resignation, dismissal, death or disability and said appointment shall be for the balance of the unexpired term.

.0105 OFFICERS

The commission shall send recommendations for officers in writing each year at the time of the annual meeting to the Governor and the Governor shall designate from among the members of the commission a chairman, vice-chairman, secretary and treasurer.

.0106 POWER AND DUTIES

The powers and duties of the officers of the commission shall be as provided from time to time by resolution or other directive of the voting members. In the absence of such provisions, the respective officers shall have the powers and shall discharge the duties customarily and usually held and performed by like officers of commissions similar in organization and purposes to this commission.

.0107 REMOVAL

Any officer may be removed by

the voting members whenever in their judgement the best interest of the commission would be served thereby.

.0108 VACANCIES

A vacancy in any office other than the chairman because of death, resignation, removal, disqualification or otherwise, may be filled by the voting members for the unexpired portion of the term. The Governor shall designate a chairman based on recommendations from the commission.

.0109 ANNUAL MEETING

The annual meeting of the voting members shall be held in October each year for the purpose of recommending officers and for the transaction of such other business as may come before the meeting.

.0110 REGULAR AND SPECIAL MEETINGS

The commission shall meet quarterly. Special meetings of the voting members may be called by the chairman and shall be called at the request of not less than three voting members.

.0111 QUORUM

Seven members of the voting members entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of the commission. If less than a quorum of the voting members are represented at a meeting, a quorum of the voting members so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally notified. The voting members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough voting members to leave less than a quorum.

.0112 PROXIES

At all meeting of voting members, a voting member may vote by proxy executed in writing by the voting member. Such proxy shall be filed with the secretary of the commission before or at the time of the meeting. No proxy shall be valid after the meeting for which it was given.

.0113 PLACE OF MEETING

The chairman may designate any place within Dare County in the State of North Carolina as the place of meeting for any annual meeting or for any other meeting. A waiver of notice signed by all voting members entitled to vote at a meeting may designate any place, either within or without Dare County in the State of North Carolina, as the place for the holding of such meeting.

.0114 STANDING COMMITTEES

There shall be five standing committees which are the Executive Committee, the Standards Committee, the Legislative Committee, the Utilities Committee and the Fundraising Committee. The executive committee shall be appointed by the Governor and shall be the officers unless otherwise specified. The chairman shall appoint three or more voting members to the other standing committees. The chairman shall select the chairman of each standing committee and fix its duties unless otherwise fixed by resolution or adoption of motion by the voting members.

.0115 OTHER COMMITTEES

The chairman shall appoint three or more voting members to such other committees as may be created by motion and adopted by the voting members. The chairman shall select a chairman of such other committee and shall fix its duties unless its duties are otherwise fixed by resolution or adoption of motion of the voting members.

.0116 RECORDS

Every committee shall keep a written record of its proceedings and shall submit such record to the voting membership at each regular meeting and at such other times as may be requested by the voting members.

.0117 ACTION BY EXECUTIVE COMMITTEE

Between meetings, the Executive Committee shall have authority to act on behalf of the Roanoke Voyages and Elizabeth II Commission in considering and acting on applications submitted to the commission.

SECTION .0200 - GENERAL DEFINITIONS

.0201 ADVERTISING OR

ADVERTISEMENT

Means any writing, printing, picture, painting, emblem, drawing, sign, flag or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, property, real or personal, business, services, entertainment or amusement manufactured, produced, bought, sold, conducted, furnished or dealt in by any person or for any political party or for the candidacy of any individual for any nomination of office; the term(s) shall include any part of an advertisement recognizable as such.

.0202 ADVERTISING STRUCTURE

Means any rigid, semi-rigid or portable material with or without any advertising displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

.0203 COMMISSION

Means the Roanoke Voyages and Elizabeth II Commission.

.0204 CORRIDOR

Right of way of U.S. Highway 64-264 and all lands within 660 feet back from and parallel to the right of way. For the purpose of these Regulations, the Corridor shall apply to the right of way of U.S. Highway 64-264 and all lands within 660 feet back from and parallel to the right of way for signs; to the right of way and all lands within 50 feet back from and parallel to the right of way for cutting of trees and regulating utilities and to the right of way for landscaping.

.0205 HIGHWAY

U.S. Highway 64 and 264 on Roanoke Island between the William B. Umstead Memorial Bridge over Croatan Sound and the Washington Baum Bridge over Roanoke Sound.

.0206 OFF PREMISE

Means away from the property or tract of land forming the subject of a conveyance or the house or building with the grounds and boundaries belonging to the tract.

.0207 SIGN
Means any outdoor display, device, figure, painting, drawing, message, placard, poster, billboard, flag or any other thing which is designed, intended or used to advertise or inform; any part of the advertising or informative contents.

.0208 UTILITIES
Utility facilities and/or utilities means and includes all privately, publicly or cooperatively owned lines, facilities and systems transmitting or distributing communications power, electricity, not connected with highway drainage, and other similar commodities directly or indirectly serving the public or any part thereof.

.0209 WORKING DAY
Means any one 24 hour period from midnight to midnight on Mondays through Fridays exclusive of recognized national and state holidays.

SECTION .0300 - REGULATIONS

.0301 OUTDOOR ADVERTISING
Regulations for off-premise location of billboard, outdoor advertising structures and displays which are located within 660 feet of the right of way of U.S. Highway 64-264 on Roanoke Island:

(1) No off-premise advertisement, advertising, advertising structure or sign shall be erected, constructed, installed, maintained or operated in the Corridor without first obtaining a Certificate of Appropriateness.

(2) Standards for Outdoor Advertising

(a) In zoned and unzoned residential districts the minimum distance from the right of way shall be 660 feet unless otherwise specified or prohibited by local ordinance.

(b) In zoned and unzoned commercial districts the minimum distance from the right of way shall be 50 feet unless otherwise specified or prohibited by local ordinance.

(c) The sign display board shall measure no larger than local ordinances allow.

(d) The top of the sign shall be no higher than 14 feet above existing grade, except

where other ordinances apply.

(c) No trees, shrubs or other vegetation within 50 feet of the right of way can be removed to accommodate outdoor advertising without a Certificate of Appropriateness.

(3) Any outdoor advertising erected, altered or established after the effective date of these Regulations shall be unlawful and constitute a nuisance unless a Certificate of Appropriateness is obtained. The commission shall give 30 days notice by registered mail to the owner of the non-conforming advertising and/or structure if such owner by reasonable diligence can be ascertained, to move the advertising, structure or sign. The commission or its agent shall have the right to remove or to contract to have removed the non-conforming advertisement, structure or sign at the expense of the said owner if the said owner fails to act within 30 days after the signed receipt of such notice. The commission or its agent or contractor may enter upon private property for the purpose of removing the advertising, structures and/or signs prohibited by these Regulations without civil or criminal liability.

(4) Highway signs located within the Corridor are exempt from these Regulations inasmuch as maintenance of standard colors, shapes, sizes and location are necessary for highway safety. The backs and structures on all highway signs will conform to the color described as Roanoke Island Brown.

.0302 LANDSCAPING
Regulations for the landscaping of the U.S. Highway 64-264 right of way within the Corridor:

(1) Landscaping, seeding, earthmoving, planting, topsoiling and pruning within the right of way shall be prohibited without a plan approved by the commission and a Certificate of Appropriateness issued by the commission.

(2) Maintenance and planting when approved by the commission shall be in accordance with Guidelines for Planting Within Highway

Right of Ways published by the North Carolina Department of Transportation, prepared by the Landscape Unit, Division of Highways, P. O. Box 25201, Raleigh, North Carolina 27611, telephone (919) 733-29_0.

.0303 CUTTING OF TREES AND SHRUBS

Regulations for cutting and/or removal of trees from the highway right of way and within 50 feet adjacent to the right of way of the Corridor:

- (1) No trees or shrubs shall be cut or removed from the Corridor right of way without a Certificate of Appropriateness issued to the land owner (on whose land the trees are located) by the commission.
- (2) Clear cutting of the Corridor right of way and the vegetation within 50 feet of the highway right of way is prohibited.
- (3) A Certificate of Appropriateness for the removal of trees shall be permitted when it is determined by the commission that such removal does not result in an adverse impact or detriment to the Corridor. Where minimum vegetation along the Corridor exists due to removal of trees and shrubs by natural causes, unauthorized clearing or accidental causes and the commission finds that the visual integrity of the Corridor is interrupted, planting..... within the 50 feet area adjacent to the right of way for the purpose of enhancing the appearance and aesthetic quality of the Corridor may be required by the commission.

.0304 DRIVEWAYS AND CURB CUTS

Regulations for the installation of driveways and curb cuts through the North Carolina Department of Transportation right of way of U.S. 64-264 on Roanoke Island:

- (1) No driveway permit shall be issued by the North Carolina Department of Transportation until a Certificate of Appropriateness has been issued by the commission.
- (2) Any individual, individuals or group wishing to cut through the Corridor for a driveway or curb must obtain a Certificate of

Appropriateness as outlined in Section .0400.

(a) Driveway cuts made without obtaining a Certificate of Appropriateness shall be unlawful and constitute a nuisance. The commission shall give 30 days notice by registered mail to the owner of the property of a violation of these Regulations.

(b) Parcels of land adjacent to the Corridor right of way under one ownership shall be entitled to no more than two curb cuts and may be limited to one curb cut or driveway at the discretion of the commission, depending on the size and scope of the development to be served. If more than one use is to be located on said parcel, the number of curb cuts or driveways into the parcel shall still not exceed two and a feeder (frontage) road behind the Corridor may be permitted in order to limit the disturbance of the Corridor. The commission, by a majority vote, may waive this requirement if it is determined that better traffic operation and safety will result without compromising the visual integrity of the historic Corridor.

(c) Curb cuts and driveways shall be no wider than 36 feet at the apron adjacent to the highway pavement and 24 feet for the remainder of the driveway.

(d) Tracts subdivided after the effective date of these Regulations will be considered as one parcel.

(e) All driveways and curb cuts shall be designated to disturb the minimum number of plantings within the Corridor.

.0305 UTILITY REGULATIONS

(a) Location

- (1) New utility installations on the Corridor shall be placed underground. New utility installations means initial installations and the replacement of existing facilities with those of a different type, capacity, size of wire or design or replacement at a new location on the Corridor. Any replacement of an existing facility or portion thereof with another of the same type, size of wire,

capacity and design at the same location is considered to be maintenance.

- (2) Pedestals, transformers, manholes, vaults or other above ground or at grade utility appurtenances installed as part of buried plant shall be located at or near the outer extremity of Corridor jurisdiction. Justification for other locations may be approved by the commission and Department of Transportation.
- (3) Longitudinal installations shall be located on uniform alignment as determined satisfactory by the commission and Department of Transportation so as to provide a safe environment for traffic operation and to preserve adequate space for planned highway improvements or other utility installations. Longitudinal installations under the pavement, including paved shoulders, will not be permitted.
- (4) To the extent feasible and practicable, utility line crossings of the highway should cross on a line generally perpendicular to the highway alignment.
- (b) Pavement Cuts
 - (1) Longitudinal pavement cuts along U.S. 64-264 will not be permitted without obtaining a Certificate of Appropriateness.
 - (2) Generally, pavement cuts across U.S. 64-264 will not be permitted; however, there may be extreme cases where the commission and the Department of Transportation may allow open cuts where justified. A Certificate of Appropriateness must be obtained for open cuts.
- (c) Cased and Uncased Construction
 - (1) Underground crossings of U.S. 64-264 may be installed without protective pipe, conduit or duct provided such installations are limited to open-cut construction or to small bores for wire or cable facilities where soil conditions permit installation by boring a hole about the same diameter as the cable and pulling the cable through. On crossing where open-cut is not allowed, installations that require bores in excess of six inches shall be encased

unless the utility demonstrates to the satisfaction of the commission and Department of Transportation that the installation method for an uncased crossing is such that the bored hole is never left unsupported.

- (d) Bury. The minimum depth of bury for utility lines shall be as follows:
 - (1) Crossings under all roadways (including shoulders)...3'
 - (2) Crossings under ditches (paved and unpaved) and sidewalks ..2'
 - (3) Longitudinal electric power primary3'
 - (4) Longitudinal electric power secondary, and trenched communication lines ...2'
 - (5) Plowed-in utility lines18"

(e) Safety Warning Devices. The utility owner shall provide during construction any subsequent maintenance, proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual of Uniform Traffic Control Devices for Streets and Highways, and the North Carolina Construction and Maintenance Operations Supplement. Information as to this Rule may be obtained from the Department of Transportation's Maintenance Office in Manteo, North Carolina. The Department of Transportation has the right to stop any work for non-compliance.

(f) Removal or Alteration of Vegetation.

- (1) The encroaching party or their agents shall exercise every required precaution during construction and/or maintenance to prevent eroding of soil; silting or pollution of water impoundments, ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Division of Environmental Management, North Carolina Sedimentation Control Commission and with ordinances and regulations of Dare County, the Town of Manteo, the State of North Carolina and other official regulating agencies relating to sedimentation and pollution prevention and control.

(2) Where there is excavation for underground installations or when any other installation or maintenance operations disturb the ground surface and the existing ground cover, the encroaching party shall be required to perform erosion control measures as follows:

(A) Erosion control shall be performed in accordance with the requirements contained in the current edition of the Department of Transportation's Standard Specifications for Roads and Structures.

(B) The use of temporary erosion control measures shall be included to prevent siltation of waterways and adjacent property. The use of silt basins, silt check dams, silt fence, temporary slope drains, brush barriers and temporary seeding and mulching shall be used as needed.

(C) Permanent erosion control shall be performed as follows:

(i) All disturbed areas shall be dressed to original typical sections and plowed to a depth of five inches. The top two inches shall be pulverized to provide a uniform seedbed. Lime shall be applied before plowing.

(ii) Kinds and rates of seed, fertilizer and limestone shall be specified by the commission or Department of Transportation.

(iii) Lime, seed and fertilizer shall be applied with necessary equipment to give uniform distribution of these materials. The hand-bucket method is not acceptable.

(iv) Seeded area shall be cultipacked to firm seedbed and seed shall be adequately covered.

(v) Grain straw shall be applied over seeded areas as a mulch. No bare ground shall be visible when riding by a mulched area if proper application is achieved. Thick clumps of straw are not permissible; a uniform coverage is required.

(vi) Mulched areas shall

be tacked sufficient to hold straw in place.

(3) No trees may be cut or removed without prior approval, and in certain situations, the commission or Department of Transportation may require that trees or shrubs be carefully dug and replanted or replaced by new plants.

(4) When permission for cutting, trimming, digging or other removal or alteration of trees, shrubs or other vegetation on the Corridor for the purposes of construction and maintenance by an encroaching party is given it shall be subject to the following standard requirements:

(A) The permission applies only to the interest of the commission and Department of Transportation in the vegetation and is not to be construed as freeing the encroaching party from liability to the adjacent property owner. Special attention is called to this provision in cases of specimen trees that are also a part of private development such as home grounds, schools, churches, etc.

(B) All cutting shall be done as close to flush with the ground as is practicable with modern saw equipment. Under very exceptional conditions, such as very large diameter trees or swamp growth, flush cuts may not be practical. The burden of proof for the necessity of high stumps will rest with the encroaching party and express approval must be obtained from the commission prior to such cutting.

(C) Trimming of specimen trees on the Corridor shall be done in accordance with generally accepted tree surgery practice and any trimming necessary to leave the tree with a good, balanced appearance must be done in addition to the minimum trimming needed for line clearance, climbing irons or spurs must not be used on any tree.

(D) All cuttings shall be removed from the Corridor and out of view unless

otherwise stated in the Certificate of Appropriateness. If woodchipping machines are used for brush disposal, the chips must be removed from the Corridor.

(E) Removal or alteration of vegetation for existing overhead utility facilities generally will be limited to 15 feet; that is, to seven and a half feet on either side of the utility wire or pole. Wider clearing areas will be considered only on the basis of (1) removing only danger trees, (2) retaining large, sound, strong-trunked trees, and (3) trimming such large sound trees for wire clearance only instead of complete side trimming. No flat-topping, bench-topping or clear-cutting will be allowed and all trimming will be accomplished by irregular hand pruning.

(F) Under some circumstances the granting of permission related to existing overhead utility facilities will be conditioned upon the preservation of such shrubs and low-growing trees within the clearing area. The need and extent of such preservation will be determined for specific locations.

(G) When excavating for underground utility installation or maintenance is done near trees, the minimum, but necessary, cutting of tree roots shall be done in accordance with generally accepted tree surgery practice. The tunneling under and retention of principal support roots may be required when considered necessary, according to the location, size and quality of the tree involved.

(H) The use of herbicides for control of vegetation is prohibited.

(g) Procedures of Processing Utility Encroachment Agreements.

(1) All requests shall be submitted directly to the Commission, P.O. Box 155, Manteo, North Carolina 27954, for review, consideration and processing. Those requests

affecting the North Carolina Department of Transportation right of way or the right of way and the 50 feet outside of the right of way require the approval of both the commission and the Department of Transportation Division Engineer. Those requests affecting only the 50 feet outside the right of way require the approval of the commission only.

(2) General requirements for permit application are the same as found under Section .0400 of the general regulations for the commission.

SECTION .0400 - CERTIFICATION OF APPROPRIATENESS: PROCEDURAL REQUIREMENTS

.0401 APPLICATION

Anyone seeking to take any action within the jurisdiction of the Corridor, including but not limited to removing or moving trees or shrubs, installing or maintaining utilities, or installing a driveway or curb cut or erecting outdoor advertising, will first obtain a Certificate of Appropriateness from the commission. The proposed action must comply with the regulations outlined herein. Any individual, individuals or group seeking such certificate will submit five copies of the proposed sketch plan or letter to the commission for review. The sketch plan and/or letter showing the proposed action within the Corridor must contain the following information:

(1) A sketch map of the vicinity of the proposed action showing its location in relation to neighboring tracts, plantings within the Corridor, existing signs, roads and waterways.

(2) The boundaries and total acreage of the tract where the proposed action is to take place.

(3) The name, address and telephone number of the owner of the tract where the proposed action is to take place.

(4) Existing vegetation on the right of way and on land within 50 feet of the right of way.

(5) An inventory of the trees to be removed.

(6) A narrative explaining the reasoning behind the proposed removal.

(7) An inventory of plants,

their sizes and quantities proposed to replace those removed and/or complement those remaining.

- (8) Designation of the person /persons who will be responsible for removal and/or installation of the trees.
- (9) An estimate of the cost of the removal and installation proposed.
- (10) A sketch plan showing the location of all existing and proposed driveway cuts and the vegetation affected thereby.
- (11) An erosion and sedimentation control plan as required by G.S. 113A-67 shall be filed where applicable with the application.

The commission, upon written request, may waive any of the above information determined to be extraneous to the review process for the specific request.

.0402 COMMISSION REVIEW OF APPLICATION

Upon receipt of a complete application and plan, the commission or Executive Committee shall either approve or deny the request within 20 working days after submission. During the review period, the commission shall check the site for ownership, accuracy of submission and the compatibility of the proposed plan with the overall concept of the Corridor. Action by the Executive Committee can be delayed until the next scheduled commission meeting if in the Executive Committee's discretion an application should be considered by the commission.

.0403 ISSUANCE OF CERTIFICATE

Upon issuance of the Certificate of Appropriateness, the commission shall assure that the certificate is posted on the site at all times; that the proposed thinning, removal, pruning, planting and maintenance is performed in compliance with the approved plan; that the responsible party is informed immediately in writing should the plan or intent of the permit not be followed.

.0404 BOND

Should the projected cost of the proposed work within the Corridor jurisdiction be greater than four hundred and ninety nine dollars (\$499.00), the

commission shall have the option of requiring an insurance or cash bond or bank certificate to insure that the proposed work will be performed as permitted. Said insurance, cash bond or bank certificate to be in an amount set by the commission and to be held until released by the commission.

.0405 REPLACEMENT OF DESTROYED TREES

If the certificate holder destroys or damages vegetation for any reason that is not planned for removal, the certificate holder shall be liable for the replacement of said vegetation as close as possible to its original size and location.

SECTION .0500 - ENFORCEMENT

.0501 AUTHORITY

The commission shall have all necessary authority to administer and enforce these Regulations including the ordering in writing of the remedying of any condition found in violation of these Regulations, and bringing legal action to ensure compliance, including the injunction, abatement or other appropriate action or proceeding.

.0502 NOTICE OF VIOLATION

If any of the provisions of these Regulations are being violated, notification shall be made in writing to the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The commission shall order a discontinuance of illegal site work being done; or shall take any other action authorized by these Regulations to ensure compliance with or to prevent violation of its provisions.

.0503 LEGAL ACTION

The commission may institute a civil action against the offender seeking enforcement by appropriate equitable remedy, injunction and order of abatement.

SECTION .0600 - APPEALS

.0601 APPEAL TO FULL COMMISSION

Any individual, individuals or group may appeal a decision denying a Certificate of Appropriateness rendered by the Executive Committee to the full commission.

.0602 APPEAL PROCEDURE

The appealing party shall submit 20 copies of the application to the commission chairman at least 15 days prior to the scheduled commission meeting.

.0603 COMMISSION ACTION

The commission shall consider an appeal at its meeting and take the following action:

- (1) grant the Certificate of Appropriateness;
- (2) deny the Certificate of Appropriateness;
- (3) grant a variance; or
- (4) table the matter for one meeting in order to seek further information.

.0604 FINAL AGENCY DECISION

Once the commission has considered an appeal and rendered a decision, said decision shall be considered a final agency decision.

TITLE 10 - HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the DHR Division of Facility Services intends to adopt, amend, repeal regulations cited as 10 NCAC 3R .0304-.0307; .1602; .1604-.1609; .1613-.1618; .1702; .1704-.1709; .1713-.1719; and .2404. The purpose of the proposed regulations: Amend .0304 through .0307 - Rules dealing with the filing of certificate of need applications including fees for filing, amendments to applications, and review categories and schedule; Repeal .1602 and .1604 through .1609 - Special rules for certificate of need review for cardiac catheterization services; Adopt .1613 through .1618 - New special rules for certificate of need review for cardiac catheterization services; Repeal .1702 and .1704 through .1709 - Special rules for certificate of need review for open heart surgery services; Adopt .1713 through .1719 - New special rules for certificate of need review for open heart surgery services; Amend .2404 - Rule governs capacity in the facility and in the health service area during certificate of need review for beds for intermediate care for the mentally retarded. Proposed change makes model in Rule (d) (2) clearer.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 131E-177 and 131E-182.

The public hearing will be conducted at 10:00 a.m. on September 22, 1986 at Hearing Room, Room 201, Division of Facility Services, 701 Barbour Drive, Raleigh, N.C.

Comment Procedures: Written comments should be sent to Mr. I. O. Wilkerson, Jr., Director, Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603. These comments will be received from the date of publication until September 19, 1986.

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0300 - FUNCTIONS OF A HEALTH SYSTEMS AGENCY

.0304 APPLICATIONS

(a) After compliance with Rule .0303 of this Section, the agency shall determine which application form or forms are appropriate and provide the applicant with such form or forms.

(b) The application forms are:

- (1) The End Stage Renal Dialysis application form;
- (2) the long-term care application form;
- (3) the acute care facilities application form; and
- (4) the abridged application form ; and
- (5) any other application form developed by the agency.

(c) Copies of the forms may be inspected in the Certificate of Need Section, Division of Facility Services, North Carolina Department of Human Resources, 4330 St. Mary's Street, Post Office Box 42200, 701 Barbour Drive, Raleigh, North Carolina, 27603.

(d) Applications must be submitted to the Agency, and stamped as received by the Agency no later than 5:00 PM on the last working day before the fifteen days required in Rule .0305(f) of this Section.

(e) Responses to incomplete questions for applications submitted under Rule .0305 of this Section must be submitted to the Agency, and stamped as received by the Agency no later than 5:00 PM on the last working

day before the first day of the review schedule.

.0305 FILING APPLICATIONS

(a) An application will not be reviewed by the agency until it is filed in accordance with the Rule.

(b) An original and a copy of the application shall be delivered to the agency. The agency shall promptly acknowledge receipt of the application. For each application submitted for any review batch which starts on or after the effective date of this Rule, the applicant shall transmit, with the application, a fee to be determined according to the following formula:

(1) With each application proposing no capital expenditure, the proponent shall transmit a fee in the amount of four hundred dollars (\$400.00).

(2) With each application proposing a capital expenditure of up to, but not including, five hundred thousand dollars (\$500,000), the proponent shall transmit a fee in the amount of five hundred dollars (\$500.00).

(3) With each application proposing a capital expenditure of five hundred thousand dollars (\$500,000) or greater, the proponent shall transmit a fee in the amount of five hundred dollars (\$500.00), plus an additional fee equal to

$.001$ of the amount of the proposed capital expenditure in excess of five hundred thousand dollars (\$500,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed fifteen thousand dollars (\$15,000).

(2) The agency will notify applicants who submit applications without the appropriate fee. If a fee equal to or greater than the appropriate fee has not been remitted within ten days of receipt of such notice, the application will be considered incomplete, and no review of the application shall begin, nor will a certificate of need for the project be issued. An applicant must pay in full any outstanding fee balance due the agency prior to any subsequent application being determined complete by the agency.

(3) For any application which was submitted before the effective date of this Rule, but which was included in a review beginning July 1, 1983 or later, the proponent named in the application shall be charged a fee in accordance with this Paragraph. If the proponent has already paid a higher fee based on the temporary rule in effect from July 15, 1983 to November 10, 1983, the agency will refund proponent the amount paid in excess of the total fee that would be owed under this Paragraph.

(c) After an application is filed, the agency shall examine it to determine if whether it is complete for review. If it is complete, it will be reviewed under the applicable review schedule, if any. The agency and the applicable health systems agency will not review an application until it is complete. An application shall be complete unless:

(1) the requisite fee has not been received by the agency;

or
(2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) An application is incomplete if:

(1) it does not provide all the information requested, or does not provide it in the required form and manner;

(2) an original and copy of the application were not submitted to the agency;

(3) the appropriate forms were not used; or

(4) the original was not signed.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant within 15 days after the application is filed.

(e) If an application is incomplete, the agency, within 15 days after an application is filed, shall mail notice to the applicant that it is incomplete. The notice shall specify what is necessary to complete the

application. If an application is incomplete because the appropriate forms were not used, the agency will not review for completeness the forms submitted, but will provide the applicant with the appropriate forms. After receipt of the appropriate forms, the agency will review them for completeness.

(c) In order for the agency and applicable health systems agency to commence review, the application must be deemed complete prior to the start of the application review period for which it was submitted.

(f) After the agency mails a notice of incompleteness, the applicant has six months from the date of the notice to provide the necessary information. If the applicant does not respond within such time, the application shall be deemed withdrawn. If the applicant does respond, but does not provide all the required information, the agency shall mail another notice of incompleteness within 15 days of the receipt of the additional information.

(g) The date an application is complete is the day the agency determines it is complete.

(h) (f) An application will not be included in a scheduled review under Rule .0307 of this Section, unless it is delivered to the agency more than 15 days before the first day of the review schedule.

.0306 AMENDMENTS TO APPLICATIONS

(a) An applicant may amend an incomplete application in writing. If an application is amended, the agency will review it for completeness and may send out a notice of incompleteness for the reasons set forth in Rule .0305 of this Section.

(b) An applicant may not amend a complete application. Responding to a request for additional information made by the agency or the health systems agency after the review has commenced is not an amendment.

.0307 REVIEW CATEGORIES AND SCHEDULE

(a) The Agency will determine the appropriate review category or categories for all applications submitted. For proposals which include more than one of the categories, the Agency, if practical, will require the applicant to submit

separate applications, the Agency will determine in which category the applications will be reviewed.

(b) The review of an application for a certificate of need under G.S. 131E-184, "Required Approvals," will commence in the next review schedule after the application has been determined to be complete. The Agency will determine if the proposed activity may be eligible for a certificate of need under G.S. 131E-184.

(c) Except for those applications eligible for review under Rule .0307(b), all other Proposals will be reviewed under the schedule set forth in this Rule. The review categories are as follows:

(1) Category A includes

proposals for acute health care facilities, including but not limited to the following types of projects: renovation, construction, major medical equipment and other ancillary and support equipment and services, except those proposals included in Category C and Category D.

(2) Category B includes

proposals for skilled nursing beds and intermediate care beds which are reviewed against the State Medical Facilities Plan.

(3) Category C includes

proposals for the following types of projects: 1) psychiatric facilities; 2) psychiatric services in existing health care facilities; 3) intermediate care facilities for the mentally retarded; 4) intermediate care services for the mentally retarded in existing health care facilities; 5) substance abuse and chemical dependency facilities; and 6) substance abuse and chemical dependency services in existing health care facilities.

(4) Category D includes

proposals for the following types of projects: 1) inpatient rehabilitation facilities; 2) inpatient rehabilitation services in existing health care facilities; 3) comprehensive outpatient rehabilitation facilities; 4) ambulatory surgical facilities; and 5) end

stage renal disease treatment facilities.

(5) Category E includes proposals for the following types of projects: 1) life care facilities; 2) home health agencies; 3) nursing home proposals which do not include health care beds; and 4) any other proposal not included in Categories A through D.

(d) For health service area I, which is the area of Western North Carolina Health Systems Agency, the reviews will commence as follows:

- (1) For Category A on March 1, July 1 and October 1 of each year;
- (2) For Category B on April 1, August 1 and November 1 of each year;
- (3) For Category C on May 1, September 1 and December 1 of each year;
- (4) For Category D on February 1, June 1 and September 1 of each year; and
- (5) For Category E on June 1 and December 1 of each year.

(e) For health service area II, which is the area of Piedmont Health Systems Agency, the reviews will commence as follows:

- (1) For Category A on May 1, August 1 and December 1 of each year;
- (2) For Category B on April 1, July 1 and November 1 of each year;
- (3) For Category C on March 1, June 1 and October 1 of each year;
- (4) For Category D on February 1, June 1 and September 1 of each year; and
- (5) For Category E on March 1 and September 1 of each year.

(f) For health service area III, which is the area of Southern Piedmont Health Systems Agency, the reviews will commence as follows:

- (1) For Category A on April 1, August 1 and November 1 of each year;
- (2) For Category B on May 1, September 1 and December 1 of each year;
- (3) For Category C on February 1, June 1 and October 1 of each year;
- (4) For Category D on March 1, July 1 and October 1 of each year; and
- (5) For Category E on June 1 and December 1 of each year.

(g) For health service area IV, which is the area of Capital Health Systems Agency, the reviews will commence as follows:

- (1) For Category A on February 1, June 1 and October 1 of each year;
- (2) For Category B on March 1, August 1 and December 1 of each year;
- (3) For Category C on April 1, July 1 and November 1 of each year;
- (4) For Category D on May 1, September 1 and December 1 of each year; and
- (5) For Category E on May 1 and November 1 of each year.

(h) For health service area V, which is the area of Cardinal Health Agency, the reviews will commence as follows:

- (1) For Category A on March 1, July 1 and October 1 of each year;
- (2) For Category B on February 1, June 1 and September 1 of each year;
- (3) For Category C on May 1, August 1 and November 1 of each year;
- (4) For Category D on April 1, August 1 and December 1 of each year; and
- (5) For Category E on April 1 and November 1 of each year.

(i) For health service area VI, which is the area of Eastern Carolina Health Systems Agency, the reviews will commence as follows:

- (1) For Category A on May 1, September 1 and December 1 of each year;
- (2) For Category B on February 1, June 1 and November October 1 of each year;
- (3) For Category C on March 1, July 1 and November 1 of each year;
- (4) For Category D on April 1, August 1 and November 1 of each year; and
- (5) For Category E on April 1 and October 1 of each year.

(j) The Agency may designate specified review schedules for geographic sub-divisions within a category or categories to be applied during a calendar year. When the Agency designates a review schedule more specific than the categories established by this Rule, the specified review schedule will be included in the applicable State Medical Facilities Plan.

SECTION .1600 - SPECIAL RULES
FOR CARDIAC CATHETERIZATION
SERVICES

- .1602 DEFINITIONS (REPEALED)
- .1604 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA (REPEALED)
- .1605 SCOPE OF SERVICES OFFERED (REPEALED)
- .1606 PROJECTED UTILIZATION/ OCCUPANCY (REPEALED)
- .1607 PROJECTED PATIENT ORIGIN (REPEALED)
- .1608 SITE AND EQUIPMENT (REPEALED)
- .1609 STAFFING (REPEALED)

.1613 DEFINITIONS

The following definitions will apply to all rules in this Section:

- (1) "Capacity" of a cardiac catheterization room is considered to be 1200 diagnostic-equivalent procedures per year. One PTCA procedure is valued at two diagnostic-equivalent procedures. One pediatric cardiac catheterization procedure is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.
- (2) "Cardiac catheterization" is a procedure performed in a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body, usually through an extremity blood vessel, and advanced under fluoroscopic guidance into the heart chambers to perform a hemodynamic or angiographic examination of the left and right heart chamber, or coronary arteries; therapeutic intervention in a coronary artery may also be performed using cardiac catheterization. By this definition a cardiac catheterization procedure does not include a simple right heart catheterization for monitoring purposes as might be done in a electrophysiology laboratory, pulmonary angiography as an isolated procedure, or cardiac pacing through a right electrode catheter. It does include angiographic procedures to evaluate the coronary arteries, and aortic root injections to examine the degree of aortic

regurgitation or deformity of aortic valve.

- (3) "Cardiac catheterization procedure" means a single episode of catheterization which occurs during one visit to a cardiac catheterization room.
- (4) "Cardiac catheterization room" means a room in a hospital which has the equipment required to perform angiographic and physiologic cardiac catheterization procedures, and which has been approved by the Certificate of Need Section as a cardiac catheterization room.
- (5) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, diagnostic and interventional cardiac catheterization, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services may be provided through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program must be provided within a single facility.
- (6) "Diagnostic cardiac catheterization procedure" means a cardiac catheterization procedure performed for the purpose of detecting and identifying defects in the great arteries of veins of the heart, or abnormalities in the heart structure.
- (7) "Expanded cardiac catheterization service" means the addition or conversion of a room to be dedicated to cardiac catheterization procedures; or the purchase of additional equipment specially designed to perform cardiac catheterizations.
- (8) "Pediatric cardiac catheterization procedure" means a cardiac catheterization procedure performed on a patient age five or under.
- (9) "Percutaneous

transluminal coronary angioplasty (PTCA)" is an interventional cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.

(10) "Primary service area" means a geographical area defined by the proponent, which has boundaries that are not further than 45 road miles from the facility, if the facility has a comprehensive cardiac services program; and not further than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures.

(11) "Service area" means a geographical area defined by the proponent, which has boundaries that are not further than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not further than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures.

.1614 INFORMATION REQUIRED OF APPLICANTS

(a) An applicant that proposes a new or expanded cardiac catheterization service must provide the information requested on the acute care application form.

(b) In addition to information requested on the acute care application form, the applicant must provide the following information:

(1) projected number of procedures, by type of procedure to be completed in each cardiac catheterization room for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;

(2) applicant's experience in treating cardiovascular patients at the facility during the past twelve months, including:

- (A) the number of patients receiving stress tests;
- (B) the number of patients receiving intravenous thrombolytic therapies;
- (C) the number of patients

presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;

(D) the number of patients referred to other facilities for cardiac catheterization and/or open heart surgery procedures, by type of procedure;

(3) number of patients from the proposed service area who are projected to receive cardiac catheterization services by patient's county of residence in each of the first 12 quarters of operation, including the methodology and assumptions used for these projections;

(4) number of patients from the proposed primary service area who are projected to receive cardiac catheterization services by patient's county of residence in each of the first 12 quarters of operation, including the methodology and assumptions used for these projections;

(5) projected referral sources of patients;

(6) evidence of applicant's capability to communicate efficiently with emergency transportation agencies and with an established comprehensive cardiac services program;

(7) the number and composition of cardiac catheterization teams available to the applicant;

(8) a brief description of applicant's in-service training or continuing education programs for cardiac catheterization team members;

(9) a written agreement with a comprehensive cardiac services program specifying arrangements for referral and transfer of patients seen by the proponent which alleviates the need for duplication in catheterization studies;

(10) a written description of patient selection criteria including referral arrangements for high-risk patients.

.1615 REQUIRED PERFORMANCE STANDARDS

(a) To be approved the State Agency must determine that the proposed project is capable of meeting the following standards:

- (1) each cardiac catheterization room will be utilized at an annual rate of at least 50 percent of capacity, measured during the fourth quarter of the third year following completion of the project;
 - (2) if the facility has a comprehensive cardiac services program or the proponent intends to perform PTCA, the proponent will be performing at an annual rate of at least 50 PTCA procedures, measured during the fourth quarter of the third year following completion of the project;
 - (3) at least 50 percent of the projected procedures will be performed on patients residing within the primary service area;
 - (4) each existing cardiac catheterization room in each facility which has a primary service area that overlaps the proposed primary service area operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;
 - (5) the utilization of existing cardiac catheterization programs whose primary service area overlaps the proposed primary service area is not expected to fall below 50 percent of capacity due to the institution of the new or expanded program;
 - (6) the applicant's projected utilization and proposed staffing patterns are such that each cardiac catheterization team will be performing at an annual rate of at least 150 diagnostic-equivalent catheterizations by the end of the third year following completion of the project.
- (b) If the proponent intends to perform pediatric cardiac catheterization, the State Agency must determine that the proponent meets the following additional criteria:
- (1) capability to perform both pediatric cardiac catheterization services and pediatric open heart surgery services;
 - (2) the proposed project will be performing at an annual rate of at least 80 pediatric cardiac catheterization procedures during the fourth quarter of

the third year following initiation of pediatric cardiac catheterization service.

.1616 REQUIRED SUPPORT SERVICES

- (a) If the proponent intends to perform PTCA procedures, the State Agency must determine that the proponent has access to an open heart surgery service within the same facility.
- (b) To be approved the State Agency must determine that the following services will be available in the facility:
- (1) electrocardiography laboratory and testing services including stress testing and continuous cardiogram monitoring;
 - (2) echocardiography service;
 - (3) blood gas laboratory;
 - (4) nuclear medicine laboratory;
 - (5) pulmonary function unit;
 - (6) staffed blood bank;
 - (7) hematology laboratory/coagulation laboratory;
 - (8) microbiology laboratory;
 - (9) clinical pathology laboratory with facilities for blood chemistry;

.1617 REQUIRED STAFFING AND STAFF TRAINING

- (a) To be approved, the State Agency must determine that the proponent can meet the following staffing requirements:
- (1) one physician licensed to practice medicine in North Carolina who has been designated to serve as Director of the cardiac catheterization service and who has the following special credentials:
 - (A) board-certified in internal medicine, pediatrics or radiology;
 - (B) subspecialty training and board eligibility in cardiology, pediatric cardiology, or cardiovascular radiology;
 - (C) current clinical experience in performing physiologic procedures, angiographic procedures, or both;
 - (2) at least one specialized team to perform cardiac catheterizations, composed of at least the following professional and technical personnel:
 - (A) one physician licensed to practice medicine in North Carolina with evidence of special training and current experience in

cardiovascular disease and radiation sciences;

(B) one nurse with special training and current experience in critical care of cardiac patients, cardiovascular medication, and catheterization equipment;

(C) at least three technicians with current specialized training in cardiac care who are capable of performing the duties of a radiologic technologist, cardiopulmonary technician, monitoring and recording technician, and darkroom technician.

(b) To be approved, the State Agency must determine that the proponent can provide the following staff training for members of cardiac catheterization teams:

- (1) certification in cardiopulmonary resuscitation and advanced cardiac life support;
- (2) organized program of staff education and training which is integral to the cardiac services program and ensures improvements in technique and the proper training of new personnel.

.1618 DATA REPORTING REQUIREMENTS

The facility must agree to provide the following types of data and information to the Division of Facility Services, in accordance with data format and reporting requirements formulated by the Division of Facility Services:

- (1) demographic data on patients treated;
- (2) financial data;
- (3) clinical data.

SECTION .1700 - SPECIAL RULES FOR OPEN HEART SURGERY SERVICES

.1702 DEFINITIONS (REPEALED)

.1704 CAPACITY IN THE FACILITY AND THE HEALTH SERVICE AREA (REPEALED)

.1705 SCOPE OF SERVICES OFFERED (REPEALED)

.1706 PROJECTED UTILIZATION (REPEALED)

.1707 PROJECTED PATIENT ORIGIN (REPEALED)

.1708 SITE AND EQUIPMENT (REPEALED)

.1709 STAFFING (REPEALED)

.1713 DEFINITIONS

The following definitions will apply to all rules in this Section:

(1) "Capacity" of an open heart surgery suite is considered to be 400 adult-equivalent procedures per year. One pediatric open heart surgery procedure is valued at two adult procedures.

(2) "Expanded open heart surgery suite" means the addition or conversion of an operating room to be dedicated for open heart surgery.

(3) "Open heart surgery" is a highly specialized surgical procedure which utilizes a heart-lung bypass machine (the "pump") to perform extra-corporeal circulation and oxygenation during surgery. Open heart surgery includes a wide range of procedures designed to correct congenital and acquired cardiac and coronary artery disease.

(4) "Open heart surgery procedure" means an open heart operation.

(5) "Open heart surgery suite" means an operating room dedicated to open heart surgery procedures which has been approved for this use by the Certificate of Need Section, along with any related rooms used for preparation and recovery of patients receiving an open heart surgery procedure.

(6) "Pediatric open heart surgical procedure" means an open heart surgery procedure performed on a patient age five or under.

(7) "Percutaneous transluminal coronary angioplasty (PTCA)" means an interventional cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.

(8) "Primary service area" means a geographical area defined by the proponent, which has boundaries that are not further than 45 road miles from the facility.

(9) "Service area" means a geographical area defined by the proponent, which has boundaries that are not

further than 90 road miles from the facility.

.1714 INFORMATION REQUIRED OF APPLICANTS

(a) An applicant that proposes a new or expanded open heart surgery service must provide the information requested on the acute care application form.

(b) In addition to information requested on the acute care application form, the applicant must provide the following information:

(1) projected number of open heart surgery procedures to be completed in each open heart surgery suite for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;

(2) projected number of cardiac catheterization procedures to be completed in the facility for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;

(3) applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:

(A) the number of patients receiving stress tests;

(B) the number of patients receiving intravenous thrombolytic therapies;

(C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;

(D) the number of cardiac catheterization procedures performed, by type of procedure;

(E) the number of patients referred to other facilities for cardiac catheterization and/or open heart surgery procedures, by type of procedure;

(F) the number of patients referred to proponent's facility for cardiac catheterization and/or open heart surgery procedures, by type of procedure;

(4) number of patients from the proposed service area who are projected to receive open heart surgery

procedures by patient's county of residence in each of the first 12 quarters of operation for these projections;

(5) number of patients from the proposed primary service area who are projected to receive open heart surgery procedures by patient's county of residence in each of the first 12 quarters, including the methodology and assumptions used for these projections;

(6) projected referral sources of patients;

(7) evidence of applicant's capability to communicate efficiently with emergency transportation agencies and with all hospitals serving the proposed service area;

(8) the number and composition of open heart surgery teams available to the applicant;

(9) a brief description of applicant's in-service training or continuing education programs for open heart surgery team members;

(10) evidence of applicant's capability to provide both cardiac catheterization and open heart surgery services on a 24 hour per day, 7 day per week basis.

.1715 REQUIRED PERFORMANCE STANDARDS

To be approved, the State Agency must determine that the proposed project is capable of meeting the following standards:

(1) each open heart surgery suite meeting will be utilized at an annual rate of at least 50 percent of capacity, measured during the fourth quarter of the third year following completion of the project;

(2) the proponent will be performing a sufficient number of catheterizations to generate the projected number of open heart surgeries during each quarter;

(3) the proponent will be performing at an annual rate of at least 50 PTCA procedures, measured during the fourth quarter of the third year following completion of the project;

(4) at least 50 percent of the projected procedures will be performed on patients residing within the primary service areas;

(5) each existing open heart surgery suite in each facility which has a primary

service area that overlaps the proposed primary service area operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with DFS;

- (6) the utilization of existing open heart surgery programs whose primary service area overlaps the proposed primary service area is not expected to fall below 50 percent of capacity due to the institution of the new or expanded program;
- (7) the applicant's projected utilization and proposed staffing patterns are such that each open heart surgery team will be performing at an annual rate of at least 150 open heart surgical procedures by the end of the third year following completion of the project.

.1716 HOURS OF OPERATION

To be approved, the State Agency must determine that the proponent has the capability of providing open heart surgery services 24 hours per day, seven day per week.

.1717 REQUIRED SUPPORT SERVICES

(a) To be approved, the State Agency must determine that the following services will be available on a 24 hour per day, 7 day per week basis in the facility:

- (1) electrocardiography laboratory and testing services including stress testing and continuous cardiogram monitoring;
- (2) echocardiography service;
- (3) blood gas laboratory;
- (4) nuclear medicine laboratory;
- (5) pulmonary function unit;
- (6) staffed blood bank;
- (7) hematology laboratory/coagulation laboratory;
- (8) microbiology laboratory;
- (9) clinical pathology laboratory with facilities for blood chemistry;
- (10) dedicated cardiac surgical intensive care unit;
- (11) emergency room with full-time director, staffed for cardiac emergencies with acute coronary suspect surveillance area and voice communication linkage to the ambulance service and the coronary care unit;
- (12) cardiac catheterization

services including both diagnostic and interventional cardiac catheterization capabilities.

(b) To be approved the State Agency must determine that the following services will be available to the proponent:

- (1) preventive maintenance program for all biomedical devices, electrical installations and environmental controls;
- (2) cardiac rehabilitation program;
- (3) community outreach and education program.

.1718 REQUIRED STAFFING AND STAFF TRAINING

(a) To be approved the State Agency must determine that the proponent can meet the following staffing requirements:

- (1) one cardiovascular surgeon who has been designated to serve as director of the open heart surgery service and who has the following special credentials:
 - (A) certified by the American Board of Thoracic Surgery;
 - (B) special qualification in cardiac surgery;
- (2) at least one specialized team to perform open heart surgery composed of at least the following professional and technical personnel:
 - (A) one cardiovascular surgeon board certified (or board-eligible) by the American Board of Thoracic Surgery;
 - (B) one assistant surgeon, preferably a cardiovascular or thoracic surgeon;
 - (C) one board certified (or board eligible) anesthesiologist trained in open heart surgery;
 - (D) one certified registered nurse anesthetist;
 - (E) one circulating or scrub nurse, with recent specialized training in cardiac surgical procedures;
 - (F) one operating room technician or nurse with recent specialized training in cardiac surgery procedures;
 - (G) two certified pump technicians;
 - (H) staff for the dedicated cardiac surgery intensive care unit sufficient to ensure the availability of

- 1 RN for every 2 patients during the first 48 hours of post-operative care;
- (3) at least two fully-qualified cardiac surgeons on the staff, at least one of whom is board-certified, and the other at least board-eligible; one of these surgeons must be on-call at all times; if pediatric surgery is performed, one of these surgeons must be specially trained and clinically competent to perform pediatric surgery.

(b) To be approved, the State Agency must determine that the proponent can provide the following staff training for members of cardiac surgical teams:

- (1) certification in cardiopulmonary resuscitation and advanced cardiac life support;
- (2) an organized program of staff education and training which is integral to the cardiac services program and ensures improvements in technique and the proper training of new personnel.

.1719 DATA REPORTING REQUIREMENTS

The facility must provide the following types of data and information to the Division of Facility Services, in accordance with data format and reporting requirements formulated by the Division of Facility Services:

- (1) demographic data on patients treated;
- (2) financial data;
- (3) clinical data.

SECTION .2400 - CRITERIA AND STANDARDS FOR INTERMEDIATE CARE FACILITY/MENTALLY RETARDED (ICF/MR)

.2404 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA

(a) Proposals to provide ICF/MR services must be consistent with the applicable North Carolina State Health Plan (the one in effect at the time the review period begins), the State Medical Facilities Plan, and the applicable health systems plan.

(b) A proposal to provide new or expanded ICF/MR services must specify the number of ICF/MR beds to be operated following the completion of the proposed project.

(c) A proposal to provide expanded ICF/MR beds will not be approved unless the overall

average occupancy, over the three months immediately preceding the submission of the proposal, of the total number of ICF/MR beds within the facility in which the new beds are to be operated was at least 90 percent.

(d) A proposal to provide ICF/MR beds must comply with one of the following models:

- (1) small, residential, five beds or less, ICF/MR community-based freestanding facility, i.e. group home model;
- (2) ~~community-based, 15 beds or less, ICF/MR facility serving mentally retarded persons who are nonmobile, nonambulatory, or mobile nonambulatory;~~ community based, 15 beds or less, serving persons with severe or profound mental retardation or related conditions; or persons with moderate mental retardation who have other handicapping conditions;
- (3) state-operated mental retardation centers converting existing beds to ICF/MR beds;
- (4) health profession schools, interdisciplinary specialty centers, and research centers proposing a residential facility larger than 15 ICF/MR beds but not to exceed 30 ICF/MR beds.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Facility Services intends to amend regulation cited as 10 NCAC 3R.1003. The purpose of the proposed regulation: Rule incorporates by reference the State Medical Facilities Plan. Change would apply to the 1987 SMFP.

The proposed effective date of this action is January 1, 1986.

Statutory Authority: G.S. 131E-177(1).

The public hearing will be conducted at 10:00 a.m. on September 22, 1986 at the Hearing Room, Room #201, Division of Facility Services, 701 Barbour Drive, Raleigh, N.C.

Comment Procedures: Written comments should be sent to Mr. I. O. Wilkerson, Jr., Director, Division of Facility Services, 701 Barbour Drive, Raleigh, N.C. 27603. These comments will be received from the date of

publication until November 10, 1986.

SECTION .1000 - SPECIAL CRITERIA AND STANDARDS: IN GENERAL

.1003 STATE MEDICAL FACILITIES PLAN

(a) The 1986 1987 North Carolina State Medical Facilities Plan contains the following information:

- (1) inventory of certain categories of inpatient and outpatient health care facilities, including number of beds and utilization of such;
(2) type of services provided by each category of health care facility;
(3) projections of need for acute care hospital (including rehabilitation services), long-term care facilities (including nursing homes and home health agencies), mental health facilities and end-stage renal dialysis services for various geographical areas of the state;
(4) statement of policies related to acute care facilities, rehabilitation services, long-term care, psychiatric facilities, chemical dependency facilities, and facilities for intermediate care for the mentally retarded, which are used with other criteria contained in this Subchapter and in G.S. 131E-183 and need projections to determine whether applications proposing additional beds and services of these types may be approved under the certificate of need program.

(b) This plan can be obtained in 0 from the Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina, at a cost of forty dollars (\$40.00) per copy. This plan is also available for inspection at the Administrative Procedures Section, Attorney General's Office, 10 East Jones Street, Raleigh, North Carolina. This plan is also available for inspection at the Division of Facility Services.

Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission intends to amend regulations cited as 10 NCAC 3U

- .0102; .0202; .0204; .0302; .0303; .0401; .0402; .0501; .0504; .0703-.0708; .0903; .1001; .1003; .1201; .1302; .1403; .1902; .1903; .2001-.2004; .2101; .2201; .2204; .2316.

The purpose of the proposed regulations is to set forth child day care licensure requirements.

The proposed effective date of this action is January 1, 1987.

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

The public hearing will be conducted at 10:00 a.m. on September 18, 1986 at Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, NC.

Comment Procedures: Written comments and requests for time to speak at the public hearing should be addressed to: Lucy H. Bode, Chairperson, Child Day Care Commission, 701 Barbour Drive, Raleigh, N.C. 27603, and be received on or before September 12, 1986.

SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

The terms and phrases used in this Subchapter shall be defined as follows except when the content of the Rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

(1) "Agency" means the Child Day Care Section, Division of Facility Services, Department of Human Resources, located at 701 Barbour Drive, Post Office Box 42200, Raleigh, North Carolina 27605 27603.

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

(3) (9) "Day Care Home" means day care plan as defined in G.S. 110-86(4) which provides day care on a regular basis of at least once per week for more than four hours, but less than 24 hours per day. Child care arrangements excluded from the definition

of day care facility in G.S. 110-86(3) are excluded as day care homes.

~~(12)~~ "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff-child ratios set forth in G.S. 110-91(7) and this Subchapter, using a specific space which is defined by walls or wall substitutes.

~~(14)~~ (16) "Operator" means the person or entity held responsible by law as the owner of a child day care business. The terms "owner", "operator", "sponsor" or "licensee" are used interchangeably.

~~(16)~~ (18) "Preschool-aged child" means any child between birth and five years who does not fit the definition of school-aged child in Paragraph ~~(19)~~ (21).

~~(19)~~ (21) "School-aged child" means any child who is at least five years of age old on or before October 16 of the current school year and who is enrolled in, or has attended, a public or private grade school or kindergarten.

~~(20)~~ (22) "Section" means the Child Day Care Section, Division of Facility Services, 70+ Barbour Drive, Post Office Box 42200, Raleigh, North Carolina 27605, Department of Human Resources. The section is located at the address given in Paragraph (1) of this Rule.

~~(22)~~ (24) "Supervisor" means, for the purposes of implementing G.S. 110-91(7), the person on site, at the center, who is responsible for the day-to-day operation of the center, at the center who has the overall responsibility for planning and administering the child care program. The terms "supervisor" and "director" are used interchangeably.

SECTION .0200 - GENERAL PROVISIONS RELATED TO LICENSING

.0202 CENTERS SUBJECT TO LICENSURE

Any child care arrangement where six or more children under 13 years of age (not including the operator's own after-school children as defined in this Subchapter), receive care, on a regular basis of at least once

per week, for more than four hours but less than 24 hours per day, regardless of the time of day and regardless of whether the same children attend regularly, must be licensed. These arrangements include, but are not limited to:

(3) Temporary care arrangements, including those which provide care on a seasonal, drop-in, part-time, or after-school basis as defined in Rule .0102 ~~(22)~~ (26) of this Subchapter;

.0204 CHANGES REQUIRING ISSUANCE OF A NEW LICENSE

(a) When the operator, as defined in .0102 ~~(14)~~ (16), of a licensed day care center changes, the new operator must apply for a new license as prescribed in Section .0300 of this Subchapter. A child day care license cannot be bought, sold, or transferred by one operator to another.

SECTION .0300 - PROCEDURES FOR OBTAINING A LICENSE

.0302 APPLICATION FOR A LICENSE

(b) The applicant is responsible for arranging for inspections of the center by the local sanitarian, building and fire inspectors. The applicant must provide an approved inspection report signed by the appropriate inspector to the section's representative.

(1) A provisional classification may be accepted in accordance with Rule

~~-.0401(1)~~

.0401(a)(1) of this Subchapter.

(d) The applicant, or the person responsible for the day-to-day operation of the center, must be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center will comply with Sections .0500 and .0600 of this Subchapter. The applicant shall make the following written information available to the section's representative for review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) Daily schedule(s),
- (2) Activity plans,
- (3) Emergency care plan,

(4) Discipline policy, and

(5) Staff development plan.

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

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

.0303 RENEWAL OF A LICENSE

(b) The section's representative shall make one or more visits to the center to determine compliance with the licensing standards. The first of these compliance inspection visits will shall be made during the 60 days immediately preceding the expiration date on the license. This will shall be the announced renewal visit. The representative will shall review the records and documents identified in Rule .0302(d) and (e), observe in the classrooms, and perform other activities necessary to evaluate compliance.

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

(e) Regardless of the reason, when a application for renewal is received by the section after the license expiration date, the existing

license remains shall remain valid until the section notifies the licensee otherwise pursuant to the provisions of ~~150A-3-~~ 150B-3.

SECTION .0400 - ISSUANCE OF PROVISIONAL LICENSES

.0401 PROVISIONAL LICENSE

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

.0402 SPECIAL PROVISIONAL LICENSE

(a) A special provisional license, as a minimum penalty, may be issued for a six-month period in the following situations:

(2) When the section determines that a staff member, or other person present at the center with the operator's permission, abused/neglected any child in care, and the operator knew about or had reason to know, or after exercising reasonable care and diligence, should have had knowledge of the abuse/neglect;

(d) Nothing in this Rule shall restrict the Division from using any other statutory or administrative penalty available, including the provisions in ~~150A-3(c)~~ 150B-3(c) to summarily suspend a license if the health, safety or welfare of the child is in jeopardy.

SECTION .0500 - CAREGIVING REQUIREMENTS FOR CENTERS

.0501 STAFF/CHILD RATIO

(d) Children must shall be adequately supervised at all times. Adequate supervision shall mean visual supervision with the exception of brief periods necessitated by emergencies and day-to-day child care responsibilities. When less than 30 children are present, and only one adult caregiver is required to meet the staff-child ratio, food preparation shall be considered a day-to-day child care responsibility as long as the children are also inside the facility and the caregiver can respond to the children immediately.

(g) The provisions of G.S.

110-91(7) a. and b. shall apply to all centers licensed for fewer than 30 children. The provisions of G.S. 110-91(7)c.3. will apply to shall also be allowed for all centers caring for fewer than 30 children.

(h) In computing the 10% tolerance, all fractions will shall be rounded down, except that in centers licensed for 6 to 10 children, inclusive, a tolerance of 1 child is allowed, unless all children are less than 2 years of age.

(i) When a center uses the tolerance for both emergency situations and after-school care, the total number of children present at any time cannot shall not exceed the licensed capacity plus 10%, except for centers licensed for 6 to 10 children, inclusive, as provided in (h) of this Rule.

(k) The staff/child ratio for centers licensed for fewer than 30 children which provide care exclusively for school-aged children, as defined in Rule .0102(21) of this Subchapter, shall be one adult caregiver for 25 children. When only one caregiver is required to meet the staff/child ratio, another person who is at least 16 years of age and on the premises shall be available for emergency relief.

(l) "For purposes of G.S. 110-91(7)c.1. a child who attains his/her second birthday may remain in the group with children under two until space is available in the next oldest group.

.0504 CAREGIVING ACTIVITIES FOR SCHOOL-AGED CHILDREN

(a) Each center caring for school-aged children as defined in Rule .0102 (18) (21) of this Subchapter will have a written schedule for each group of children.

(f) (e) For school-aged programs operating 4 or fewer hours per day, the written daily activity plan will include three activities. These may be any combination of indoor and outdoor activities. The activity areas must support the written plan.

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

.0703 AGE REQUIREMENTS

(b) Anyone who is at least 13 years of age, but less than 16 years of age, may work in a

day care center on a volunteer basis, as long as that person is under the direct supervision of a required staff person, as long as he/she is supervised by and works with a required staff person who is at least 21 years of age, and also meets the health standards for volunteers found in Rule .0702 of this Section.

.0704 EDUCATION AND EXPERIENCE REQUIREMENTS

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

(1) Be at least 21 years of age, and be literate, and

(2) Have either a high school or general education diploma

-, and

(1) (3) This person must also have Have two years of full-time verifiable child day care or early childhood experience; or an undergraduate, graduate, or Associate Degree, with at least 12 semester hours in child development, child psychology, early childhood education or directly related field or, a Child Development Associate Credential or diploma from a community or technical college early childhood program

-, and

(2) (4) In addition to satisfying (1) above, this person must also verify successful completion of, Have verification of having successfully completed, or be currently be enrolled in, 3 credit hours, or 33 clock hours, of training in the area of child care program administration; or, have one year experience performing administrative responsibilities; or, have one year experience performing administrative responsibilities and have another full-time staff person, who meets the requirements in (1) through (3) of this Paragraph who has responsibility is responsible for planning and implementing the daily program

- at the center to comply with Sections .0100 and .0600 of this Subchapter.

(b) The administrator of a

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

(c) Any person who is at least 21 years of age and literate who was employed as an on-site administrator in a day care program on January 1, 1986 and who will have accumulated a total of five years experience, two of which were performing administrative responsibilities, between January 1, 1980 and January 1, 1987, shall be exempt from all other provisions of this Rule.

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

- (1) A high school or general education diploma and one year verifiable experience working in a child day care center; or successful completion of the Department of Public Instruction's Child Care Services Occupational Home Economics Program; or
- (2) A Child Development Associate Credential; or
- (3) Graduation from a one or two-year child care program at a community college or technical college; or
- (4) An undergraduate or graduate degree with at least the equivalent of four semester hours in child development, child psychology, or early childhood education; or
- (5) Five years of verifiable experience working in child day care, and, within the past five years, 40 clock hours of documented training in child development.

(c) (e) The aide or person responsible to the teacher/caregiver for assisting with planning and implementing the daily program shall be a high school graduate; or have a general education diploma; or be

at least 18 years of age and literate.

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

- (1) Be at least 18 years of age; or a duly licensed school bus driver; and
- (2) Have a personal driving record with not more than three four active points and no conviction of Driving While Impaired (DWI) within the last three years; and
- (3) Have a valid driver's license; or
- (4) If regularly transporting twelve or more than twelve persons, have a valid North Carolina Class B license, or comparable license from the state in which he/she resides.

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

(f) (h) Any substitute who has caregiving responsibilities shall, at a minimum, meet the qualifications for an aide stated in Paragraph (c) (e) of this Rule. In addition, any substitute driver must shall also possess a valid driver's license.

.0705 SPECIAL TRAINING REQUIREMENTS

(a) At least one staff member must shall be knowledgeable of and able to recognize common contagious and infectious diseases.

(b) The center shall have on file verification that at least one staff person on site is currently certified as having who is present at the center has successfully completed a course in basic first aid within the last three years.

(c) A first aid information sheet will shall be posted in a prominent place for quick referral. Copies of this form may be requested from the Medical Society of the State of North Carolina, P. O. Box 27167, Raleigh, North Carolina, 27611.

(d) At least one person who has a current Red Cross Advanced Life Saving or Water Safety Instructor certificate shall supervise the children whenever they are participating in swimming activities in or near a

swimming pool or other body of water.

.0706 STAFF DEVELOPMENT PLAN

Each day care center shall annually prepare written staff development plan which incorporates a variety of instructional opportunities. The center's plan shall describe provisions to satisfy the staff development standards stated in Rule .0707 of this Section. The plan must shall be revised to incorporate any changes necessary during the year. The plan shall be on file in the center.

.0707 STAFF DEVELOPMENT STANDARDS

(a) Each day care center shall provide, or arrange for the provision of, training for staff to assure that each new employee, including the supervisor, staff person who has contact with the children will receive a minimum of ~~20~~ ten clock hours of on-site orientation within the first six weeks of employment. This orientation shall include training in their job-specific duties and responsibilities; a review of the child day care licensing law and regulations; a review of the individual center's personnel and operational policies, purpose, and goals; an explanation of the role of state and local government agencies, their effect on the center, their availability as a resource, and individual staff responsibilities to representatives of state and local government agencies; observation of center operations; maintaining a safe and healthy environment; and training to recognize symptoms of child abuse and neglect.

(b) The center director and any staff who have responsibility for planning and supervising a day care program, as well as staff who work directly with children, shall participate in a minimum of 20 clock hours of training activities, according to the individual's assessed needs which are either child care related or related to the person's job responsibilities. Such training shall be either related to child care or to the person's job responsibilities. For staff working less than 40 hours per week on a regular basis, the training requirement may be prorated as follows:

WORKING HOURS PER WEEK

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

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

.0708 MEETING STAFF DEVELOPMENT STANDARDS

Staff may meet the staff development standards by attending child care workshops, conferences, seminars, or courses provided each training activity satisfies the following criteria: any training activity, including in-service sessions, not offered or sponsored by an accredited school, professional organization, or government agency must be approved by the section.

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

center staff. This restriction shall not apply if the center staff providing the training have been approved according to the criteria outlined in either Paragraph (1) or (2) of this Rule.

SECTION .0900 - NUTRITION
STANDARDS

.0903 REQUIREMENTS FOR
CHILDREN AGED 24 MONTHS
AND OLDER

Meals and snacks shall be planned according to the number of hours a child is in the center. These rules apply in all situations except during sleeping hours and nighttime care:

- (1) For preschool-aged children in the center at least two hours but less than four hours, and for all school-aged children, one snack shall be provided unless the time attended covers a normal meal hour, in which case, a meal shall be provided.
- (3) For children in the center at least six hours, but less than ten twelve hours, two meals and one snack or two snacks and one meal shall be provided equal to at least one-half of the child's daily food needs.
- (4) For children in the center over ten hours, more than twelve hours, two snacks and two meals shall be provided which are equal to at least two-thirds of the child's daily food needs.

SECTION .1000 - TRANSPORTATION
STANDARDS

.1001 SEAT RESTRAINTS

(d) Each child under three years of age will shall be provided a child passenger restraint device appropriate for his/her size and age. Older children shall use a child restraint or seat belt appropriate for his/her size.

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

.1003 SAFE PROCEDURES

(c) Each center shall establish safe procedures for pick-up and delivery of children. These procedures will shall be communicated to parents, and a copy will shall be posted in the center where they can easily be seen.

(d) A first-aid kit will shall be located in each vehicle used on a regular basis to transport children. The first-aid kit will shall be located in each vehicle used on a regular basis to transport children. The first-aid kit will shall be firmly mounted or otherwise secured if kept in the passenger compartment.

(f) The driver shall be 18 years old or a duly licensed school bus driver and have a valid driver's license with not more than 3 4 active points and no conviction within the last three years of Driving While Impaired (DWI). Anyone who regularly drives a vehicle carrying 72 or more more than 12 passengers must shall have a North Carolina Class "B" license, or comparable license from the state in which he/she resides.

(g) Each person in the vehicle must be seated in the manufacturer's designated areas. No child may shall ride in the load carrying area or floor of a vehicle.

SECTION .1200 - SANITATION
STANDARDS FOR CENTERS

.1201 SANITATION REQUIREMENTS

Each day care center shall comply with specific sanitation requirements as provided below:

(1) Floors. All floors will shall be easily cleanable, and will shall be kept clean and in good repair.

(2) Walls and Ceilings. The walls and ceilings of all rooms and areas will shall be kept clean and in good repair. All walls shall be easily cleanable. Walls in food service areas, diaper changing areas and toilets will shall have nonabsorbent, washable surfaces to the highest level reached by splash or spray.

(3) Lighting and Ventilation. All rooms and areas shall be well lighted by natural or artificial means which is effective under actual use conditions. In no event will shall the minimum required level of illumination exceed 30 foot-candles on tasks.

Ventilation will shall be provided and installed as required by the North Carolina State Building Code. Copies of the North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, P. O. Box 26387, Raleigh, North Carolina 27611. In kitchens, effective and properly designed ventilation systems shall be provided. Adequate provision shall be made to admit make-up air from a suitable location to replace that which is exhausted from the kitchen. For child day care centers operated in private residences, domestic type ventilation systems should be considered acceptable if the performance is satisfactory. Toilet rooms and infant rooms shall be well-ventilated to the outside air through windows or gravity ducts having cross-sectional areas of at least 72 square inches or with mechanical ventilation systems complying with the requirements of the North Carolina Building Code Council.

(5) Water Supply. The water supply shall be from an approved source, be adequate to meet the requirements of the center and shall be of a safe, sanitary quality. Running water under pressure shall be provided. When a private water supply is used, it must be located, constructed, maintained and operated in accordance with the requirements of the Division of Health Services, Department of Human Resources Bulletin No. 476 (Revised 4/70) entitled "Protection of Private Water Supplies." A sample of water shall be collected by the sanitarian and submitted to the laboratory section of the Division of Health Services or other approved laboratory for bacteriological analysis at least once a year. No backflow connections or cross-connections with an unapproved water supply shall exist.

Water Supply. The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Health Services' rules governing water supplies. Copies of 10 NCAC 10A .1700 and 10 NCAC

10D .0600 through .2500 as amended through April 1, 1986 may be obtained from the Division of Health Services, Department of Human Resources, P. O. Box 2091, Raleigh, North Carolina 27602-2091. A sample of water from a private or public non-community water supply serving a day care center shall be collected by the sanitarian and submitted at least once a year to the laboratory section of the Department of Human Resources or other approved laboratory for bacteriological examination. No backflow connections or cross-connections with an unapproved water supply shall exist.

Hot water heating facilities shall be sufficient to meet the maximum expected requirements of the child day care center.

Hot and cold water under pressure shall be easily accessible to all rooms where food is processed or handled, rooms in which utensils or equipment are washed, lavatories provided for use by staff, and other areas in which water is required for cleaning and sanitizing.

(7) Liquid Wastes. All sewage and liquid wastes shall be disposed of in a public sewerage system or, in the absence of a public sewerage system, by a sanitary procedure approved by the sanitarian. All sewage and other liquid wastes shall be disposed of so as not to create a public health hazard.

Liquid Wastes. All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system.

(11) Storage. Rooms or spaces will shall be provided for the storage of necessary equipment, furniture, toys, clothes, beds, cots, mats and supplies and shall be kept clean.

All corrosive agents, insecticides, rodenticides, herbicides, bleaches, detergents, polishes, items containing petroleum products, any product which is under pressure in an aerosol dispensing can, and any substance which may be

hazardous to a child if ingested, inhaled or handled (skin contact) shall be stored in a locked storage room or locked cabinet. Medications must shall be stored in a separate locked cabinet. Medications which require refrigeration must shall be stored in a designated area for such storage in a refrigerator which is not accessible to children.

(13) Cleaning and Sanitizing of Food Service Utensils and Equipment. All multi-use eating and drinking utensils must shall be thoroughly cleaned and sanitized after each usage, and the facilities needed for washing, rinsing and sanitizing must shall be provided. The facilities for washing, rinsing and sanitizing multi-use eating and drinking utensils needed by child day care centers will shall depend upon the numbers and types of utensils in use; consequently, individual determinations of the acceptability of facilities for washing, rinsing and sanitizing multi-use eating and drinking utensils must shall be made by the sanitarian. If residential dishwashers which do not provide a sanitizing cycle are used for washing and rinsing, facilities for sanitizing must shall be provided. Sanitizing may be accomplished by any of several procedures:

(c) other procedures equivalent to (a) and (b) of this subdivision. The facilities for washing, rinsing and sanitizing multi-use eating and drinking utensils, preferred in all cases and required where the number of utensils justifies them, consist of standard three-compartment compartment sinks or dishwashing machines manufactured, installed and operated in accordance with the National Sanitation Foundation Standards or equal.

When necessary for the effective washing of pots, pans and vegetables, a two-compartment sink with drainboards on each end must shall be provided.

All kitchenware and food-contact surfaces or of equipment, exclusive of

cooking surfaces of equipment, used in the preparation or serving of food or drink and all food storage utensils must shall be thoroughly cleaned after each use.

Cooking surfaces or of equipment must be cleaned at least once each day. Non-food contact surfaces of equipment must be cleaned at such intervals as to keep them in a clean and sanitary condition.

No polish or other substance containing cyanide or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

(16) Staff Members. All staff members must shall wear clean outer garments, maintain a high degree of personal cleanliness and conform to hygienic practices while on duty. They must shall wash their hands thoroughly in an approved handwashing facility before starting work, after diaper changing activity, and otherwise as often as may be necessary to remove soil and contamination. No staff member shall resume work after visiting the toilet room without first washing his/her hands. Hair nets, headhands, or caps must shall be used by staff members engaged in the preparation of food to keep hair from falling in food and on food-contact surfaces. Staff members shall not use tobacco in any form while engaged in food preparation or while working in equipment and utensil-washing, food preparation areas, or while feeding children.

No person while affected infected with any disease in a communicable form, or while a carrier of such a disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection shall work in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals; and no person known or suspected of being affected with any such disease or condition shall be employed in such area or capacity. If the operator has reason to suspect that any person has contracted any

disease in a communicable form or has become a carrier of such disease, he/she must notify the local health department immediately.

SECTION .1300 - BUILDING CODE
REQUIREMENTS FOR DAY CARE
CENTERS

.1302 BUILDING CODE
REQUIREMENTS
FOR DAY CARE
CENTERS

For the purpose of carrying out the provision of G.S. 110-91(4), the North Carolina Building Code standards for day care centers (more than 15 children) developed by the Building Code Council are hereby adopted by reference by the Child Day Care Commission. A copy of the North Carolina Building Code standards is on file at the Child Day Care Section, Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina, 27605-27603, and will be available for public inspection during regular business hours.

SECTION .1400 - SPACE
REQUIREMENTS

.1403 SWIMMING POOLS

(a) When children participate in swimming activities in or near a swimming pool or other body of water deeper than 18 inches, a person who has earned a Red Cross Advanced Life Saving or Water Safety Instructor certificate shall be present to supervise the swimming area and shall not be counted in the staff-child ratio.

SECTION .1900 - SPECIAL
PROCEDURES CONCERNING
ABUSE/NEGLECT IN DAY CARE

.1902 UNANNOUNCED VISITS

If the county department of social services determines the allegation warrants investigation according to G.S. 7A-544, unannounced visits shall be made by a representative of the section to the day care center or home within the time periods established by G.S. 110-105 (a) (3).

(1) The purpose of the first unannounced visit is to investigate whether the alleged incident did, in fact, occur at the center or home and to identify who was involved.

(2) The section's representative will not interview the child or

children about the allegations of abuse or neglect.

(3) (2) The purpose of subsequent visit(s) will shall be determined by the child abuse/neglect unit representative and is dependent upon the results of the first visit and information received from the county department of social services and other relevant sources.

.1903 INVESTIGATION PROCEDURES

(a) The investigation will shall include interviews with the registrant, operator, staff, parents, or any adult who has information regarding the allegation. Reports from law enforcement officers and other professionals, as well as pictures and other investigative tools, may be used, as appropriate.

(b) The section's representative shall not interview the child or children about the allegations of abuse or neglect.

(b) (c) The section will shall share information related to investigations with departments of social services, as appropriate. However, any information subject to confidentiality laws or regulations shall be handled so as to preserve the confidential nature of the material.

(c) (d) At any time during the investigation, the representative of the section may conduct an evaluation for compliance with all licensing requirements.

(d) (e) The section shall make a written report to the licensee/registrant following the completion of the investigation and the county department of social services when the investigation is completed. The section may also report to law enforcement officers and other professionals that were involved in the investigation. This report will shall explain the section's findings and what further action will be taken, if any.

SECTION .2000 - RULE MAKING AND
CONTESTED CASE PROCEDURES

.2001 PETITIONS FOR RULEMAKING

(a) Any person wishing to

request the adoption, amendment, or repeal of a rule made by the Child Day Care Commission (hereinafter referred to as the Commission) shall make his/her request in a written petition to:

Administrative Procedures
Coordinator
Division of Facility Services
Post Office Box #2200
701 Barbour Drive
Raleigh, North Carolina
27605
27603

(c) The division director or his/her designee shall present the petition plus any additional information or recommendations deemed relevant to the Commission to determine whether the public interest will be served by granting the petition.

(d) The Commission shall render a decision as to whether to deny or approve the petition at its next scheduled meeting, which may be no later than 120 days after submission of the petition. If the decision is to deny the petition, the division director or his/her designee shall notify the petitioner, in writing, stating the reasons for the denial. If the decision is to approve the petition, the Commission shall initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these rules.

.2002 RULEMAKING PROCEDURES

(a) The rulemaking procedures for the Secretary of the Department of Human Resources adopted February 1, 1976, as amended through January 1, 1986, and codified in 10 NCAC 1 B .0102 through .0107 are hereby adopted by reference to apply to the actions of the Commission, with the following modifications:

(1) Correspondence related to the Commission's rulemaking actions shall be submitted to:

Administrative Procedures
Coordinator
Child Day Care Section
Division of Facility
Services
Post Office Box #2200
701 Barbour Drive
Raleigh, North Carolina
27605
27603

.2003 DECLARATORY RULINGS

(a) The Commission shall have the power to make declaratory rulings. All requests for

declaratory rulings shall be by written petition and shall be submitted to:

Child Day Care Section
Division of Facility Services
P. O. Box #2200
701 Barbour Drive
Raleigh, North Carolina
27605
27603

(b) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner;
- (2) the statute or rule to which the petition relates;
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him/her, and
- (4) the consequences of a failure to issue a declaratory ruling.

.2004 CONTESTED CASE PROCEDURES

(a) The contested case procedures adopted by the Secretary of the Department of Human Resources on February 1, 1976, as amended through January 1, 1986, and codified in 10 NCAC 1 B .0200 are hereby adopted by reference to apply to the Division of Facility Services, Child Day Care Section. In applying these rules, correspondence related to contested cases shall be addressed to:

Administrative Procedures
Coordinator
Division of Facility Services
Post Office box #2200
701 Barbour Drive
Raleigh, North Carolina
27605
27603

SECTION .2100 - CHURCH DAY CARE CENTER STANDARDS

.2101 CENTERS OPERATING UNDER G.S. 110-106

(c) The Section shall notify the operator in writing as to whether the center complies or does not comply with the standards. The Section may give the center time to achieve compliance, in addition to the 30 days allowed by G.S. 110-106(b)(1), for the reasons stated in .0401 ~~(1)-(4)~~ (a).

SECTION .2200 - CIVIL PENALTIES

.2201 SCOPE AND PURPOSE

Any operator/registrant who violates any provision of Article 7 of Chapter 110 of the

General Statutes or of this Subchapter who fails to take corrective action after being provided adequate written notice by the section shall be considered to be in willful violation of the licensing law and a civil penalty may be levied against the operator by the Secretary or his/her designee pursuant to rules and schedules of penalties adopted by the Commission.

.2204 RIGHT TO A HEARING

Any operator contesting a penalty is entitled to an administrative hearing and judicial review in accordance with Chapter ~~450A~~ 150B of the General Statutes, the Administrative Procedures Act.

SECTION .2300 - FORMS

.2316 WHERE TO OBTAIN FORMS

Sample copies of the forms required by statute or rules of this agency may be obtained by writing to the section, ~~Post Office Box 42200,~~ Raleigh, North Carolina, 27605, ~~at the address given in .0102(1)~~ of this Subchapter.

Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission intends to adopt regulation cited as 10 NCAC 3U .0505. The purpose of the proposed regulation is to allow centers serving handicapped children to use Mental Health Certification standards about program activities for licensure.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 110-91; 143B-168.3.

The public hearing will be conducted at 10:00 a.m. on September 18, 1986, at Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, N.C.

Comment Procedures: Written comments and requests for time to speak at the public hearing should be addressed to: Lucy H. Bode, Chairperson, Child Day Care Commission, 701 Barbour Drive, Raleigh, N.C. 27603, and be received on or before September 12.

SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

SECTION .0500 - CAREGIVING REQUIREMENTS FOR CENTERS

.0505 DEVELOPMENTAL DAY CENTERS

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

Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission, intends to amend regulations cited as 10 NCAC 3U .1701-.1703; .1705 and .1716.

The purpose of the proposed regulations is procedures for state registration of family day care homes.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 110-86(4); 110-88(3); 143B-168.3.

The public hearing will be conducted at 10:00 a.m. on September 18, 1986 at the Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, N. C.

Comment Procedures: Written comments and requests for time to speak at the public hearing should be addressed to: Lucy H. Bode, Chairperson, Child Day Care Commission, 701 Barbour Drive, Raleigh, N. C. 27603, and be received on or before September 12.

.1701 GENERAL PROVISIONS RELATED TO REGISTRATION

(a) All child day care homes as defined by G. S. 110-86(4) and Rule .0102 ~~(8)~~ (9) of this Subchapter shall register and comply with the standards for registration set forth in this Section.

(b) Religious-sponsored day care homes which do not have to register pursuant to G. S. 110-106.1 are subject to and

must comply with all standards of this Section.

(c) The Child Day Care Section may periodically visit and inspect all day care homes to insure compliance with North Carolina General Statutes and those rules and regulations adopted pursuant thereto.

(4) A representative of the Section shall conduct an announced visit prior to initial issuance and renewal of registration. The prospective or current registrant will be notified in advance about the visit. This Rule does not apply to the investigation of homes that are operating without being registered in violation of the law.

(2) At the beginning of each fiscal year the Section shall prepare a written plan explaining the guidelines for making routine unannounced compliance visits to registered day care homes. The plan shall be dated and signed by the section chief and shall be kept in a confidential file by the section chief.

(d) When a day care home exists, the caregiver's own preschool-aged children shall be counted in the maximum of five children who receive care during other than after-school hours.

(c) The caregiver's own school-aged children are not counted in determining if a day care home exists.

(c) When a day care home exists, all preschool-aged children shall be counted in the registered capacity. This includes the caregiver's own preschool-aged children.

(d) The caregiver's own school-aged children shall include school-aged children who reside at the location of the day care home, and they shall not be counted to determine if a day care home exists, nor shall they be counted in the registered capacity.

.1702 INITIAL REGISTRATION

(a) Anyone who wishes to register Any person who plans to operate a day care home other than those homes identified in Rule .1701(b) shall complete a Day Care Home Application for Registration as described in Rule .2313. The applicant shall submit the completed application, which complies with the following, to the section:

(1) Only one registered

day care home shall be operated at the location address of that registered day care home.

(2) The applicant shall list each location address where the day care home will operate.

(b) A representative of the section shall review each application to assure that the applicant complies with all pertinent requirements. If the applicant does not comply, the section's representative shall contact the applicant to explain what must be done to achieve compliance. The applicant is responsible for submitting any additional information needed to document compliance.

(c) A Certificate of Registration shall be issued to each individual who applies for registration and who is deemed by the section to comply with requirements for registration. A person is not considered to be registered until the section determines that he/she complies with all applicable requirements.

(b) When a registrant operates a day care home at more than one location address by cooperative arrangement among two or more families, the following procedures shall apply:

(1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the registrant.

(2) The coordinating parent is responsible for knowing the current location address at all times and shall provide the information to the section upon request.

(c) Upon receipt of an acceptable application, the section shall issue written permission to operate on a temporary basis. A person is not able to operate legally until he/she has received that permission.

(d) A representative of the section shall make an announced visit to each home operating on a temporary basis. The purpose of this visit shall be to determine compliance with the standards, to offer technical assistance when needed, and to provide information about local resources.

(1) If the home is found to be in compliance with the applicable requirements of G.S. 110 and this Section, a

Certificate of Registration shall be issued.

- (2) If the home is not in compliance but has the potential to comply, the section representative shall establish with the operator a reasonable time period for the home to achieve full compliance. If the section representative determines that the home is in compliance within the established time period, a Certificate of Registration shall be issued.
- (3) If the home is not in compliance, cannot potentially comply, or fails to comply within the appropriate time, the section shall deny the application and terminate the temporary permission to operate.
- (d) (e) Use of the certificate is limited to the following conditions:
- (1) A Certificate of Registration remains valid for a period of two years unless terminated, revoked, or suspended.
 - (2) The Certificate of Registration cannot be bought, sold, or transferred from one individual to another.
 - (3) The Certificate of Registration is valid only for the location address/addresses listed on it.
 - (4) The Certificate of Registration is the property of the State of North Carolina. It must be returned to the section in the event of termination or revocation of registration.
 - (5) The Certificate of Registration shall be prominently displayed so that it can be easily seen by parents; available and shall be shown to each child's parent or guardian when the child is enrolled.
- (f) A registrant is responsible for notifying the section whenever a change occurs which affects the information shown on the Certificate of Registration.

.1703 RENEWAL OF REGISTRATION

(a) Each registrant must apply to renew his/her registration every two years, using forms developed and supplied by the section, according to the following schedule: shall apply for

renewal of registration every two years.

(1) The section will send each registrant the forms needed to apply for registration renewal approximately 90 days before the registration expires.

(1) The section shall notify the registrant of the need to renew by sending him/her the appropriate forms, which shall include a self-check questionnaire, not less than 60 days from the expiration date of the current Certificate of Registration.

(2) The registrant must return the completed forms to the section no later than 30 days before the registration expires. If the completed forms are not received as prescribed, the section will notify the registrant that he/she has 20 days to submit the required forms or to contact the section to explain the delay. If there is no response from the registrant, the section shall initiate termination proceedings.

(2) The registrant shall return the completed forms to the section not less than 30 days prior to the expiration date of the current Certificate of Registration.

(3) Representatives of the section shall make announced and scheduled visits to a random selection of registered homes prior to renewal, in accordance with the section's plan developed pursuant to G.S. 110-105.1. The purpose of these visits shall be to determine continued compliance with the registration requirements.

(b) When the section determines that the registrant registered home continues to comply with registration applicable requirements, another a new Certificate of Registration, valid for as long as the registrant is in compliance, not to exceed two years, shall be issued.

(c) Failure to apply for renewal of registration shall be grounds for termination of registration.

.1705 HEALTH STANDARDS FOR APPLICANTS/REGISTRANTS DAY CARE HOME OPERATORS

(a) Each applicant must

obtain a written statement or medical examination report, signed by a licensed physician or an authorized health professional. That statement or report must indicate that the applicant is physically and emotionally fit to care for children. Each applicant must also obtain written proof that he/she is free of active tuberculosis shall be on file in the home.

(b) Each registrant must annually obtain a written statement or medical examination report as described in Paragraph (a) or he/she must complete the health questionnaire approved by the Child Day Care Commission. This statement report, or questionnaire must be on file in the home. Proof that the registrant has had an annual test showing that he/she is free of active tuberculosis must also be on file in the home.

(a) Each day care home operator shall complete and keep on file a health questionnaire which attests to the operator's physical and emotional ability to care for children. The section may require a written statement or medical examination report signed by a licensed physician or other authorized health professional if there is reason to believe that the caregiver's health may adversely affect his/her care of the children.

(b) Each day care home operator shall complete the health questionnaire initially and prior to each renewal.

(c) Each operator shall obtain written proof that he/she is free of active tuberculosis prior to initial registration and each renewal of registration.

.1716 FAILURE TO MEET AND MAINTAIN REQUIREMENTS

If the section determines that a registrant fails to meet and or maintain compliance with the requirements for registration, the section may deny, suspend, terminate or revoke the registration after a hearing as provided in Section 2000 of this Subchapter. In addition, a civil penalty may be imposed according to Section 2000 of this Subchapter.

(a) If the section determines that a day care home operator fails to meet and maintain compliance with the requirements for registration, the section may establish a reasonable time period to allow

the operator to achieve compliance.

(b) If the operator fails to achieve compliance within the established time period, the section may deny, suspend, terminate, or revoke the registration. The operator may appeal any such action pursuant to provisions of G.S. 150B.

Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission intends to repeal regulations cited as 10 NCAC 30 .1704; .1706 - .1715. The purpose of the proposed regulations is for registration standards for day care homes.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 110-88; 110-101; 143B-168.3.

The public hearing will be conducted at 10:00 a.m. on September 18, 1986, at Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, N.C.

Comment Procedures: Written comments and requests for time to speak at the public hearing should be addressed to: Lucy H. Bode, Chairperson, Child Day Care Commission, 701 Barbour Drive, Raleigh, N.C. 27603, and be received on or before September 12.

- .1704 CHANGES AFFECTING REGISTRATION (REPEALED)
- .1706 MEDICAL AND IMMUNIZATION REPORTS FOR CHILDREN (REPEALED)
- .1707 CHILD'S APPLICATION FOR ENROLLMENT (REPEALED)
- .1708 EMERGENCY CARE PROCEDURES (REPEALED)
- .1709 NUTRITION (REPEALED)
- .1710 ADMINISTERING MEDICATIONS (REPEALED)
- .1711 DISCIPLINE POLICY (REPEALED)
- .1712 GENERAL HEALTH PROVISIONS (REPEALED)
- .1713 SAFE ENVIRONMENT (REPEALED)
- .1714 SAFE TRANSPORTATION PROCEDURES (REPEALED)
- .1715 SANITATION STANDARDS

(REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission intends to adopt regulation cited as 10 NCAC 3U .1717.

The purpose of the proposed regulation is: Standards for registration of day care homes.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 110-88(3); 110-101; 143B-168.3.

The public hearing will be conducted at 10:00 a.m., September 18, 1986 at Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, N. C.

Comment Procedures: Written comments and requests for time to speak at the public hearing should be addressed to: Lucy H. Bode, Chairperson, Child Day Care Commission, 701 Barbour Drive, Raleigh, N. C. 27603, and be received on or before September 12.

.1717 HEALTH: SAFETY AND SANITATION STANDARDS

(a) Each day care home shall comply with the following standards in order to maintain a safe, healthy and sanitary environment for children:

(1) To assure a healthy environment, the operator shall:

(A) have on file, for each child who attends on a regular basis, a health and emergency information form completed and signed by the child's parents or guardian. The completed form must be on file on the first day the child attends. A recommended form is available from the section. However, the operator may use another form provided that form includes the following information:

(i) the child's name, address, and date of birth;

(ii) the names of individuals to whom the child may be released;

(iii) the general status of the child's health;

(iv) any allergies and/or restrictions on the child's participation in activities with specific

instructions from the child's parent or physician;

(v) the names and phone numbers of persons to be contacted in an emergency situation;

(vi) the name and phone number of the child's physician and preferred hospital;

(vii) authorization for the operator to administer specified medication according to the parent's instructions, if the parent so desires;

(viii) authorization for the operator to seek emergency medical care in the parent's absence.

(B) serve nutritious meals and snacks appropriate in amount and type of foods served for the ages of the children in care.

(C) provide frequent opportunities for outdoor play or fresh air.

(D) provide adequate space to rest comfortably.

(E) be able to recognize symptoms of childhood illnesses.

(F) provide a quiet, separate area which can be easily supervised for children too sick to remain with other children.

(G) visually supervise all children who are awake. The operator must be able to respond to the children immediately.

(H) be able to provide basic first aid.

(2) To assure each child's health and well-being, no child shall be subjected to any form of corporal punishment by the day care home operator, substitute caregiver, or any other person in the home, whether or not these persons reside in the home.

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

(B) No child shall ever be placed in a locked room, closet, or box.

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

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

- (i) No food shall be withheld, or given, as a means of discipline.
 - (ii) No child shall ever be disciplined for lapses in toilet training.
 - (iii) No child shall ever be disciplined for not sleeping during rest period.
- (3) To assure a safe environment, the home operator shall:
- (A) keep all areas used by the children indoors and outdoors reasonably clean and orderly and free of items which are potentially hazardous to children.
 - (B) safely store equipment and supplies such as lawnmowers, power tools, nails, etc..
 - (C) securely anchor outdoor stationary play equipment.
 - (D) securely mount electric fans out of the reach of children or have a mesh guard on each fan.
 - (E) cover all electrical outlets not in use.
 - (F) separate firearms and ammunition and store both in areas inaccessible to children.
 - (G) keep items used for starting fires, such as matches and lighters, out of the children's reach.
 - (H) keep all medicines in locked storage or in a place completely inaccessible to children.
 - (I) keep hazardous cleaning supplies and other substances out of reach when preschool-age children are in care.
 - (J) keep first-aid supplies in a place easily accessible to the operator.
 - (K) keep the equipment and toys in good repair and appropriate for the ages of children in care.
 - (L) have a working telephone within close proximity of the day care home. Emergency phone numbers shall be readily available.
 - (M) have access to a means of transportation that is always available for emergency situations.
 - (N) have solid, safe and railed stairs and steps if these are used by the children. Indoor stairs with more than two steps shall be guarded if any children in care are two years of age or younger.
- (4) To assure the safety of children whenever they are transported, the operator, or any other transportation provider, shall:
- (A) have written permission from a parent or guardian to transport his/her child.
 - (B) comply with all applicable state and federal laws and regulations concerning the transportation of passengers. All children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices.
 - (C) have a valid driver's license issued by the Division of Motor Vehicles, not including a limited permit.
 - (D) assure that each child is seated in a manufacturer's designated area.
 - (E) never leave children in a vehicle unattended by an adult.
 - (F) have emergency and identification information about each child in the vehicle whenever children are being transported.
- (5) To assure a sanitary environment, the operator shall:
- (A) have a well or water system that complies with the requirements of the local health department and the Division of Health
- (O) construct, maintain and use swimming pools (with water deeper than 12 inches) or wading pools on the premises in a manner which will safeguard the lives and health of the children.
- (P) enclose below-the-ground swimming pools by a fence not less than 5 feet high to prevent chance access by children. The swimming pool shall be separate from the play area.
- (Q) complete a form which explains the operator's procedures in emergency situations. The form shall be supplied by the section.
- (R) practice fire drill procedures with the children at least monthly.

Services, Department of Human Resources.

- (B) have sanitary toilet, diaper changing and handwashing facilities.
 - (C) place soiled diapers in a covered, leak-proof container which is emptied and cleaned daily.
 - (D) wash his/her hands before handling food and feeding the children.
 - (E) wash his/her hands before, as well as after, diapering each child.
 - (F) use acceptable sanitary procedures when preparing and serving food.
 - (G) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below.
 - (H) label all bottles for each individual child, except when there is only one bottle-fed child in care.
 - (I) serve only pasteurized milk and milk products.
 - (J) have a house that is free of rodents.
 - (K) screen all windows and doors used for ventilation.
 - (L) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs.
 - (M) store garbage in waterproof containers with tight fitting covers.
 - (N) provide individual linens for rest time for each child in care for more than four hours. The linens shall be changed weekly or whenever they become soiled or wet.
- (b) The operator shall assure that the structure in which the day care home is located complies with the following requirements:
- (1) Comply with Section 509.2 of the North Carolina Building Code or have written approval for use as a day care home by the local building inspector.
 - (2) Have at least one exit from each floor used by children. Hallways and passageways to the exit shall never be blocked.
 - (3) Assure that all indoor areas used by children are adequately heated in cool

weather and ventilated in warm weather.

- (4) Assure that fuel burning heaters are properly vented to the outside. Fuel burning heaters, fireplaces, stove, and portable electric space heaters shall have a securely attached guard.

Notice is hereby given in accordance with G.S. 150B-12 that the Child Day Care Commission intends to repeal regulation cited as 10 NCAC 3U .2005. The purpose of the proposed regulation is to provide information to Commission.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 143E-17; 143B-168.3.

The public hearing will be conducted at 10:00 a.m. on September 18, 1986 at Mission Valley Inn, 2110 Avent Ferry Road, Raleigh, N.C.

Comment Procedures: Written comments and requests for time to speak at the public hearing should be addressed to: Lucy H. Bode, Chairperson, Child Day Care Commission, 701 Barbour Drive, Raleigh, N.C. 27603, and be received on or before September 12, 1986.

SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

SECTION .2000 RULEMAKING AND CONTESTED CASE PROCEDURES

.2005 REPORTS TO THE COMMISSION (REPEALED)

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Mental Retardation and Substance Abuse Services intends to amend regulations cited as 10 NCAC 14B .0101 through .0106. The purpose of the proposed regulations is to combine two current sets of rules on rulemaking procedures, one for the Commission and one for the Division Director, and will eliminate duplication. Proposed changes also reflect revisions in the Administrative Procedure Act made by the General Assembly in 1985. The revisions in 10 NCAC 14B .0103 will replace

individual hearing notices with required notices in the N.C. Register.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 143B-10(j)(2); 143B-18; 143B-147; 150B-11; 150B-12; 150B-16.

The public hearing will be conducted at 10:30 a.m. on September 17, 1986 at President's II Room, Sheraton Crabtree, 4501 Creedmore Road, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by September 16, 1986. The hearing record will remain open for written comments for 30 days from August 18, 1986 through September 16, 1986. Written comments must be sent to the APA Coordinator at the address specified above by September 16, 1986 and must state the proposed rule or rules to which the comments are addressed.

SUBCHAPTER 14B - RULES OF PROCEDURE

SECTION .0100 - RULE-MAKING PROCEDURES FOR THE COMMISSION AND THE DIVISION DIRECTOR

.0101 PURPOSE AND SCOPE

(a) The purpose of Rules .0101 through .0107 and Rule .0109 of this Section is to set forth the procedures for rule-making hearings of the Commission for Mental Health, Mental Retardation and Substance Abuse Services

and the Director of the Division of Mental Health, Mental Retardation and Substance Abuse Services.

(b) The procedures in these rules shall be followed by persons wishing to submit comments, written or oral, at rule-making hearings and by persons requesting additional information regarding proposed or adopted rules.

(c) As used in these rules, the term "rule" has the meaning specified in G.S. 150B-2(8a) and includes the amendment or repeal of a prior rule as well as the adoption of a new rule.

.0102 PETITIONS

(a) Except for petitions regarding the addition, deletion, or rescheduling of controlled substances which are governed by 10 NCAC 45H .0217, any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Commission for Mental Health, Mental Retardation and Substance Abuse Services or the division director shall address the petition to: Chairman, Commission for Mental Health, Mental Retardation and Substance Abuse Services, c/o A.P.A. Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 North Salisbury Street, Raleigh, North Carolina 27611.

(b) The petition shall contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents and the statutory authority for the commission or the division director to promulgate the rule;
- (2) reason for proposal;
- (3) effect of existing rules;
- (4) any data supporting the proposal;
- (5) effect of the proposed rule on existing practices in the area involved, including cost factors;
- (6) names and addresses, if known, of those most likely to be affected by the proposed rule with addresses, if known; and
- (7) name and address of the petitioner.

(c) The A.P.A. coordinator shall determine whether the rule comes under the statutory authority of the commission or the division director or both and submit the petition to the appropriate body.

~~(c)~~ (d) The commission or division director shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. The commission or division director shall consider all the contents of the petition, plus any additional information it deems deemed relevant.

~~(d)~~ (e) Within 30 days after

submission of the petition, the commission shall render a final decision. The commission or division director shall render a final decision on the petition within the time requirements of G.S. 150B-16. If the decision is to deny the petition, the chairman shall notify the petitioner shall be notified in writing, stating and provided the reasons for the denial. Denial of the petition shall be considered a final agency decision as specified in G.S. ~~150A-16.~~ 150B-16. If the decision is to approve the petition, the chairman shall initiate rule-making proceedings shall be initiated in accordance with G.S. 150A-11(4) and 150A-12 or G.S. 150A-13. the rules in this Section.

.0103 NOTICE

(a) Upon a determination to hold when a rule-making hearing is scheduled for either the commission or the division director, either in response to a petition or otherwise, the commission division shall give notice to all interested parties of a public hearing on the proposed rule in accordance with ~~G.S. 143B-13 and 150A-12.~~ of a public hearing. The notice shall be given at least 10 days before the public hearing and the adoption, amendment, or repeal of the rule, meet the requirements of G.S. 150B-12 except that hearing notices for commission rule-making hearings shall meet the time requirements of G.S. 143B-18.

(b) Persons or agencies desiring to be placed on the mailing list for the commission's rule-making notices shall submit a written request, furnishing their name and mailing address, to A.P.A. Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 North Salisbury Street, Raleigh, North Carolina 27611. The request shall state the subject areas within the authority of the commission for which notice is requested.

(c) The division director or his designee shall review the mailing list periodically and may write to any person on the list to inquire whether that person wishes to remain on the list. If no response is received within 30 days, that person may be removed from the list.

(d) (b) Persons desiring

information in addition to that provided in a particular rule-making notice shall contact the division's A.P.A. coordinator or other person specified in the hearing notice according to the directions in the notice.

.0104 HEARINGS

(a) Oral presentations.

Any person desiring to make an oral presentation on a proposed rule should file a request at least one day prior to the hearing with the division's A.P.A. coordinator or other person specified in the hearing notice. Any person making an oral presentation is encouraged to submit a written copy of the presentation to the hearing officer prior to or at the hearing. Oral presentations shall not exceed 10 minutes unless, upon request either before or at the hearing, the hearing officer grants an extension of time for good cause.

(b) Written Submissions.

(1) Any person may file a written submission containing data, comments, or arguments after publication of a rule-making notice up to one day prior to the hearing. within the 30-day period that the hearing record is open for written comments. The deadline for written submissions shall be stated in the hearing notice.

(2) The written submission shall clearly state the proposed rule to which the comments are addressed and shall also include the name and address of the person submitting it. Written submissions shall be sent to the person and address specified in the hearing notice.

~~(3)~~ The hearing officer shall promptly acknowledge receipt of all written submissions.

(c) Management of Hearing.

The hearing officer shall have complete control of the hearing, including:

(1) the responsibility of having a record made of the hearing,

(2) extension of any time allotments,

(3) recognition of speakers,

(4) elimination of repetitious presentations, and

(5) general management of the hearing.

(d) Fair Opportunity to

Present Views. The hearing officer shall insure that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

.0105 JUSTIFICATION OF RULE-MAKING DECISION

(a) Any interested person, either prior to adoption of a rule or within 30 days thereafter, who desires a concise statement of the principal reasons for and against the adoption of a rule by the commission or division director and the factors that led to overruling the considerations urged against its adoption, may submit a request to: Chairman of the Commission, c/o A.P.A. Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 North Salisbury Street, Raleigh, North Carolina 27611.

(b) For purposes of this Rule, an "interested person" shall be any person, group, or organization whose rights, duties, or privileges might be affected by the adoption of the rule.

(c) The request shall be made in writing, shall identify the rule or proposed rule involved, and shall contain a statement of the reasons of interest.

.0106 RECORD OF RULE-MAKING PROCEDURES

A record of all commission rule-making hearings shall be permanently maintained by the division's office of the division's A.P.A. coordinator. The record shall be available for public inspection during regular office hours and shall include:

- (1) any petitions received by the commission, related to the hearing,
- (2) the hearing notice,
- (3) all written memoranda and information submitted,
- (4) a record of the oral hearing, and
- (5) any statement of reasons issued to an interested person according to Rule .0105 of this Section, and
- ~~(5)~~ (6) a final draft of the rule.

The record shall be available for public inspection during regular office hours.

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental

Health, Mental Retardation and Substance Abuse Services intends to adopt, amend, repeal regulations cited as 10 NCAC 14B .0109; 10 NCAC 14C .0401 and .0405 through .0415; 10 NCAC 45G .0308; 10 NCAC 45H .0202, .0203, .0205. The purpose of the proposed regulations 10 NCAC 14B .0109 and 10 NCAC 14C .0401 and .0405 through .0415 are proposed for repeal to eliminate repetition of statutes and internal management policies; 10 NCAC 45G .0308 is proposed for adoption to limit Dronabinol to use as an antiemetic for nausea associated with cancer treatment; 10 NCAC 45H .0202, .0203 and .0205 are proposed for amendment to reschedule controlled substances for consistency with action taken by the Drug Enforcement Administration and the General Assembly.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 90-88; 90-100; 90-101(h); 122C-55; 122C-132; 122C-206; 143B-147; 150B-11; 150B-13.

The public hearing will be conducted at 10:30 a.m. on September 17, 1986 at President's II Room, Sheraton Crabtree, 4501 Creedmore Road, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by September 16, 1986. The hearing record will remain open for written comments for 30 days from August 18, 1986 through September 16, 1986. Written comments must be sent to the APA Coordinator at the address specified above by September 16, 1986 and must state the proposed rule or rules to which the comments are addressed.

SUBCHAPTER 14B - RULES OF PROCEDURE

SECTION .0100 - RULE-MAKING PROCEDURES FOR THE COMMISSION

.0109 TEMPORARY RULES (REPEAL)

SUBCHAPTER 14C - GENERAL RULES

SECTION .0400 - TRANSFER OF CLIENTS

- .0401 REFERRAL OF PATIENTS (REPEAL)
- .0405 TRANSFER OF RESPONDENTS IN PRE-HEARING CUSTODY (REPEAL)
- .0406 PURPOSE AND SCOPE (REPEAL)
- .0407 DEFINITIONS (REPEAL)
- .0408 TRANSFERS BETWEEN REGIONAL PSYCHIATRIC HOSPITALS (REPEAL)
- .0409 TRANSFERS BETWEEN REGIONAL MENTAL RETARDATION CENTERS (REPEAL)
- .0410 TRANSFERS BETWEEN REGIONAL ALCOHOLIC REHAB CENTERS (REPEAL)
- .0411 TRANSFERS BETWEEN DISSIMILAR REGIONAL FACILITIES (REPEAL)
- .0412 MEDICAL-SURGICAL TRANSFERS (REPEAL)
- .0413 NORTH CAROLINA SPECIAL CARE CENTERS (REPEAL)
- .0414 REVIEW PROCEDURE (REPEAL)
- .0415 INTERSTATE TRANSFERS (REPEAL)

SUBCHAPTER 45G - MANUFACTURES: DISTRIBUTORS: DISPENSERS AND RESEARCHERS OF CONTROLLED SUBSTANCES

SECTION .0300 - PRESCRIPTIONS

.0308 USE OF DRONABINOL IN SCHEDULE II
Practitioners licensed pursuant to Chapter 90, Article 5, may dispense Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product only as an antiemetic agent in cancer chemotherapy.

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

.0202 SCHEDULE I

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) mecloqualone 2572
- (2) methaqualone 2565

.0203 SCHEDULE II

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital 2125
- (2) Methaqualone 2565
- (2) Pentobarbital 2270
- (3) Secobarbital 2315

(f) Hallucinogenic Substances.
Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product 7369

Some other names for dronabinol: (6aP-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo b,d pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

.0205 SCHEDULE IV

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (18) Midazolam 2884
- (24) Quazepam 2881

Notice is hereby given in accordance with G.S. 150B-12 that the Director of the Division of Mental Health, Mental Retardation and Substance

Abuse Services intends to adopt, repeal regulations cited as 10 NCAC 14B .0201 through .0207; 14C .0704 through .0716; 15B .0902 through .0908; 15D .0901 through .0931; 15E .1402 through .1435; 16B .0501 through .0510; 16E .0033; 17B .0201, .0202; 17C .0201; 17D .0201. The purpose of the proposed regulations 10 NCAC 14B .0201 through .0207 are proposed for repeal and will be replaced by combined rules for the Commission and Division Director being amended in 10 NCAC 14B .0101 through .0106. 10 NCAC 14C .0704 through .0716 are proposed for adoption and will provide uniform rules governing department, traffic, parking, and registration of vehicles at Division institutions. 10 NCAC 15B .0902 through .0908, 15D .0901 through .0931, 15E .1402 through .1435, 16B .0501 through .0510, 16E .0033, 17B .0201 and .0202, 17C .0201, 17D .0201 are proposed for repeal and will be replaced by the uniform department and traffic rules proposed for adoption in 10 NCAC 14C .0704 through .0716.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 14-132; 20-37.6(f); 122C-402; 122C-403; 143-116.6; 143-116.7; 143B-10(j)(2); 150B-11; 150B-12; 150B-13.

The public hearing will be conducted at 10:30 a.m. on September 16, 1986 at President's II Room, Sheraton Crabtree, 4501 Creedmore Road, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jackie Stalnaker, APA Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611, (919) 733-7971 by September 16, 1986. The hearing record will remain open for written comments for 30 days from August 18, 1986 through September 16, 1986. Written comments must be sent to the APA Coordinator at the address specified above by September 16, 1986 and must state the proposed rule or rules to which the comments are addressed.

SUBCHAPTER 14B - RULES OF PROCEDURE

SECTION .0200 - PROCEDURES FOR DIRECTOR

- .0201 PETITIONS (REPEAL)
- .0202 NOTICE (REPEAL)
- .0203 HEARINGS (REPEAL)
- .0204 JUSTIFICATION OF RULEMAKING DECISION (REPEAL)
- .0205 RECORD OF RULEMAKING PROCEEDINGS (REPEAL)
- .0206 FEES (REPEAL)
- .0207 EMERGENCY RULES (REPEAL)

SUBCHAPTER 14C - GENERAL RULES

SECTION .0700 - RULES GOVERNING DEPARTMENT: TRAFFIC: PARKING AND REGISTRATION OF VEHICLES AT DIVISION INSTITUTIONS

.0704 PURPOSE

The purpose of Rules .0704 through .0716 in this Section is to establish specific procedures governing traffic, parking, registration of motor vehicles, and the department of individuals or groups of individuals on the grounds of division institutions. These procedures are supplemental to G.S. 14-132 and the statewide motor vehicle laws in Chapter 20 of the General Statutes which are applicable on the grounds of division institutions.

.0705 SCOPE

The provisions of Rules .0704 through .0716 in this Section apply to the grounds and all persons thereon and to the drivers of all vehicles, whether public or private, and shall be in force 24 hours a day, except as otherwise provided in the rules. It shall be unlawful for any person to violate the provisions of these rules except as otherwise permitted in the rules or in the General Statutes.

.0706 DEFINITIONS

The definitions of all terms shall be as provided in the General Statutes of North Carolina, insofar as they are provided. The meaning of other terms shall be as follows:

- (1) "Crosswalk" means that portion of a roadway ordinarily included within

the prolongation or connection of lateral lines of sidewalks at intersections, or any portion of a roadway distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway.

- (2) "Dormant storage" means the parking of a non-operative vehicle for a period longer than seven days.
- (3) "Institution" means the division's psychiatric hospitals, mental retardation centers, alcoholic rehabilitation centers, North Carolina Special Care Center at Wilson, Wright School and Whitaker School.
- (4) "Institution director" means the chief administrative officer or manager of the institution or his/her designee.
- (5) "Law enforcement officer" means an individual who is qualified and has been certified or who is in the process of being certified according to the requirements of G.S. 17C-6 or has been appointed under G.S. 122C-183.
- (6) "Park" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of, and while actually engaged in loading and unloading.
- (7) "Secretary" means Secretary of the Department of Human Resources.
- (8) "Stop" means, when required, complete cessation of movement.
- (9) "Street or roadway" means any way or place designated or marked by proper authorities for vehicular travel.
- (10) "Traffic office" means an office as designated by the institution director to administer these rules.
- (11) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon the grounds, excepting devices moved by human power.
- (12) "Walk or walkway" means a way designed for, or marked by proper authorities for, the exclusive use of pedestrians, whether along a street or roadway or not.

.0707 DEFACING SIGNS
No person without authority

shall attempt to, or in fact, alter, deface, injure, knock down or remove any official traffic control sign or device or any railroad sign or signal, or any inscription, shield or insignia thereon, or any other part thereof. Violators of this Rule shall be arrested and prosecuted according to the provisions of General Statute 14-132.

.0708 OBEYING OFFICERS AND SIGNS

The driver of any vehicle shall obey the instructions of any law enforcement officer having jurisdiction to enforce the statewide motor vehicle laws and of any official traffic sign or control device applicable thereto, placed in accordance with the rules of this Section, unless otherwise directed by such officer. The institution director may erect, establish and maintain the signs, signals, and markings necessary to implement the rules in this Section and state motor vehicle laws applicable to the institution grounds.

.0709 VEHICLE REGISTRATION

(a) Each vehicle used or parked on institutional property by employees shall be registered and shall display an official sticker. Newcomers to the institutional staff shall display an official sticker within 48 hours of beginning employment, excluding holidays and weekends. For the purposes of the rules in this Section, "employees" shall include those persons who have assigned work stations on the grounds of the institution. Bonafide visitors to the institution are exempt from vehicle registration requirements. Students and trainees shall register their vehicles and display an official temporary permit valid up to 90 days.

(b) The registration sticker shall be mounted on the left hand side of the rear bumper of the vehicle in such a manner as to be clearly visible upon approaching the rear of the vehicle. The temporary permit shall be displayed in the lower left hand side of the rear window.

(c) Out-of-date stickers shall not be displayed on vehicles.

(d) No person shall display a counterfeit sticker or sticker issued to another vehicle or vehicle registrant.

(e) The person to whom the registration sticker is issued shall be responsible for all civil penalties charged for violation of the rules in this Section regardless of who is operating the vehicle.

(f) The employee shall present his/her ownership registration card or other proof of ownership, if requested, for the vehicle to be registered.

(g) A copy of the latest traffic rules shall be issued with each registration sticker.

(h) The individual assigned responsibility for a vehicle with a permanent state license shall receive notice of any improper operation of or citation issued to the vehicle for conveyance to the appropriate operator of the vehicle.

(i) Registration stickers shall serve as parking permits and may be obtained as such location as designated by the institution director.

(j) Registration stickers shall be issued to be valid for a period of up to three years dating from the date of the facility-wide issue. There shall be a charge of one dollar (\$1.00) each for the original registration sticker and one dollar (\$1.00) for each additional or replacement registration sticker.

(k) A temporary permit shall be obtained when it is necessary to bring a vehicle on the grounds as a replacement for one previously registered. Temporary permits shall be obtained at the location designated by the institution director and shall be effective only for the period of time specified on the temporary permit.

.0710 VEHICLE OPERATION

(a) No vehicle shall be driven or ridden except upon the streets, roadways, alleys and driveways of the institution's grounds. Vehicles shall not be driven or ridden upon or within any sidewalk or walking area or within any area not designated for vehicular traffic.

(b) When stop signs or signals are erected upon streets, roadways, or alleys of the institution grounds each driver of a vehicle shall stop at every such sign or signal, or at a clearly marked stop line, before entering the street or intersection, except when directed to proceed by an

officer or traffic control signal.

(c) When yield signs are erected upon streets, roadways, or alleys, each driver of a vehicle shall yield the right-of-way to opposing traffic before entering the street or intersection, except when directed to proceed by an officer or traffic control signal.

.0711 PARKING

(a) No person shall stop any vehicle in any street, roadway or parking lot except for parking or stopping as allowed by the rules in this Section unless such stop is made necessary by:

- (1) the approach of emergency vehicles as defined in the General Statutes;
- (2) the approach of any procession which is given the right-of-way;
- (3) the stopping of a bus to load or unload passengers;
- (4) traffic signals;
- (5) the passing of some other vehicle or pedestrian; or
- (6) some emergency.

In the cases covered by these exceptions, vehicles shall stop so as not to obstruct any crosswalk, walkway, street, or intersection. In case of an emergency, provisions for the removal of the vehicle shall be made within a reasonable period of time. "Reasonable time" shall be determined by the seriousness of the hazard created by such an emergency stop.

(b) When signs are erected, placed or installed establishing time zones for parking and giving notice thereof, no person shall park a vehicle for a period of time longer than that indicated by the sign. Time zone restrictions shall be in effect at all times, unless otherwise indicated on the time zone sign.

(c) Vehicles shall be parked at the angle to the curb indicated by marks or signs, and no vehicle shall be parked in such a manner as to occupy more than the space indicated by lines, signs, or markings for one vehicle.

(d) Vehicles shall be parked only in designated parking spaces. Parking spaces are defined by appropriate painted lines in the surfaced parking areas and by parking bumper logs in the gravel-dirt parking areas.

(e) Vehicles shall be parked

with the front end toward the curb except where parallel parking is indicated. In no instance shall a vehicle be parked with its rear to the curb.

(f) No person shall park a vehicle upon any street, roadway, alley, parking lot or driveway for the principal purpose of:

- (1) displaying it for sale;
- (2) washing, greasing or repairing such vehicle except for repairs necessitated by an emergency; or
- (3) storage which is not incident to the bonafide use and operation of such vehicle.

(g) Agents designated by the institution director may remove to a place of storage, at the owners expense, any unattended vehicle illegally stopped or parked in such a manner as to be: blocking the normal movement of a properly parked car; obstructing the flow of traffic; creating a safety hazard endangering life and/or property; using authorized or unauthorized parking space for dormant storage; or in violation of the rules in this Section. Any such removal shall meet the requirements of Article 7A of Chapter 20 of the General Statutes.

(h) Nothing in the rules in this Section shall be deemed to prohibit authorized service vehicles from operating in such a manner as is necessary for the particular service being performed.

.0712 PARKING AREAS

All vehicles may park in any designated parking location on a first-come, first-served basis, except in those areas designated and marked as service zones, loading zones, handicapped parking, and restricted and/or reserved parking zones or spaces.

.0713 PARKING EXCEPTIONS

If a vehicle must be parked in violation of the rules in this Section due to an emergency situation, the employee or visitor shall notify the institution traffic office immediately and give his/her name, make and color of vehicle, parking permit number if applicable, location, description of the emergency, and estimated time vehicle will need to remain in the prohibited area.

.0714 SPEED LIMITS

Speed limits for the grounds of the institution shall be indicated by clearly marked standard speed limitation signs posted in conspicuous locations next to streets and roadways. Speed limits lower than those provided in G.S. 20-141 shall be established only upon the direction of the secretary and shall be based upon a traffic and engineering investigation conducted pursuant to G.S. 143-116.7(b). A copy of the traffic and engineering investigation may be inspected in the traffic office of the institution.

.0715 STREET AND GROUNDS RESTRICTIONS

(a) No person shall use the streets, roadways, parking lots, alleys, driveways, or sidewalks for the conduct of protests or for the purpose of advertising any article, commodity, service, or event by sign, poster, drawing, painting, or photograph, by crying out the same, or by using any loudspeaker, musical instrument or noise making device. However, the institution director may formulate and issue a policy regarding the broadcasting of official announcements and/or instructions for a specific event.

(b) No person, firm, or corporation shall use the streets, roadways, parking lots, alleys, driveways, or sidewalks for the purpose of selling, or offering for sale, any article, commodity or service.

(c) The institution director may close any street, roadway, parking lot, or driveway, or any portion thereof, when necessary for the purpose of construction or maintenance work, or for the protection of pedestrians or for special events. When such closing has been indicated by proper signs, barriers or obstructions, no person shall willfully drive into or upon such street, roadway, alley, or driveway, or portion thereof, or break down, remove, injure or destroy any such sign, barrier or obstruction.

(d) No person, firm, or corporation shall throw, dump or place in any manner any paper, glass, trash, garbage, rubbish, filth, wood, boxes, dirt, or any other articles of substance on any street, roadway, parking lot, alley, driveway, or

sidewalk of the institutional grounds or any place where such matters may be blown or washed or may fall in these areas. This subparagraph shall not be deemed to prohibit any construction or maintenance work or properly authorized disposal operations.

.0716 VIOLATIONS

(a) Violation of the rules in this Section shall subject the offender to a civil penalty. The offender and the person to whom the vehicle is registered may be charged civil penalties for non-moving violations as follows:

(1) employees only:

(A) failure to register a vehicle, five dollars (\$5.00);

(B) failure of a registered vehicle owner to secure a temporary permit when using a non-registered vehicle, two dollars (\$2.00);

(C) failure to display or improper display of parking sticker, two dollars (\$2.00); and

(D) failure to remove expired parking sticker, two dollars (\$2.00); and

(2) all violators:

(A) parking in a restricted area or restricted parking space, five dollars (\$5.00);

(B) blocking a fire hydrant, five dollars (\$5.00);

(C) parking on grass, five dollars (\$5.00);

(D) blocking a walkway, two dollars (\$2.00);

(E) double parking or parking in driving lane, five dollars (\$5.00);

(F) improper use of a service zone, five dollars (\$5.00);

(G) parking out of space, two dollars (\$2.00);

(H) parking with rear of vehicle to curb, two dollars (\$2.00);

(I) overtime parking, two dollars (\$2.00);

(J) parking in "non-parking" zone, five dollars (\$5.00); and

(K) parking in a "handicapped space", twenty-five dollars (\$25.00).

(b) Civil penalties for non-moving violations listed in (a) of this Rule shall be processed as follows:

(1) By the fifth calendar day

of the month following the citation, the face value of the penalty indicated may be paid by writing on the ticket the name of the person to whom the vehicle is registered and mailing it together with payment to the person or office as designated on the citation by the institution director.

(2) If the person receiving the citation feels that the citation was unjustly issued, a request for review may be made in writing to the director of the institution. The request for review shall be made within five days of the date the citation was issued and shall state the reason for review. The director shall notify the person in writing of the final decision regarding the review. If the decision sustains the issuance of the citation, the date of written notice shall become the effective date of issue of the citation and the penalty shall be paid according to the instructions in (b) (1) of this Rule. If the review determines a citation should not have been issued, no further action shall be required.

(3) If the penalty is not paid by the fifth calendar day of the month following the citation, the institution director shall mail a notice to the person in whose name the vehicle is registered. If the offender is an institution employee, the division supervisor and the appropriate supervisor shall also be instructed to contact the registrant.

(4) If the penalty is not paid by the last calendar day or the month following the citation, the institution director shall initiate enforcement by civil action in the nature of a debt.

(c) Court citations shall be issued for all violations not listed in (a) of this Rule including all violations of state motor vehicle laws, all speeding violations, violations arising from failure to obey traffic control signs or devices, and violations of department and grounds control requirements. The offender shall be cited to stand trial for the alleged offense in the

General Court of Justice by the officer observing the violation.	(REPEAL)
SUBCHAPTER 15B - BROUGHTON HOSPITAL	.0917 TIME ZONE PARKING (REPEAL)
SECTION .0900 - SAFETY AND TRAFFIC	.0918 PARKING ANGLE (REPEAL)
.0902 SPEED LIMIT (REPEAL)	.0919 FROHIBITED PARKING (REPEAL)
.0903 PATIENT RIGHT-OF-WAY (REPEAL)	.0920 IMPROPER USE OF PARKING (REPEAL)
.0904 THROUGH TRAFFIC (REPEAL)	.0921 REMOVAL OF VEHICLES (REPEAL)
.0905 PARKING SPACES (REPEAL)	.0922 SERVICE VEHICLES (REPEAL)
.0906 TIME LIMIT (REPEAL)	.0923 PARKING AREAS (REPEAL)
.0907 TRANSPORT OF PATIENTS (REPEAL)	.0924 PROHIBITED USE OF STREETS (REPEAL)
.0908 TOWING IMPROPERLY PARKED CARS (REPEAL)	.0925 CLOSING TRAFFIC AREAS (REPEAL)
SUBCHAPTER 15D - DOROTHEA DIX HOSPITAL	.0926 LOITERING (REPEAL)
SECTION .0900 - TRAFFIC	.0927 DUMPING ON GROUNDS (REPEAL)
.0901 DEFINITION OF TERMS (REPEAL)	.0928 CIVIL PENALTIES AND COURT CITATIONS (REPEAL)
.0902 APPLICABILITY OF REGULATIONS (REPEAL)	.0929 TOWING (REPEAL)
.0903 DEFACING SIGNS (REPEAL)	.0930 USE OF FUNDS (REPEAL)
.0904 VEHICLE REGISTRATION (REPEAL)	.0931 PROCESSING TRAFFIC VIOLATIONS (REPEAL)
.0905 OBEYING OFFICERS AND SIGNS (REPEAL)	SUBCHAPTER 15E - JOHN UMSTEAD HOSPITAL
.0906 OBTAINING REGISTRATION STICKERS (REPEAL)	SECTION .1400 - SAFETY AND TRAFFIC
.0907 MOUNTING REGISTRATION STICKERS (REPEAL)	.1402 COVERAGE OF TRAFFIC REGULATIONS (REPEAL)
.0908 INVALID STICKERS (REPEAL)	.1403 ENFORCEMENT OF TRAFFIC RULES (REPEAL)
.0909 RESPONSIBILITY FOR VEHICLES (REPEAL)	.1404 DRIVER COMPLIANCE (REPEAL)
.0910 REPLACEMENT STICKERS (REPEAL)	.1405 TRAFFIC SIGNS (DEPEAL)
.0911 TEMPORARY PERMITS (REPEAL)	.1406 DEFACING SIGNS (REPEAL)
.0912 OPERATION OF VEHICLES (REPEAL)	.1407 OPERATION OF VEHICLES (REPEAL)
.0913 STOP SIGNS (REPEAL)	.1408 STOP SIGNS (REPEAL)
.0914 YIELD SIGNS (REPEAL)	.1409 YIELD SIGNS (REPEAL)
.0915 STOPPING IN STREET (REPEAL)	.1410 PARKING AREAS (PEPEAL)
.0916 BLOCKING TRAFFIC	.1411 STOPPING IN STRDEETS (REPEAL)
	.1412 EMERGENCY STOPPING

(REPEAL)	(REPEAL)
.1413 BLOCKING TRAFFIC (REPEAL)	.0502 VEHICLE REGISTRATION (REPEAL)
.1414 TIME ZONE PARKING (REPEAL)	.0503 OPERATION OF VEHICLES (REPEAL)
.1415 PARKING ANGLE (REPEAL)	.0504 PARKING REGULATIONS (REPEAL)
.1416 PROHIBITED PARKING (REPEAL)	.0505 PARKING AREAS (REPEAL)
.1417 TOWING (REPEAL)	.0506 SPEED LIMIT (REPEAL)
.1418 SERVICE VEHICLES (REPEAL)	.0507 PROHIBITED STREET USES (REPEAL)
.1419 IMPROPER USE OF PARKING (REPEAL)	.0508 VIOLATION FINES (REPEAL)
.1420 PROHIBITED USE OF STREETS (REPEAL)	.0509 TOWING (REPEAL)
.1421 CLOSING TRAFFIC AREA (REPEAL)	.0510 PROCEDURES FOR PROCESSING VIOLATIONS (REPEAL)
.1422 LOITERING (REPEAL)	SUBCHAPTER 16E - WESTERN CAROLINA CENTER: IDENTIFYING INFORMATION
.1423 DUMPING ON GROUNDS (REPEAL)	.0033 PARKING (REPEAL)
.1424 SPEED LIMIT (REPEAL)	SUBCHAPTER 17B - BLACK MOUNTAIN AR CENTER
.1425 CIVIL PENALTIES AND COURT CITATIONS (REPEAL)	SECTION .0200 - PARKING
.1426 USE OF FUNDS (REPEAL)	.0201 PARKING AREAS (REPEAL)
.1427 PROCESSING TRAFFIC VIOLATIONS (REPEAL)	.0202 VIOLATIONS (REPEAL)
.1428 EMPLOYEE VEHICLE REGISTRATION (REPEAL)	SUBCHAPTER 17C - BUTNER AR CENTER
.1429 VISITOR VEHICLES (REPEAL)	SECTION .0200 - MISCELLANEOUS
.1430 OBTAINING VEHICLE STICKER (REPEAL)	.0201 PATIENT PARKING (REPEAL)
.1431 VEHICLE RESPONSIBILITY (REPEAL)	SUBCHAPTER 17D - WALTER B. JONES ALCOHOLIC REHABILITATION CENTER
.1432 MOUNTING VEHICLE STICKERS (REPEAL)	SECTION .0200 - MISCELLANEOUS
.1433 INVALID VEHICLE STICKERS (REPEAL)	.0201 PATIENT PARKING (REPEAL)
.1434 VEHICLE REPLACEMENT STICKERS (REPEAL)	Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to amend regulations cited as 10 NCAC 44C .1601 through .1604. The purpose of the proposed regulations is to specify staffing requirements, admission criteria, evaluation, and performance standards, and monitoring and reporting requirements for CBA funded school related programs. Proposed amendments upgrade staffing requirements and adjust CBA standards to be in accord with recently changed guidelines of the Department of Public
.1435 TEMPORARY VEHICLE PERMIT (REPEAL)	
SUBCHAPTER 16B - CASWELL CENTER	
SECTION .0500 - REGULATIONS GOVERNING TRAFFIC: PARKING: AND THE REGISTRATION OF MOTOR VEHICLES FOR CASWELL CENTER	
.0501 GENERAL REGULATIONS	

Instruction for in-school suspension programs. These changes will improve services.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 7A-289.14; 143-B10.

The public hearing will be conducted at 2:00 p.m. on September 15, 1986 at Division of Youth Services, Conference Room, Dobbin Building, 705 Palmer Drive, Raleigh, NC 27603.

Comment Procedures: Written comments, opinions, and arguments concerning these amendments must be submitted by September 10, 1986 to: Director, Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603. Oral comments (for no more than 10 minutes) may be presented at the hearing.

SUBCHAPTER 44C - CBA PROGRAM STANDARDS

SECTION .1600 MINIMUM PERFORMANCE STANDARDS FOR CBA FUNDED SCHOOL RELATED PROGRAMS

.1601 STAFFING

(a) Requirements for Alternative School Program (ASP) Teacher/Counselor. Alternative School Programs may include: In-School Suspension, and Alternative Learning Centers.

The Alternative School Programs ASP teacher/counselor must be a certified teacher or human service related professional with at least a B.A. degree and some background and training in counseling. An Alternative School Programs ASP teacher/counselor must be assigned full time to the program during the program's normal operating hours.

~~NOTE: Alternative School Programs may include In-school Suspension, Detention Rooms, Time-out Rooms, Tutoring Programs, and Alternative Learning Centers.~~

(b) Provisional Standards for Teacher/Counselor. Where lack of adequate funding prevents the employment of a certified teacher or human service professional, ASP programs may utilize a teacher aide or other para-professional provided Those teachers/counselors hired prior to the beginning of 1985-86

school year who do not meet the requirements of paragraph (a) of this rule must comply with the following provisions:

(1) That during the first year of employment, five hours of supervision and classroom training by a certified teacher or human service professional be provided on a weekly basis;

(2) that in each subsequent year of employment, two hours of supervision and classroom training by a certified teacher or human service professional be provided on a weekly basis;

(3) the training and supervision required in subparagraphs ~~(b)~~

~~(1) and (b) (2)~~ of this Rule, must cover such things as: maintaining discipline, overall classroom supervision, orientation to other faculty members, individual counseling, and one-to-one tutoring skills development, etc.;

~~(4) that the Local Education Agency (LEA) of the Department of Public Instruction document its need for the provisional status and submit a plan (to be included in yearly program agreement) for upgrading the program as may be required by the annual program evaluation. This includes the requirement to meet the CBA Minimum Performance Standards;~~

~~(5) (4) not more than four para-professionals may be supervised by a full time professional;~~

~~(6) (5) para-professionals must meet all local school board requirements for employment; and~~

~~(7) (6) Youth assigned to programs supervised by para-professional personnel may not be assigned for more than 10 days and may not spend more than 20 days in the ASP during any single school year.~~

(c) Staff/Student Ratio. Programs must maintain a weekly average of not more than 12 pupils per class period per certified teacher or other human service professional. The weekly average per class may be increased by six pupils for each additional certified teacher or human service professional assigned to the ASP and by four pupils per day for each para-professional or teacher's aide.

(d) Provisional Standard for Staff/Student Ratio. Programs qualifying under the provisional standard for staffing must maintain a weekly average of not more than six pupils per class period.

.1602 ADMISSION CRITERIA

(a) Age Limits for Students Served by ASP. All youth served by CBA funded ASP programs must be actively enrolled in school and above the age of nine.

(b) Identification and Length of Stay.

(1) When ASP is used as a disciplinary alternative, there must have been a violation of school rules and regulations governing disruptive or disrespectful behavior which could result in out-of-school suspension or expulsion. Length of stay may not exceed 10 consecutive days. Disciplinary actions must be taken in compliance with minimum due process as defined herein as:

(A) there must be a fair and reasonable rule which is broken or disobeyed;

(B) the rule must apply equally to all; and

(C) if punishment is meted out for violation of a reasonable and fair rule, that procedure by which the punishment is assessed must be fair, reasonable and impartial. ("Some Consideration for Establishing Policies Relative to Student Rights and Responsibilities," Division of Human Relations and Student Affairs, North Carolina Department of Public Instructions, August 1, 1977, p. 19.)

(2) Only the violation of school rules which are life threatening, or result in serious property damage, or involve the use or sale of any controlled substance may result in automatic out-of-school suspension.

(3) For all other violations which could result in out-of-school suspension, the ISS program must be used before a child may be suspended out of school, except in the case where the child or the child's parent or guardian refuses to accept placement in the I.S.S. program.

(4) Use of I.S.S. for the violation of school rules that cannot result in out-of-school suspension shall not be permitted.

(5) A copy of the school rules governing student behavior and stipulating approved sanctions must be included in the annual program agreement which is submitted to CBA for funding approval.

(2) (6) An individual Education Plan (IEP) --as provided in Subparagraph (b) (5) of this Rule Subparagraph (7) and (8) of this Rule --shall be required for any child assigned to In-School Suspension (ISS) in excess of 20 non-consecutive days per school year. The IEP for ISS referrals must include:

(A) a list of other resources that have been considered or tried or a statement that no appropriate resource is available;

(B) documentation of the programs and/or the school's efforts to initiate a parental conference or the date and time such conference took place.

(C) a finding by the ASP and responsible school officials that continuing involvement in the ISS is in the best interest of the youth.

(3) Minimum due process is hereby defined as:

(A) there must be a fair and reasonable rule which is broken or disobeyed;

(B) the rule must apply equally to all; and

(C) if punishment is meted out for violation of a reasonable and fair rule, that procedure by which the punishment is assessed must be fair, reasonable, and impartial.

(4) ASP may also be used as a treatment and counseling alternative to stimulate student motivation, build self-confidence, improve individual study habits and improve classroom behavior. If length of stay exceeds ten consecutive days, an individualized Education Plan must be developed.

(7) Admission to Alternative

Learning Centers programs requires the development of an Individual Education Plan (IEP) outlining the treatment, counseling and teaching strategies to be used to stimulate student motivation and self confidence and to improve study habits and classroom behavior. Length of stay to be determined based on the individual needs as documented in the IEP.

(5) (8) The Individual Education Plan must;

(A) not be used as a punitive tool to control behavior;

(B) attempt to specifically detail in writing the educational and behavioral problems in need of remediation;

(C) be negotiated with and signed by the student and the student's parents or guardian. To implement the IEP without parental approval, the program must follow the procedures outlined under the policies for exceptional children, which can be obtained through any regional office (LEA) of the Department of Public Instruction;

(D) include time-specific educational and behavioral objectives designed to reintegrate the student into the regular class upon fulfillment of the specified objectives goals.

(c) Placement into ASP.

Only the school principal or staff so designated by the principal his/her designee may authorize placement in the ASP.

(d) Parental/Guardian Involvement.

(1) In addition to the required parental involvement included in Subparagraph (b) (5) of this Rule, (8) of this Rule,

parents of guardians must be notified of their child's placement into ASP and the notification must include a specific request for a conference between the parent or guardian and appropriate school personnel. Included in the notification must be an explanation of the policies, procedures, and rules governing the ASP.

(2) Efforts to initiate a parental or guardian conference must be documented

by copy of a letter and/ or by a note placed in the child's file showing the time and date of telephone contact.

(e) Exit Criteria.

When the principal or his designee feels evidence warrants leaving the program, re-assignment to the regular program will be made.

.1603 EVALUATION AND PERFORMANCE STANDARDS

(a) Reduce Court Referrals. Court petitions by any school operating an ISS program will show a reduction of 20 percent when compared to court petitions made by that school during the last school year in which no ISS program was operational. This standard will apply only to schools showing at least 10 petitions in the base year or any year thereafter. Base year is the last full school year prior to the implementation of the ASP.

(b) (a) Reduce Suspensions. Out-of-school suspensions by any school operating a CBA funded ISS program with a maximum length of stay of 10 consecutive days or less will be reduced by 25 percent as compared to suspensions during the last full school year in which no ISS program was operational. The standard will apply only to schools showing at least 10 expulsions in the base year or any year thereafter. shall not exceed 15 percent of the school's average daily enrollment.

(b) Reduce Expulsions. Expulsions (suspension or exclusion from school for more than 10 consecutive days) during any school year by any school operating a CBA funded ISS program shall not exceed 1 percent of the school's average daily enrollment.

(c) Improve Student Behavior.

(1) Twenty-five percent of students completing the ISS will show improved classroom behavior as documented by follow-up evaluation one week after returning to the regular class.

(2) A follow-up evaluation must be submitted by the referring teacher or school administrator as documentation for this standard. A follow-up evaluation must include the student's name, date of referral to the alternative school program, reason for

referral, evaluation of the student's classroom behavior upon return to the regular school program, the teacher's name, and date on which the evaluation was completed.

(d) Reduce Absences. Youth served by CBA funded programs which require Individual Education Plans (IEP) will show a 25 percent reduction in school absences while participating in the CBA funded programs as compared with their school absences during the 12-month period prior to participation in the program.

(e) Reduce Dropouts. Not more than 25 percent of the youth 16 years old or older will drop out of school while participating in CBA funded programs which require the IEP. This standard will apply only to those programs where 10 or more youth 16 years or older participate during a school year.

(f) Documentation. All school related CBA funded programs must utilize the Quarterly School Program Review for school related programs and must submit an Annual Program Review to provide client information for on-going program documentation.

.1604 ORIENTATION AND REPORTING REQUIREMENTS

(a) The Annual Program Review must be submitted at the close of each school year to the CBA Regional Office.

(b) An annual on-site monitoring visit shall be conducted by the CBA regional consultant. The Monitoring Report signed by the regional consultant shall document compliance.

(c) Copies of the Annual Program Review and the On-site Monitoring Report shall be provided to the local CBA Task Force, the school principal and the superintendent of the local school system.

(d) The ASP program director shall attend at least one CBA Task Force meeting for the purpose of briefing the task force on the ASP program.

(e) The ASP program director or the school principal shall be responsible for a faculty orientation prior to the start up of any new CBA funded ASP program.

(f) The ASP program director shall be responsible for providing at least annual

progress reports to all members of the school faculty.

TITLE 11 - INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt regulations cited as 11 NCAC 6 .0700 (.0701 through .0706). The purpose of the proposed regulations is to set out Departmental standards for the Agents' Pre-licensing education program.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 58-41(6).

The public hearing will be conducted at 10:00 a.m. on September 15, 1986 at Hearing Room, Third Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611.

Comment Procedures: Written comments may be sent to Bill Beaty, P. O. Box 26387, Raleigh, North Carolina, 27611. Mr. Beaty may be contacted by calling (919) 733-4935.

CHAPTER 6 - AGENT SERVICES DIVISION

SECTION .0700 - PRE-LICENSING EDUCATION

.0701 GENERAL REQUIREMENTS

(a) This Rule applies to persons attempting to obtain a license to solicit Life and/or Property and Casualty insurance in North Carolina except as specifically exempted by 11 NCAC 6 .0701 (b) (1) through (7).

(b) The following individuals shall be automatically exempt from the provisions of this Chapter:

- (1) Chartered Life Underwriter; or
- (2) Chartered Property and Casualty Underwriter; or
- (3) Life Underwriter Training Council graduate; or
- (4) American Institute of Property and Liability Underwriter graduate; or
- (5) Institute of Insurance of America graduate; or
- (6) Licensed in North Carolina for Life and/or Property and Casualty within 36 months preceding the date of application for a new license in that line of insurance; or

(7) Upon furnishing of letters of clearance certifying that the applicant has been licensed for the same line of insurance within the previous 12 months in another state, such license to have been granted upon successful passing of a written examination given by an insurance department of a state.

(c) In this Chapter, unless otherwise noted the following definitions will apply:

(1) "Classroom School" shall mean Pre-licensing Education sponsored by a company, association or education institution and provided through instruction by either a Lead or Assistant Instructor utilizing a teaching curriculum based on the published North Carolina Course Content Outline.

(2) "Correspondence Course" shall mean Home, self, individual, and correspondence study utilizing programmed text instruction.

(3) "Correspondence School" shall mean Pre-licensing Education sponsored by a company, association or educational institution and provided through completion of correspondence course materials which have been approved by the Commissioner of Insurance with students individually supervised by approved Proctors.

(4) "Program Director" shall mean the individual associated with an approved school who is responsible for administration of that school according to the Administrative Requirements of the Pre-licensing Education Program of the North Carolina Department of Insurance.

(5) "Lead Instructor" shall mean an approved instructor in classroom schools who is responsible for preparation and presentation of lesson plans to assure that the North Carolina Course Content Outline is taught to that school's students and prepares a final course examination. This individual directs and supervises teaching by Assistant Instructors.

(6) "Assistant Instructor" shall mean a person who teaches students in the classroom utilizing that

school's curriculum under supervision of the Lead Instructor and Program Director.

(7) "Proctor" shall mean a individual approved by the Department of Insurance to assist and supervise students in completion of approved Correspondence School courses.

.0702 SCHOOLS

(a) This Rule applies to all schools offering life and property and casualty pre-licensing courses prescribed by General Statute 58-41 through 58-41.1. All such schools desiring to conduct such courses must be approved by the North Carolina Department of Insurance prior to commencement of any course.

(b) Schools seeking approval to conduct Life and for Property and Casualty pre-licensing courses must make written application to the Commissioner upon a form prescribed by the Department of Insurance.

(c) After due investigation and consideration, approval shall be granted to the school when it is shown to the satisfaction of the Commissioner that:

(1) the school has submitted all information required by the Commissioner; and

(2) the course(s) to be conducted complies with Rule .0704 of this Chapter; and

(3) the instructor(s) or Proctor(s) for the course(s) has been certified by the Commissioner in accordance with Rules .0705 or .0706 of this Chapter.

(d) The following shall apply for the approval for pre-licensing education schools:

(1) Approval extends only to the course(s) and location(s) reported in the application for school approval.

(2) The Commissioner's approval of schools shall terminate on June 30 next following the date of issuance.

(3) Schools must renew annually their approval to conduct Life and for Property and Casualty pre-licensing courses by submitting an application for approval not later than May 31 of each year.

(e) The Commissioner may deny, withdraw or suspend approval of any school upon finding that:

(1) Such school has refused

or failed to comply with any of the provisions of Rules .0702, .0703, .0704, .0705, or .0706 of these regulations; or

(2) Any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, N.C. Life or Property and Casualty licensing examination questions; or

(3) Such school's students have a licensing examination performance record which is determined by the Commissioner to be substantially below the performance record of all first-time examination candidates.

(f) In all proceedings to withdraw or deny approval the provisions of the General Statutes shall be applicable.

(g) When a school's approval is discontinued, the procedure for reinstatement will be to apply as a new school with attachments describing reasons that the school is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(h) The following shall apply for changes during the academic year:

(1) Classroom schools must obtain advance approval from the Commissioner for changes of location(s) where courses are to be conducted or changes of Instructors or Proctors. Requests for approval of such changes must be in writing.

(2) Approved schools which intend to terminate their program must notify the Commissioner in writing.

(3) Schools should notify the Commissioner of change of textbook.

(4) The Program Director shall notify the Commissioner in writing at the time an instructor resigns or ceases to be associated with the school.

(i) An approved school may utilize for advertising or promotional purposes licensing examination performance data provided to the school by the Commissioner, provided that any disclosure of such data by the school must be accurate, must be presented in a manner that is not misleading, and:

(1) Be limited to the annual examination performance data for the particular school and for

all examination candidates in the State;

(2) Include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and

(3) Be reviewed and approved by the Commissioner prior to publication.

(j) The following requirements are to be met regarding facilities and equipment of classroom schools:

(1) Schools shall either own their facilities or possess a lease or other agreement for the use of facilities. If facilities are to be leased or rented, the school need not execute such lease or other agreement until notification is received that the school application has been approved; however, such lease or agreement must be executed and a copy provided to the Commissioner prior to the first scheduled class.

(2) All schools facilities and equipment shall have been found by appropriate local building, heating and fire inspectors to be in compliance with all applicable local, state and federal laws and regulations regarding safety and sanitation.

(3) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have adequate light, heat, cooling, and ventilation; and shall be free of distractions which would disrupt class sessions.

(4) Classrooms shall contain, as a minimum, a chalkboard/flip chart/grease board and student desks or worktables sufficient to accommodate all students enrolled in a course.

(5) School facilities shall be designed and equipped in such manner as will assure full and free access for use of the facilities by handicapped persons as required by General Statute 168-2. Otherwise, the school must certify that school personnel will be available before, during and after scheduled classes to assist any handicapped person as may be necessary.

(k) One person must be designated as the Program Director of the insurance pre-licensing program. The Program Director is defined as the person responsible for pre-licensing program administrative matters such as program development, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and general supervision of the instructional program.

(1) Schools shall publish and provide to all students prior to enrollment a bulletin or similar official publication which is certified by the Program Director as being true and correct with respect to content, and which contains, as a minimum, the following information:

- (1) Name of school and publication date,
- (2) Name of sponsor,
- (3) All associated costs,
- (4) Detailed outline or description of all courses offered.

(m) Schools shall file with the Commissioner information giving exact dates, times, and location for each scheduled pre-licensing class. This can be submitted either:

- (1) For a school's quarter/semester, and
- (2) No later than one week prior to the first class meeting of each pre-licensing course.

(n) Classroom schools shall retain the following on file for a minimum of 3 years:

- (1) Class schedules,
- (2) Advertisements,
- (3) Bulletins, catalogues, and other official publications,
- (4) Grade reports,
- (5) Attendance records,
- (6) Master copy of each final course examination, and such file copy shall indicate the answer key, the school name, course location, course dates and name of instructor.

- (7) List of participating student names and Social Security numbers for each class, with the name of the instructor responsible for that class provided on the list. All files shall be made available to the Commissioner of Insurance upon request.

(o) Correspondence schools shall retain the following on file for a minimum of 3 years:

- (1) Advertisements,

(2) Bulletins, catalogues and other official publications,

(3) Grade reports, and

(4) A list of student names, Social Security numbers, and proctor of students who successfully complete the approved course. All files shall be made available to the Commissioner of Insurance upon request.

(p) Senior level baccalaureate degree granting institutions which are constituent members of the University of North Carolina, or are authorized to grant degrees through on campus programs within the State of North Carolina and which offer degree credit courses in General Insurance, Life Insurance or Property and Casualty Insurance shall be deemed to meet the requirements of Rule .0702 through compliance with their standard procedures for the offering and recordkeeping for such on-campus credit courses.

(q) In the event of an emergency created by illness, injury or death of instructors, the Program Director can utilize non-approved instructors to complete the single course offering. The school shall thereafter suspend operation until approved instructors are available to conduct classes.

.0703 PROGRAM DIRECTORS

(a) This Rule applies to Program Directors of Insurance pre-licensing schools as defined in Rule .0702 of this Chapter. All such Program Directors of this Chapter must be approved by the Commissioner in accordance with the provisions of this Rule.

(b) Persons desiring approval to direct an Insurance pre-licensing program shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the President/Chief Operating Officer of the sponsoring educational institution/company. If the employing school is not currently approved by the Commissioner, applications for Program Director approval should be submitted along with the application for school approval.

(d) The Commissioner shall approve an applicant as a Program Director upon finding that the applicant is recommended by the President/Chief Operating Officer of the sponsoring

educational institution/company, has submitted all information required by the Commissioner, is possessed of good character and reputation, and possesses the qualifications described in this Rule:

- (1) Hold a baccalaureate or higher degree and have at least two years experience as an instructor of insurance or as an educational administrator; or
- (2) Hold a baccalaureate or higher degree and have at least six years of experience in the insurance industry with a minimum of two years experience in insurance management; or
- (3) Possess qualifications which are found by the Commissioner to be substantially equivalent to those described.

(e) Program Director approval will be valid for an indefinite period subject to future changes in laws or regulations regarding approval of Program Directors.

(f) The Commissioner may deny, revoke, or suspend the approval of any Program Director upon finding that:

- (1) The Program Director fails to meet the criteria for approval provided by these Regulations; or
- (2) The Program Director has failed to comply with the Commissioner's Administrative Requirements regarding Insurance pre-licensing schools or courses; or
- (3) The Program Director's employment has been terminated by any sponsoring educational institution/company; or
- (4) The Program Director provided false information to the Commissioner when making application for approval; or
- (5) The Program Director's insurance license has been revoked or suspended; or
- (6) The Program Director has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina Insurance licensing examination questions.
- (7) The Program Director has failed to utilize an acceptable level of performance in directing the Insurance Pre-licensing Program.

(g) In all proceedings to deny, revoke, or suspend approval, the provisions of

Chapter 150B of the General Statutes shall be applicable.

(h) When a Program Director's approval is discontinued, the procedure for reinstatement will be to apply as a new Program Director with attachments describing reasons that he/she is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(i) All approved Program Directors must inform the Commissioner of any change in program affiliation by filing an application for Program Director approval prior to directing a new program.

(j) Full-time faculty of fully accredited senior level colleges and universities who carry Risk and Insurance as part of their regular teaching load of academic courses shall be deemed to meet the requirements of Rule .0703.

.0704 COURSES

(a) This establishes minimum standards for Life and Health and/or Property and Casualty Pre-licensing courses prescribed by General Statute 58-41(6) and applies to all approved schools conducting such courses.

(b) Insurance pre-licensing programs must consist of one or both of the following separate courses:

- (1) Life and Health Insurance
- (2) Property and Casualty Insurance

(c) The maximum length of an approved pre-licensing education course is at the discretion of the pre-licensing school. In no event may a school offer a course of less than 30 hours.

(d) The following requirements are course standards:

- (1) All courses shall consist of instruction in the subject areas covered in the North Carolina Department of Insurance Course Content Outline.
- (2) Courses may also include coverage of related subject areas not prescribed by the Commissioner, however, such courses must provide additional class time (above minimum requirement stated in Rule .0704 (c) of this Rule) for the coverage of such subject areas.

(3) Pre-licensing schools and courses are intended for instructional purposes only and not for promoting the interests of or recruiting

- employees for any particular insurance agency or company.
- (4) Schools must establish and enforce academic standards for course completion which reasonably assure that students receiving a passing grade possess adequate knowledge and understanding of the subject areas prescribed for the course. In any course for which college credit is awarded, the passing grade for such course must be the same as that grade which is considered passing under the school's uniform grading system.
- (5) Schools must conduct comprehensive course examinations which cover all subject areas prescribed by the Commissioner for each course. The time for this examination must be in addition to the minimum 30 hours of instruction required. Schools may allow a student to make up a missed examination or to retake a failed examination in accordance with policies adopted by the school.
- (6) Students must attend a minimum of thirty hours of instruction or, if greater, at least 80 percent of all scheduled class hours in any course. Schools may not award a certificate of completion to students who do not satisfy the attendance requirement.
- (c) The following requirements are to be met for scheduling purposes:
- (1) Class meetings or correspondence courses shall be limited to a maximum of 8 hours of instruction in any given day.
- (2) Classroom courses must have fixed beginning and ending dates and may not be conducted on an open-entry/open-exit basis.
- (3) Correspondence course begins with the introductory session between proctor and student and ends upon the taking of the final examination and the final review session with the proctor.
- (f) The following shall apply to the use of text books:
- (1) Choice of classroom course text is at the discretion of each individual school.
- (2) Correspondence courses must be approved by the Commissioner before use.

(g) All insurance pre-licensing classroom school courses must be taught by Instructors who have been approved by the Commissioner in accordance with the provisions of Rule .0705 of this Chapter. A Lead Instructor must be designated for each course location.

(h) All insurance pre-licensing correspondence courses must be monitored by Proctors who have been approved by the Commissioner in accordance with the provisions of Rule .0706 of this Chapter. A Proctor must be designated for each correspondence course student.

(i) The following certification of course completion procedures shall apply:

(1) Schools shall furnish each student who successfully completes as Insurance pre-licensing course an official certificate on the form prescribed by the Commissioner. Certificates may not be issued to students prior to the successful completion of the course's comprehensive final examination.

(2) Certificates of successful course completion for correspondence schools shall be furnished by the publisher of the correspondence course on the form prescribed by the Commissioner. Certificates may not be issued to students prior to successful completion of all course requirements.

(3) A Certificate of Pre-licensing Course Completion form shall be issued for each separate course successfully passed by a student. Certificates presented at the state licensing examination site which indicate completion of two courses will be held to be invalid.

(4) A Certificate of Pre-licensing Course Completion shall be valid for access to the North Carolina Licensing Examination for 12 months. If a license applicant does not successfully pass the Licensing Examination within 12 months, the person must again complete a Pre-licensing Education Course to be eligible for examination.

(j) On-campus academic credit courses offered as part of a degree program at senior level fully accredited colleges and universities shall be deemed to meet the requirement of this Rule .0704.

.0705 INSTRUCTORS

(a) This Rule applies to Instructors of Insurance pre-licensing courses as defined in Rule .0704 of this Chapter. All such Instructors of this Chapter must be approved by the Commissioner in accordance with the provisions of this Rule.

(b) Persons desiring approval to teach Insurance pre-licensing courses shall make written application to the Commissioner upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the Program Director of the employing school. If the employing school is not currently approved by the Commissioner, Instructor applications should be submitted along with the application for school approval.

(d) The Commissioner shall approve an applicant as a LEAD INSTRUCTOR upon finding that the applicant is recommended by an approved school, has submitted all information required by the Commissioner, is possessed of good character and reputation, and possesses the appropriate qualifications described in this Rule for each course for which approval is sought:

- (1) Chartered Life Underwriter (CLU), Certified Property and Casualty Underwriter (CPCU), Chartered Financial Counselor (ChFC), Fellow Life Management Institute (FLMI), Attorney (LLB or JD); or
- (2) Five years of experience in the insurance industry and designation as Accredited Advisor in Insurance (AAI), Fraternal Insurance Counselor (FIC), or Life Underwriter Training Counsel Fellow (LUTCF); or
- (3) Three years of experience teaching insurance courses; or
- (4) Eight years experience in the insurance industry; or
- (5) A combination of training and experience among .0705 (d) (1) through (4) to satisfy the Commissioner of his/her qualification to be a Lead Instructor.

(e) The Commissioner shall

approve an applicant to teach the courses listed in this Rule, as an ASSISTANT INSTRUCTOR, based on the criteria in Rule .0705 (d) plus:

- (1) Life and Health Insurance: Three years experience in the Life and Health industry.
- (2) Property and Casualty Insurance: Three years experience in the Property and Casualty Insurance industry.
- (3) Possess qualifications which are found by the Commissioner to be substantially equivalent to those described in (1) and (2).

(f) The Commissioner may approve an applicant to teach the Insurance pre-licensing courses as a Lead or Assistant Instructor if such applicant has a graduate degree or graduate level course credit in insurance and risk management, or is found by the Commissioner to possess equivalent qualifications.

(g) Applicants shall be approved separately for each course taught in the Insurance pre-licensing curriculum.

(h) Approval of an Instructor for a school continues until resignation by the Instructor, revocation by the Commissioner, or termination of that school.

(i) The Commissioner may deny, revoke, or suspend the approval of any Instructor upon finding that:

- (1) The Instructor fails to meet the criteria for approval provided by these regulations; or
- (2) The Instructor has failed to comply with the Commissioner's regulations regarding Insurance pre-licensing courses or schools; or
- (3) The Instructor's employment has been terminated by any school approved by the Commissioner on the grounds of incompetence or failure to comply with institutional policies and procedures; or
- (4) The Instructor provided false information to the Commissioner when making application for approval; or
- (5) The Instructor's insurance license has been revoked or suspended; or
- (6) The Instructor has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina Insurance licensing examination questions; or

(7) The Instructor has failed to employ acceptable instructional principles and methods.

(j) In all proceedings to deny, revoke, or suspend approval, the provisions of Chapter 150 A of the General Statutes shall be applicable.

(k) When a Instructor's approval is discontinued, the procedure for reinstatement will be to apply as a new Instructor with attachments describing reasons that he/she is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(l) All approved Instructors must inform the Commissioner of any change in school affiliation by filing an application for Instructor/Proctor approval prior to instructing in the new school.

(m) Full-time faculty of fully accredited senior level colleges and universities who carry Risk and Insurance as part of their regular teaching load of academic courses shall be deemed to meet the requirements of Rule .0705.

.0706 PROCTORS

(a) This Rule applies to Proctors of Insurance pre-licensing courses as defined in Rule .0704 of this Chapter. All such Proctors must be approved by the Commissioner in accordance with the provisions of this Rule.

(b) Persons desiring to be approved as Proctors shall make written application upon a form prescribed by the Commissioner.

(c) Applications must be endorsed by the Program Director of the school. If the school is not currently approved by the Commissioner, Proctor applications should be submitted along with the application for school approval.

(d) The Commissioner shall approve an applicant to monitor courses as a Proctor upon finding that the applicant is recommended by an approved school, has submitted all information required by the Commissioner, is possessed of good character and reputation, has provided evidence of successful completion of each correspondence course for which he/she is to be approved as Proctor, and possesses the appropriate qualifications described below for each course for which approved is sought:

(1) Has three years

experience in the Life and Health insurance industry to Proctor Life and Health Insurance courses; or

(2) Has three years experience in the Property and Casualty insurance industry to Proctor Property and Casualty Insurance courses.

(e) Applicants shall be approved for each separate course in the Insurance pre-licensing curriculum.

(f) The Commissioner may approve an applicant to administer correspondence courses as a Proctor if such applicant has a graduate degree or graduate level course credit in insurance and risk management, or is found by the Commissioner to possess equivalent qualifications.

(g) Approval of a Proctor for a school continues until resignation by the Proctor, revocation by the Commissioner, or termination of the school or course.

(h) A Proctor's duties are prescribed by the Commissioner and a description may be obtained by writing to the North Carolina Department of Insurance, Agent Services Division, Post Office Box 26267, Raleigh, North Carolina, 27611.

(i) The Commissioner may deny, revoke or suspend the approval of any Proctor upon finding that:

(1) The Proctor fails to meet the criteria for approval provided by these regulations; or

(2) The Proctor has failed to comply with the Commissioner's regulations regarding Insurance correspondence courses or schools; or

(3) The Proctor's employment has been terminated by the school; or

(4) The Proctor falsified information on any form or application; or

(5) The Proctor's insurance license has been revoked or suspended; or

(6) The Proctor has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina Insurance licensing examination questions; or

(7) The Proctor has failed to utilize an acceptable level of performance in overseeing pre-licensing course(s).

(j) In all proceedings to deny, revoke, or suspend approval, the provisions of

Chapter 150A of the General Statutes shall be applicable.

(k) When a Proctor's approval is discontinued, the procedure for reinstatement will be to apply as a new Proctor with attachments describing reasons that he/she is now eligible for reconsideration. The Commissioner may require an investigation before new approval is granted.

(l) All approved Proctors must inform the Commissioner of any changes in school affiliation by filing an application for Instructor/Proctor approval prior to proctoring in the new school.

(m) Full-time faculty of fully accredited senior level colleges and universities who carry Risk and Insurance as part of their regular teaching load of academic courses shall be deemed to meet the requirements of Rule .0706.

Notice is hereby given in accordance with G.S. 150B-12 that the Insurance, N. C. Building Code Council intends to amend regulations cited as 11 NCAC 8 .0204-.0207. The purpose of the proposed regulations is to amend to North Carolina State Building Code, Volumes I, I-B, II and III.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 143-138.

The public hearing will be conducted at 10:00 a.m. on September 9, 1986 at Thomas W. Simpson Administration Building, Asheville-Buncombe Technical College, 340 Victoria Road, Asheville, NC.

Comment Procedures: Written comments should be submitted to Lee Hauser, Engineering Division, Dept. of Insurance, P. O. Box 26387, Raleigh, NC 27611.

CHAPTER 8 - ENGINEERING AND BUILDING CODES

SECTION - .0200 NORTH CAROLINA STATE BUILDING CODE

.0204 BUILDING CODE: VOLUME I: GENERAL CONSTRUCTION

This volume of the State Building Code contains general administrative procedures, general statutes pertaining to enforcement of the code, appeals procedures, procedures for amending the code and procedures

for approval of local ordinances which may be at variance with the code. In addition the volume contains the technical general construction requirements, references to technical standards adopted as part of the code, and other pertinent information. The North Carolina Building Code Council adopts by reference Volume I, General Construction, North Carolina State Building Code, 1978 Edition with amendments through June 10, 1986. September 9, 1986.

.0205 BUILDING CODE: VOLUME I-B: UNIFORM RESIDENTIAL CODE

The "Uniform Residential Building Code" volume contains general construction requirements for one and two family dwellings, including details as to the size, spacing and span of structural members, and other pertinent facts which do not require an architect or an engineer to design or advise. The North Carolina Building Code Council adopts by reference Volume I-B, Uniform Residential Building Code, 1968 Edition with amendments through June 10, 1986. September 9, 1986.

.0206 BUILDING CODE: VOLUME II: PLUMBING

The plumbing volume of the building code contains general administrative procedures, general statutes pertaining to enforcement of the code, appeals procedures, procedures for amendment of the code, procedures for approval of local ordinances, the technical provisions for installation of plumbing systems, and other pertinent information. The North Carolina Building Code Council adopts by reference Volume II, Plumbing, North Carolina State Building Code, 1980 Edition with amendments through June 10, 1986. September 9, 1986.

.0207 BUILDING CODE: VOLUME III: HEATING: AIR CONDITIONING: REFRIGERATION AND VENTILATION

This volume contains general administrative procedures, general statutes pertaining to enforcement of the code, procedures for appeals and amendments to the codes, and procedures for approval of local ordinances. Technical provisions are also contained concerning the installation of

heating, air conditioning, refrigeration and ventilation equipment. The North Carolina Building Code Council adopts by reference Volume III, Heating, Air Conditioning, Refrigeration and Ventilation, North Carolina State Building Code, 1980 Edition with amendments through June 10, 1986. September 9, 1986.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the Criminal Justice Education and Training Standards Commission intends to adopt and amend regulations cited as 12 NCAC 9A .0103; 9B .0115, .0205, .0206, .0210, .0211, .0218, .0219, .0226, .0227, .0228, .0229, .0230, .0231, .0232, .0304, .0305, .0403, .0404, .0410, .0413, .0414, .0415, .0416; 9C .0404. The purpose of the proposed regulations is to: (1) adopt or amend mandatory basic training courses and standards for Correctional Officers, Wildlife Enforcement Officers and Probation/Parole Intensive Officers; (2) to adopt Corrections specialized instructor training courses for firearms and unarmed self-defense as well as procedures for obtaining speciality instructor certification in these topical areas; (3) to adopt course delivery standards and testing standards for basic instructor training; (4) to establish specialized instructor curricula and course delivery standards for Law Enforcement firearms, driving, defensive tactics and radar instructor courses; and, (5) to adopt procedures for granting Commission recognition to "pilot" course offerings.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 17C-2; 17C-6; 17C-10.

The public hearing will be conducted at 1:00 p.m. on September 18, 1986 at City Council Chambers, Cary Municipal Building, Cary, North Carolina.

Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. Written statements not presented at the hearing should be directed to the undersigned.

The proposed rules are available for public inspection and copies may be obtained at the following address:

Criminal Justice Standards Division, North Carolina Department of Justice, 1 West Morgan Street, Room 15, Court of Appeals Building, Post Office Drawer 149, Raleigh, North Carolina 27602.

SUBCHAPTER 9A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

.0103 DEFINITIONS

The following definitions apply throughout this Chapter, except as modified in 12 NCAC 9A .0107 for the purpose of the commission's rule-making and administrative hearing procedures:

(21) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the commission consistent with Rule 9C .0404.

(22) RENUMBER PRESENT

(21) THROUGH (23)

(25) "Probation/Parole

Intensive Officer" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole officer, probation/parole intake officer, and probation/parole officer-surveillance who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole, whose duties include supervising, investigating, reporting, counseling, treating, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who serves as the lead officer in such a unit.

(26) Re-number present

(24) through (32)

SUBCHAPTER 9B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION AND TRAINING

SECTION .0100 - MINIMUM
STANDARDS FOR CRIMINAL
JUSTICE EMPLOYMENT

.0115 MINIMUM STANDARDS
PROBATION/PAROLE
INTENSIVE OFFICER

In addition to the the requirements for criminal justice officers contained in Rule .0101 of this Section, every probation/parole intensive officer employed by an agency in North Carolina shall be a graduated of an accredited college or university and have attained at least the baccalaureate degree.

SECTION .0200- MINIMUM STANDARDS
FOR CRIMINAL JUSTICE
SCHOOLS AND CRIMINAL
JUSTICE TRAINING PROGRAMS
OR COURSES OF INSTRUCTION

.0205 BASIC TRAINING--LAW
ENFORCEMENT OFFICERS

(f) In lieu of the requirements of Paragraphs (b) and (c) of this Rule, officers successfully completing a Pilot Basic Law Enforcement Training Course approved by the Basic Training Consortium, or subsequent authorized presentations of said course, shall be deemed to have satisfied the requirements of this section.

.0206 BASIC TRAINING:
CORRECTIONAL OFFICERS

(b) Each basic training course for correctional officers shall include the following identified topic areas and minimum instructional hours for each area; however, the director is authorized to permit modification of the topical areas and minimum instructional hours, not inconsistent with a minimum of 160 hours of instruction, on an interim basis with such modifications to be submitted to the Standards Committee and the full commission at their next regularly scheduled meeting:

- (1) The Division of Prisons Employee 2 Hours
- (2) Overview of the Department of Correction 2 Hours
- (3) Introduction to Custody and Security 2 Hours
- (4) Contraband Control 2 Hours
- (5) Techniques of Searching 4 Hours
- (6) Riot Baton 3 Hours
- (7) Riot Control Chemicals 3 Hours

- (8) Firearms 2 1/2 Hours
- (9) First Aid 8 Hours
- (10) Supervision of Inmates 8 Hours
- (11) Restraints 2 Hours
- (12) Transporting Inmates 2 Hours
- (13) Prison Emergencies 4 Hours
- (14) You and the Law 4 Hours
- (15) Behavior 8 Hours
- (16) Prison Society 2 Hours
- (17) Transactional Analysis 8 Hours
- (18) Disciplinary Procedures 4 Hours
- (19) Fingerprinting 4 Hours
- (20) Riot Control Equipment and Formations 3 Hours
- (21) Crime Investigation 8 Hours
- (22) Introduction to Probation Parole 4 Hours
- (23) Interpersonal Communication 2 1/2 Hours
- (24) Inmate Grievance Procedures 2 Hours
- (25) The Classification Process 4 Hours
- (26) Report Writing 4 Hours
- (27) Radio Communication 4 Hours
- (28) Corrections Workshop 4 Hours
- (29) Administrative Matters 1 1/2 Hours
- (30) Testing and Review 8 1/2 Hours
- (1) The Division of Prisons Employee 2 Hours
- (2) Prison Security Functions and Procedures 4 Hours
- (3) Contraband and Techniques of Search 8 Hours
- (4) Inmate Supervision 8 Hours
- (5) Firearms 2 1/2 Hours
- (6) Inmate Classification Process and Programs 4 Hours
- (7) Understanding Inmate Behavior 12 Hours
- (8) Prison Emergency Operations 18 Hours
- (9) Radio Communications, Transporting, and Restraints 4 Hours
- (10) Basic Life Support 12 Hours
- (11) Prison Health Services 2 Hours
- (12) Report Writing 6 Hours
- (13) You and the Law 4 Hours
- (14) Interpersonal Communication Skills 16 Hours
- (15) Unarmed Self Defense 18 Hours

- (16) Role of the Correctional Witness 4 Hours
- (17) Disciplinary and Inmate Grievance Procedures 4 Hours
- (18) Administrative Matters, Review and Testing 10 Hours

Total 160 Hours

(c) The "Basic Correctional Officer Training Manual" as published by the Department of Correction is hereby adopted by reference to apply as the basic curriculum for delivery of correctional officer basic training courses.

(d) The Office of Staff Development and Training of the North Carolina Department of Correction is the only commission-accredited school authorized to conduct this course.

.0210 RADAR INSTRUCTOR TRAINING COURSE

(d) Each radar instructor training course shall include but not be limited to the following topic areas and corresponding instructional hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- (2) Methods and Techniques of Instructions: the fundamentals of effective classroom delivery techniques to include: organization, appearance, gestures, pauses, grammar, pronunciation, enunciation, voice, eye contact, rate, use of materials and objectives, and enthusiasm. 2 Hours

(2) North Carolina Administrative Code: Familiarization with the code as to radar training courses and certification requirements, to include completion of the forms that pertain to speed measurement instrument training. 2 Hours

(3) Overview and Introduction to Radar Training. 4 Hours
 (c) familiarization of the North Carolina Administrative Code as to radar training courses and certification requirements.

(f) The North Carolina Justice Academy is the only commission-accredited school authorized to conduct this course.

.0211 CRIMINAL JUSTICE TD/SMI INSTRUCTOR TRAINING COURSE

(c) The North Carolina Justice Academy is the only commission-accredited school authorized to conduct this course.

.0218 RE-CERTIFICATION TRAINING FOR RADAR INSTRUCTORS

(d) The North Carolina Justice Academy is the only commission-accredited school authorized to conduct this course.

.0219 RE-CERTIFICATION TRAINING FOR TD/SMI INSTRUCTORS

(d) The North Carolina Justice Academy is the only commission-accredited school authorized to conduct this course.

.0226 SPECIALIZED INSTRUCTOR TRAINING - FIREARMS

(c) Each applicant for specialized firearms instructor training shall:

(1) have completed the criminal justice general instructor training course; and,

(2) present a written endorsement by a certified school director indicating the student will be utilized to instruct firearms in "Basic Recruit Training--Law Enforcement" courses.

(d) PRESENT (c) BECOMES (d)

(e) PRESENT (d) BECOMES

(e) and PRESENT (e) BECOMES (f)

(f) Commission accredited schools, except the North Carolina Justice Academy, cannot be granted course accreditation to deliver this course until such time as the Academy has developed requisite instructor notebooks and the commission has adopted rules to allow delivery of this course by commission accredited schools.

(f) The North Carolina Justice Academy is the only commission-accredited school authorized to conduct this course.

.0227 SPECIALIZED INSTRUCTOR TRAINING - DRIVING

(c) Each applicant for specialized driver instructor training shall:

(1) have completed the criminal justice general instructor training course;

(2) present a written endorsement by a certified school director indicating the student will be utilized to instruct driving in "Basic Recruit Training--Law Enforcement" courses;

(3) possess a valid operator

driver's license; and,
(4) maintain a safe driving
record where no more than
four points have been
assigned against the driving
record within the past three
years.

(d) PRESENT (c) BECOMES (d)
(e) PRESENT (d) BECOMES (e)
and PRESENT (e) BECOMES (f)

(f) Commission-accredited
schools, except the North
Carolina Justice Academy, cannot
be granted course accreditation
to deliver this course until
such time as the Academy has
developed requisite instructor
notebooks and the commission has
adopted rules to allow delivery
of this course by
commission accredited schools.

(f) The North Carolina
Justice Academy is the only
commission-accredited school
authorized to conduct this
course.

.0228 BASIC TRAINING:
 WILDLIFE ENFORCEMENT OFFICERS

(a) The basic training
 course for wildlife enforcement
 officers appointed by the
 Wildlife Resources Commission as
 authorized under General Statute
 113-136 shall consist of a
 minimum of 536 hours of
 instruction designed to provide
 the trainee with the skills and
 knowledge to perform those tasks
 essential to function as a
 wildlife enforcement officer.

(b) Each basic training
 course for wildlife enforcement
 officers shall include the
 following identified topical
 areas and minimum instructional
 hours for each area:

- (1) Course
 Orientation 2 Hours
- (2) Constitutional
 Law 4 Hours
- (3) Laws of Arrest, Search
 and Detention 16 Hours
- (4) Mechanics of Arrest,
 Arrest Procedures 8 Hours
- (5) Law Enforcement
 Communications and
 Information System 4 Hours
- (6) Elements of Criminal
 Law 24 Hours
- (7) Defensive
 Tactics 32 Hours
- (8) Juvenile Law and
 Procedures 8 Hours
- (9) Emergency Medical
 Services 24 Hours
- (10) Firearms 40 Hours
- (11) Hunter Safety 10 Hours
- (12) Patrol
 Techniques 16 Hours
- (13) Field Notetaking and
 Report Writing 12 Hours
- (14) Crisis
 Management 10 Hours

- (15) Criminal
 Investigation 12 Hours
- (16) Interviews; Field and
 In-Custody 8 Hours
- (17) Controlled
 Substances 6 Hours
- (18) ABC Laws and
 Procedures 4 Hours
- (19) Electrical and Hazardous
 Material Emergencies 6 Hours
- (20) Law Enforcement Drivers
 Training 40 Hours
- (21) Preparing for Court and
 Testifying in Court 12 Hours
- (22) Game and Fish
 Laws 36 Hours
- (23) Motorboat
 Laws 12 Hours
- (24) Boating Procedures &
 Small Boat Handling 20 Hours
- (25) Dealing with Problem
 Animal Situations 4 Hours
- (26) Basic Field
 Identification of
 Fishes 6 Hours
- (27) Basic Field
 Identification of Game
 Animals, Game Birds and
 Non-Game Animals 2 Hours
- (28) Indentification of
 Migratory Waterfowl 2 Hours
- (29) Endangered
 Species 2 Hours
- (30) Trapping 8 Hours
- (31) Water Safety and
 Swimming 16 Hours
- (32) Knotsmanship, A
 practical Use of
 Rope 2 Hours
- (33) Wildlife Law Enforcement
 and the Media 8 Hours
- (34) Motorboat Accident
 Investigation 12 Hours
- (35) Civil
 Disorders 12 Hours
- (36) Radiological
 Monitoring 16 Hours
- (37) Covert
 Activities 2 Hours
- (38) Basic
 Photography 8 Hours
- (39) Motor Vehicle
 Laws 6 Hours
- (40) DWI Enforcement 2 Hours
- (41) Physical
 Training 60 Hours

(c) The "Wildlife Basic
 Training Manual" as published by
 the North Carolina Wildlife
 Resources Commission is hereby
 adopted by reference to apply as
 the basic curriculum for
 delivery of wildlife enforcement
 officer basic training courses.

(d) The Division of
 Enforcement Training Office of
 the North Carolina Wildlife
 Resources Commission is the only
 commission-accredited school
 authorized to conduct this
 course.

.0229 CORRECTIONS SPECIALIZED
 INSTRUCTOR TRAINING - FIREARMS

(a) The instructor training course requirement for corrections specialized firearms instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.

(b) Each corrections specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in the "Basic Training--Correctional Officer" course, "Basic Training--Probation/Parole Officer-Surveillance" course, "Basic Training--Probation/Parole Intensive Officer" course, and advanced (in-service) training courses for correctional officers, extradition officers, PERT teams, and intensive supervision and surveillance probation and parole officers.

(c) Each corrections specialized firearms instructor training course shall include as a minimum the following identified topical areas and minimum instructional hours for each area:

- | | |
|--|--------------|
| (1) Overview | 3 Hours |
| (2) Legal Considerations for Firearms Instructors | 4 Hours |
| (3) Firearms Safety | 2 Hours |
| (4) Range Operations | 2 Hours |
| (5) Range Medical Emergencies | 2 Hours |
| (6) Revolver - Operation, Use and Maintenance | 12 Hours |
| (7) Advanced Revolver Training | 6 Hours |
| (8) Revolver Night Firing | 4 Hours |
| (9) Rifle Training and Qualification | 8 Hours |
| (10) Shotgun Training and Qualification | 5-1/2 Hours |
| (11) Maintenance and Repair of Rifles & Shotguns | 2 Hours |
| (12) Special Techniques, Training Aids and Methods | 3 Hours |
| (13) Chemical Weapons | 8 Hours |
| (14) Situational Use of Firearms | 10-1/2 Hours |
| (15) Day and Night Practical Courses of Fire | 6 Hours |
| (16) Administrative Matters, Testing, and Evaluation | 2 Hours |

(d) The Office of Staff Development and Training of the North Carolina Department of

Correction is the only commission-accredited school authorized to conduct this course.

.0230 CORRECTIONS
SPECIALIZED INSTRUCTOR
TRA./UNARMED SELF-DEF.

(a) The instructor training course requirement for corrections specialized unarmed self-defense instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks or as approved by the Standards Division.

(b) Each corrections specialized unarmed self-defense instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice unarmed self-defense instructor in the "Basic Training--Correctional Officer" course, "Basic Training--Probation/Parole Officer-Surveillance" course, "Basic Training--Probation/Parole Intensive Officer" course, and advanced (in-service) training courses for correctional officers, extradition officers, PERT teams, intensive supervision and surveillance probation/parole officers, and all Division of Youth Services unarmed self-defense courses.

(c) Each corrections specialized unarmed self-defense instructor training course shall include as a minimum the following identified topical areas and minimum instructional hours for each area:

- | | |
|--|----------|
| (1) Introduction to Unarmed Self-Defense | 2 Hours |
| (2) Basic Exercises, Techniques and Methods | 12 Hours |
| (3) Basic Come-Alongs and Control Techniques | 14 Hours |
| (4) Restraint Application | 10 Hours |
| (5) Instructional Methods/Techniques | 30 Hours |
| (6) Program Evaluation | 12 Hours |

(d) The Office of Staff Development and Training of the North Carolina Department of Correction is the only commission-accredited school authorized to conduct this course.

.0231 BASIC TRAINING--
-PROBATION/PAROLE
INTENSIVE OFFICER

In Addition to the requirements for Basic Training for Probation/Parole Officers and Intake Officers contained in Rule .0208 of this Section, every Probation/Parole Intensive Officer shall complete a supplemental training course contained in Rule .0223 of this section, and the 168-hour Probation/Parole advanced counseling training program.

.0232 SPECIALIZED INSTRUCTOR TRAINING - DEFENSIVE TACTICS

(a) The instructor training course required for specialized defensive tactics instructor certification shall consist of a minimum of 40 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized defensive tactics instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice defensive tactics instructor in a "Basic Recruit Training--Law Enforcement" course.

(c) Each applicant for specialized defensive tactics instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course; and,
- (3) present a written endorsement by a certified school director indicating the student will be utilized to instruct defensive tactics in "Basic Recruit Training--Law Enforcement" courses.

(d) Each specialized defensive tactics instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- | | |
|---|----------|
| (1) Orientation /Pretest | 4 Hours |
| (2) Civil Liability | 4 Hours |
| (3) Response to Injury | 4 Hours |
| (4) Safety Rules | 2 Hours |
| (5) Lesson Plan Review (BLET) | 2 Hours |
| (6) Defensive Tactics Instructional Methods | 24 Hours |

(e) The "Specialized Defensive Tactics Instructor Training Manual" as published by

the North Carolina Justice Academy is hereby adopted by reference to apply as the basic curriculum for delivery of specialized defensive tactics instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division
N. C. Department of Justice
1 W. Morgan Street
Court of Appeals Building
P.O. Drawer 149
Raleigh, N.C. 27602

(f) The North Carolina Justice Academy is the only commission-accredited school authorized to conduct this course.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

.0304 SPECIFIC INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specific Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Defensive Tactics
- (2) Emergency Medical Services
- (3) Firearms
- (4) Law Enforcement Driving Training
- (5) Physical Activities
- (6) Firearms (DOC)
- (7) Unarmed Self-Defense (DOC/DYS)
- (8) Medical Emergencies (DYS)

(b) To qualify for Specific Instructor Certification, with the exception of the Emergency Medical Services topical area as outlined in Rule .0304(c) and (d) of this Section, an applicant, as a minimum, must meet the following requirements:

- (3) be able to document successful completion of:
 - (A) a commission-recognized specific instructor training course of at least one week or longer; and
 - (B) the pertinent commission-approved familiarization course; and

(4) RENUMBER PRESENT TO (3)

(c) To qualify for Specific Instructor Certification in the Emergency Medical Services topical area, an applicant is not required to meet the

standards for issuance of General Instructor Certification, but as a minimum, must qualify through one of the following two options:

- (1) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
- (2) hold current basic Emergency Medical Technician certification; and
- (3) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate; or
- (4) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (5) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
- (6) hold current basic EMT certification.

(d) To qualify for Specific Instructor Certification in the Youth Correctional Medical Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify in the following manner:

- (1) have successfully completed a commission-accredited basic instructor training course or an equivalent instructor training course as determined by the commission within the twenty-four month period preceding application; and
- (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements.

.0305 TERMS AND CONDITIONS OF SPECIFIC INSTRUCTOR CERTIFICATION

(b) The probationary instructor will be eligible for full specific instructor status at the end of the probationary period if the instructor, through application, submits to the commission:

- (2) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation

of the probationary instructor in a commission-accredited course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for each of the topics where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted; or

(3) in the case of the Department of Correction's Specialized Firearms Instructors and Specialized Unarmed Self-Defense Instructors, a favorable written evaluation by a commission or staff member, or a staff member of the Office of Staff Development and Training of the Department of Correction, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course or a commission-approved DOC in-service firearms or unarmed self-defense course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for each of the topics where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted; or

(4) in the case of the Division of Youth Services' Specialized Unarmed Self-Defense Instructors and Youth Correctional Medical Emergencies Instructors, a favorable written evaluation by a commission or staff member, or a Staff Development Specialist of the Division of Youth Services, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form completed for the topic where the probationary instructor taught a minimum of four hours and for which Specific Instructor Certification was granted.

(c) The term of certification as a full specific instructor is two years from the date the commission issues the

certification. The certification may subsequently be renewed by the commission for two year periods. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

(3) a favorable evaluation by a commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a commission-accredited training course, during the two-year period of Specific Instructor Certification. In addition, instructors evaluated by a commission or staff member must also teach at least four hours in each of the topics for which Specific Instructor Certification was granted;

or
(4) in the case of the Department of Correction's Specialized Firearms Instructors and Specialized Unarmed Self-Defense Instructors, a favorable evaluation by a commission or staff member, or a staff member of the Office of Staff Development and Training of the Department of Correction, based on an on-site classroom evaluation of the instructor in a commission-accredited training course or a commission-approved DOC in-service firearms or unarmed self-defense course. The instructor must have taught a minimum of four hours in each of the topics for which full Specific Instructor Certification was granted for the two-year period, or

(5) in the case of the Division of Youth Services' Specialized Unarmed Self-Defense Instructors and Youth Correctional Medical Emergencies Instructors, a favorable written evaluation by a commission or staff member, or a Staff Development Specialist of the Division of Youth Services, based on an on-site classroom evaluation

of the instructor in a commission-accredited training course. The instructor must have taught a minimum of four hours in the topic for which full Specific Instructor Certification was granted for the two-year period.

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

.0403 EVALUATION FOR TRAINING WAIVER

(a) The division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been satisfactorily completed as specified in Rule .0402(a). Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

(19) Wildlife enforcement officers who separate from employment with the Wildlife Enforcement Division and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The division staff shall determine the amount of training required of these applicants.

.0404 TRAINEE ATTENDANCE

(i) A trainee, enrolled in a presentation of the "Specialized Instructor Training - Firearms" course under Rule .0226 of this Subchapter, the "Specialized Instructor Training - Driving" course under Rule .0227 of this Subchapter, or the "Specialized Instructor Training - Defensive Tactics" course under Rule .0232 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful

course completion. Appropriate make-up work must be completed during the current course presentation for all absenteeism.

(j) A trainee, enrolled in a presentation of the "Radar Instructor Training Course" under Rule .0210 of this Subchapter, or the "Time-Distance Speed Measurement Instrument Instructor Training Course" under Rule .0211 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Appropriate make-up work must be completed during the current course presentation for all absenteeism.

.0410 CRIMINAL JUSTICE
INSTRUCTOR TRAINING COURSE

(a) To acquire successful completion of the "Criminal Justice Instructor Training Course" the trainee shall:

(1) satisfactorily complete all of the required coursework, specifically including each of the trainee presentations with video taping, playback, and critique of at least one of his/her presentations. All trainee presentations must have met the criteria and conditions as specified in the Orientation - Lesson Plan Preparation in the "Basic Instructor Training Manual" as published by the North Carolina Justice Academy.

(1) satisfactorily complete all required coursework, specifically including each of the trainee presentations with video taping, playback, and critique as specified in the "Basic Instructor Training Manual" as published by the North Carolina Justice Academy. All trainee presentations must have met the criteria and conditions specified in the course orientation of the "Basic Instructor Training Manual;"

(2) achieve a score of at least 75 on the final 80-minute presentation and a score of at least 75 on the written examination.

(2) attain the minimum score on each performance area as specified in the course abstract of the "Basic Instructor Manual" for the final written lesson

plan and final 80-minute presentation; and,

(3) achieve a score of 75 percent correct answers on the commission-administered comprehensive written examination.

(b) Should a trainee fail to meet the minimum criteria on the final lesson plan or the final 80-minute presentation, he/she shall be authorized one opportunity to correct either of these deficiencies. Such makeup work must be completed during the original two-week course and prior to the trainee being administered the comprehensive written examination.

.0413 COMPREHENSIVE
WRITTEN EXAM --
INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Criminal Justice Instructor Training Course" in its entirety, an authorized representative of the commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

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

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each performance area of the course curriculum, who has scored at least 65 percent but has failed to achieve the minimum passing score of 75 percent on the commission's comprehensive written examination, may request the Director of the Standards

Division to authorize a re-examination of the trainee.

- (1) The trainee's request for re-examination shall be made in writing on the commission's form and shall be received by the Standards Division within 30 days of the examination.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.
- (3) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.
- (4) The trainee will be assigned in writing by the Standards Division staff a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score on the examination, the trainee may not be given successful course completion and shall enroll and successfully complete a subsequent offering of the instructor course in its entirety before further examination may be permitted.

.0414 COMPREHENSIVE
WRITTEN EXAM-SPECIALIZED
INSTRUCTOR TRAINING

(a) At the conclusion of a school's offering of the "Specialized Instructor Training - Firearms" course, the "Specialized Instructor Training - Driving" course, and the "Specialized Instructor Training - Defensive Tactics" course in its entirety, and authorized representative of the commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the required course work. A trainee cannot be administered the comprehensive written examination until such time as all of the pertinent course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas contained in the accredited course curriculum.

(c) The commission's

representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 75 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each performance area of the course curriculum but has failed to achieve the minimum score of 75 percent on the commission's comprehensive written examination may request the Director of the Standards Division to authorize a re-examination of the trainee.

(1) The trainee's request for re-examination shall be made in writing on the commission's form and shall be received by the Standards Division within 30 days of the examination.

(2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the course.

(3) A trainee shall have, within 90 days of the original examination, only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.

(4) The trainee will be assigned in writing by the Standards Division Staff a place, time, and date for re-examination.

(5) Should the trainee on re-examination not achieve the prescribed minimum score on the examination, the trainee may not be given successful course completion and shall enroll and successfully complete a subsequent offering of the specialized instructor course in its entirety before further examination may be permitted.

.0415 SATISFACTION OF
OF MINIMUM TRAINING-
SPECIALIZED INSTRUCTOR

(a) To acquire successful completion of the "Specialized Instructor Training - Firearms" course, the "Specialized

Instructor Training - Driving" course, and the "Specialized Instructor Training Defensive Tactics" course, the trainee shall:

- (1) satisfactorily complete all required coursework as specified in the course abstract of the "Specialized Firearms Instructor Training Manual," the "Specialized Driver Instructor Training Manual," and the "Specialized Defensive Tactics Instructor Training Manual" as published by the North Carolina Justice Academy;
 - (2) demonstrate proficiency in all required motor-skill and performance subjects as specified in each specialized instructor training manual; and
 - (3) achieve a score of 75 percent correct answers on a comprehensive written examination.
- (b) Should a trainee fail to meet the minimum criteria on a motor-skill or performance area, he/she shall be authorized one opportunity for a re-test at the discretion of the school director. Such re-test must be completed during the original course and prior to the trainee being administered the comprehensive written examination. Failure to meet the required criteria on a re-test requires enrollment in a subsequent course.

.0416 SATISFACTION OF MINIMUM TRAINING-RADAR/TDS INSTRUCTOR

(a) To acquire successful completion of the "Radar Instructor Training Course," the "Time-Distance Speed Measurement Instrument Instructor Training Course," the "Re-Certification Training for Radar Instructors" course and the "Re-Certification Training for Time-Distance Speed Measurement Instrument Instructors" course, the trainee shall:

- (1) satisfactorily complete all required coursework as specified in Rule .0210, .0211, .0213, and .0219 of this Subchapter for the specific course in attendance; and
 - (2) achieve and score of 75 percent correct answers on a commission-administered comprehensive written examination.
- (b) If the trainee passes the written examination but fails to meet the minimum

criteria on an area of motor-skills testing, he/she shall be authorized one opportunity for a re-test. Such re-test must be at the recommendation of the school director and a request must be made to the Standards Division within 30 days of the original testing. Re-examination must be completed within 90 days of the original testing. Failure on the re-test requires enrollment in a subsequent course.

(c) If the trainee passes the motor-skills testing but fails to score the required 75 percent correct answers on the written comprehensive examination, he/she shall be authorized one opportunity for a re-test. Such re-test must be at the recommendation of the school director and a request must be made to the Standards Division within 30 days of the original testing. Re-examination must be completed within 90 days of the original testing. Failure on the re-test requires enrollment in a subsequent course.

SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0400 - ACCREDITATION OF CRIMINAL JUSTICE SCHOOLS AND TRAINING COURSES

.0404 PILOT COURSE PRESENTATION/PARTICIPATION

(a) Consistent with the curriculum development policy of the commission, the Education and Training Committee shall recommend to the commission the delivery system and the developer of course curricula. Designation of the developer of course curricula by the commission shall be deemed as approval of the developer to conduct pilot courses.

(b) Individuals who successfully complete a pilot course offering shall not be required by other rules of this Chapter to complete additional training for that specific certification program. Such pilot training courses shall be recognized for purposes of certification or recertification.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Sheriffs' Education and Training Standards Commission intends to adopt and amend regulations cited as 12 NCAC 10 .0802, .0803, .0804, .0805, .0806,

.0807, .0901, .0902, .0903, .1101, .1102, .1103. The purpose of the proposed regulations is to: (1) adopt or amend course delivery and reporting standards for the basic Jailer Certification Course; (2) to adopt procedures for accrediting agencies to deliver the basic Jailer Certification Course; (3) to adopt standards for instructors in the basic Jailer Certification Course; (4) to amend and adopt procedures for applying for Jailer Instructor Certification; (5) adopt procedures for certification of school directors for the Jailer Certification Course and terms and conditions of certification.

The proposed effective date of this action is December 1, 1986.

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

The public hearing will be conducted at 9:00 a.m. on November 14, 1986 at North Raleigh Hilton, 3415 Old Wake Forest Road, Raleigh, North Carolina.

Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule Making Hearing. Written statements not presented at the hearing should be directed to the undersigned. The proposed rules are available for public inspection and copies may be obtained at the following address: Sheriffs' Standards Division, North Carolina Department of Justice, 1 West Morgan Street, Room 30, Court of Appeals Building, Post Office Drawer 629, Raleigh, North Carolina 27602.

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

SECTION .0800 - MINIMUM STANDARDS FOR JUSTICE OFFICER SCHOOLS AND TRAINING PROGRAMS OR COURSES OF INSTRUCTION

.0802 ADMINISTRATION OF JUSTICE OFFICER SCHOOLS

The rules covering the administration of Criminal Justice Schools and training programs or courses of instruction, codified as Title 12, Subchapter 9B, Section .0200 of the North Carolina Administrative Code, effective

January 1, 1981, and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission are hereby adopted by reference to apply to actions of the North Carolina Sheriffs' Education and Training Commission with the exception of the Jailer Certification Course.

.0803 ADMINISTRATION OF JAILER CERTIFICATION COURSE

(a) The executive officer or officers of the institution or agency sponsoring a Jailer Certification Course shall have primary responsibility for implementation of these rules and standards and for administration of the school. The executive officer or officers of the institution or agency shall secure school accreditation pursuant to 12 NCAC 9C .0401 of the Criminal Justice Training and Standards Commission prior to offering any Jailer Certification Course.

(b) The executive officers shall designate a compensated staff member who is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to 12 NCAC 9B .0500 who may apply to be the school director. The school director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored accredited criminal justice training course.

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

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, specifically including the following:
 - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees;

- (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
- (C) a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access;
- (D) Where required by course content, provide or make available facilities, equipment, and supplies to provide training in physical and motor-skill exercises such as handling disruptive people, CPR, handling fire emergencies and cell searches.

.0804 RESPONSIBILITIES OF THE SCHOOL DIRECTOR FOR JAILER CERTIFICATION COURSE

(a) In planning, developing, coordinating, and delivering each commission-accredited Jailer Certification Training Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the commission.
 - (A) The Jailer Certification Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
 - (B) In the event of exceptional or emergency circumstances, the Director of the Standards Division may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule qualified instructors who are properly certified by the North Carolina Criminal Justice Education and Training Standards Commission. The selecting and scheduling of instructors is subject to special requirements as follows:
 - (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery;

- (B) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is qualified to instruct more than 35 percent of the total hours of the curriculum, the director of the Sheriffs' Standards Division may grant written approval for the expansion of the individual instructional limitation.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to established commission standards and to minimize repetition and duplication of subject matter.
- (5) Shall permanently maintain records of all Jailer Certification Training Courses sponsored or delivered by the school, reflecting:
 - (A) Course title;
 - (B) Delivery hours of course;
 - (C) Course delivery dates;
 - (D) Names and addresses of instructors utilized within designated subject-matter areas;
 - (E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful;
 - (F) Copies of all rules, regulations and guidelines developed by the school director;
 - (G) Documentation of any changes in the initial course outline, including substitution of instructors; and
 - (H) Documentation of make-up work achieved by each individual trainee, including test scores and methods.
- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas.
- (7) Develop, adopt, reproduce, and distribute any supplemental rules,

regulations, and requirements determined by the school to be necessary or appropriate for:

- (A) Effective course delivery;
 - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
- A copy of such rules, regulations and requirements shall be submitted to the Director of the Sheriffs' Standards Division as an attachment to the Pre-Delivery Report of Training Course Presentation. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing agency or department at the time the trainee enrolls in the course.
- (8) If appropriate, recommend housing and dining facilities for trainees.
 - (9) Not less than 30 days before commencing delivery of the course, submit to the commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
 - (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for Professional Lecturer Certification.
 - (C) The Director of the Sheriffs' Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the school director of any apparent deficiency.
 - (10) Administer the course delivery in accordance with commission approved procedures, guidelines, and standards and ensure that the training offered is as effective as possible.
 - (11) Monitor the presentations of all probationary instructors

during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission-approved forms and forwarded to the commission. Based on this evaluation the school director shall have the added responsibility for recommending approval or denial of requests for General Instructor Certification.

NOTE: All instructors must meet minimum teaching hour requirements pursuant to 12 NCAC 9B .0303(d).

- (12) Monitor the presentations of all other instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with commission standards. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the commission upon request.
- (13) Administer or designate a qualified person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (15) During a delivery of the Jailer Certification Course, make available to authorized representatives of the commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
- (16) Not more than 10 days after receiving from the commission's representative the Report of Examination Scores, the school director shall submit to the

commission a Post-Delivery Report of Training Course Presentation (Form7-B).

.0805 CERTIFICATION OF SCHOOL DIRECTORS FOR THE JAILER CERTIFICATION COURSE

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

(b) To qualify for certification as school director of the Jailer Certification Course:

(1) Present documentary evidence showing that the applicant:

(A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required five years experience must have been while actively participating in criminal justice training as a North Carolina Criminal Justice Education and Training Standards Commission-Certified instructor; or

(B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system. At least one year of the required four years experience must have been while directly participating in criminal justice training at a North Carolina Criminal Justice Education and Training Standards Commission-Certified Instructor; or

(C) has been awarded a Baccalaureate Degree acceptable to any commission-accredited school in its criminal justice program. In addition, it is

recommended that the applicant have some experience as a criminal justice officer or some experience in criminal justice training.

(2) Present evidence showing successful completion of a North Carolina Criminal Justice Education and Training Standards Commission-Accredited Instructor training course or an equivalent instructor training program as determined by the commission; and

(3) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the commission to make presentation of accredited training programs and for whom the applicant will be the designated school director.

(4) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission; and

(5) Document successful participation in a special program presented by the North Carolina Justice Academy for purposes of familiarization and supplementation relevant to delivery of the Jailer Certification Course.

.0806 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the commission issues the certification, unless earlier terminated by action of the commission. Upon application the certification may subsequently be renewed by the commission for two-year periods. The application for renewal shall contain documentation meeting the requirements of Rule .0805(b)(2) and (3) of this Section.

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

(1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0804 of this Subchapter.

(2) Maintain updated copy of the "Jailer Certification Instructor Notebook" assigned to each accredited school.

.0807 SUSPENSION: REVOCATION: DENIAL: SCHOOL DIRECTOR CERTIFICATION

(a) The commission may deny, suspend, or revoke certification of a school director when the commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the commission or otherwise demonstrates incompetence.

(b) Prior to the commission's action denying, suspending, or revoking a school director's certification, the Sheriffs' Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

SECTION .0900 - ACCREDITATION OF JUSTICE OFFICER SCHOOLS AND TRAINING COURSES

.0901 ACCREDITATION: JUSTICE OFFICER SCHOOLS/TRAINING COURSES

The rules covering the accreditation of Criminal Justice Schools and training courses, codified as Title 12, Subchapter 9C, Section .0400 of the North Carolina Administrative Code, effective January 1, 1981 and previously adopted by the North Carolina Criminal Justice Education and Training Standards Commission, are hereby adopted by reference to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of the Jail Instructor.

.0902 ACCREDITATION OF SCHOOL TO DELIVER A JAILER CERTIFICATION COURSE

(a) An institution or agency to be accredited to deliver a Jailer Certification Course must submit a Form F-7 requesting school accreditation.

(b) School accreditation shall be granted for a period of two years and shall remain effective until surrendered, suspended, revoked or expiration.

(c) The commission may suspend or revoke the accreditation of a school when it finds that the

school has failed to meet or to continuously maintain any requirement, standard or procedure for school accreditation as required by .0803(c).

.0903 REPORTS OF TRAINING COURSE PRESENTATION AND COMPLETION

Each presentation of the Jailer Certification Course shall be reported to the commission as follows:

(1) After acquiring accreditation for the course and before commencing each delivery of the course, the school director shall notify the commission of the school's intent to offer the training course by submitting a Pre-Delivery Report of Training Course Presentation (Form F-7A); and

(2) Upon completing delivery of the accredited course, and not more than 10 days after receiving from the commission's representative the Report of Examination Scores, the school director shall notify the commission regarding the progress and achievement of each enrolled trainee by submitting a Post-Delivery Report of Training Course Presentation (Form F-7B).

SECTION .1100 - MINIMUM STANDARDS FOR JUSTICE OFFICERS INSTRUCTORS

.1101 CERTIFICATION OF INSTRUCTORS FOR JAILER TRAINING COURSES

(a) Any person participating in a commission-accredited justice officer training course or program as an instructor, teacher professor, lecturer, or other participant making presentations to the class shall first be certified by the commission as an instructor.

(b) Any existing valid General Instructor Certifications previously issued by the North Carolina Criminal Justice Education and Training Standards Commission shall be accepted by the North Carolina Sheriffs' Education and Training Standards Commission until January 1, 1988.

(c) The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative Code, effective January 1, 1981 and previously adopted by the North Carolina Criminal Justice

Education and Training Standards Commission, are hereby adopted by reference to apply to actions of the North Carolina Sheriffs' Education and Training Standards Commission with the exception of instructor for Jailer Certification Course.

.1102 GENERAL JAIL INSTRUCTOR CERTIFICATION
After January 1, 1988 an applicant for General Jailer Instructor Certification shall meet the following requirements:
(1) Present documentary evidence demonstrating that the applicant:
(a) has attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission approved 120 hours Jail Training Course;
(b) has at least 2 years of experience as a jailer, and;
(c) present evidence showing applicant holds valid General Instructor Certification.

.1103 TERMS AND CONDITIONS OF GENERAL JAIL INSTRUCTOR CERTIFICATION
(a) An applicant meeting the requirements for certification as a General Jail Instructor shall, for the first 12 months of certification, be in a probationary status. The General Jail Instructor Certification, probationary status, shall automatically expire 12 months from the date of issuance.
(b) The probationary instructor will be awarded full General Jail Instructor Status at the end of the probationary period if the instructor submits to the commission:
(1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor satisfactorily taught a minimum of four hours in a commission-accredited course during his/her probationary year; or
(2) a favorable written evaluation by a commission member or staff member based on a on-site classroom evaluation of the probationary instructor in a commission-accredited course. Such evaluation will be certified on a

commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of four hours in a commission-accredited Jailer Training Course.

(c) General Instructor Certification is continuous so long as the instructor submits to the commission every two years:
(1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor satisfactorily taught a minimum of four hours in a commission-accredited course during the previous two year period (the date General Instructor Certification is originally issued is the anniversary date from which each two year period is figured); or
(2) a favorable written evaluation by a commission member or staff member based on a minimum four hour, on-site classroom observation of the instructor in a commission-accredited Jailer Training Course.
(d) If an instructor does not teach a minimum of four hours during each two year period following the awarding of his General Jailer Instructor Certification, his certification automatically expires, and he must then apply for probationary instructor certification status and must meet the requirements set forth in this Section.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-12 that the Boiler and Pressure Vessel Division intends to amend regulation cited as 13 NCAC 13 .0101(16). The purpose of the proposed regulation is to include certain unfired pressure vessels used in air conditioning/refrigeration systems which meet specified conditions within the definition of nonstandard pressure vessels.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 95-69.11; 95-69.14.

The public hearing will be conducted at 2:00 p.m. on Wednesday, September 17, 1986 at One South Wilmington St., Raleigh, NC, Highway Building Auditorium, first floor.

Comment Procedures: People wanting to present oral testimony at the hearing, or who want to have written testimony read at the hearing, should provide a written summary of the proposed testimony to the department by September 12, 1986. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until September 29, 1986. All correspondence should be directed to: E.A. Eaton, N.C. Dept. of Labor, Boiler & Pressure Vessel Division, 214 W. Jones St., Raleigh, NC 27603. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.

CHAPTER 13 - BOILER AND PRESSURE VESSEL

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

- (16) "Nonstandard boiler or pressure vessel" means:
- (a) power boilers contracted for or installed before December 7, 1935;
 - (b) heating boilers contracted for or installed before January 1, 1951;
 - (c) pressure vessels contracted for or installed before January 1, 1976; and
 - (d) non ASME Code constructed hydropneumatic storage tanks containing water under pressure at ambient temperatures contracted for or installed before January 1, 1986; and
- (e) unfired pressure vessels used in air conditioning/refrigeration systems operated entirely full of water or other liquid which is not materially more hazardous than water contracted for or installed before July 1, 1985, provided the owner or user has registered the vessel with the division prior to February 28, 1987, and the manufacturer of such vessel provides an extended warranty or similar protection when the commissioner determines that

such vessel may be operated without serious threat to life or property. At the time the owner or user registers the vessel he shall provide full documentation regarding the date the vessel was contracted for, the date the vessel was installed, the age of the vessel, the date the owner or user accepted the vessel, a copy of any insurance policy covering the vessel and a full explanation of the location of the vessel including its proximity to electric wiring or conduits and an analysis of any possible damage or injury to persons or property that would occur should the vessel rupture. Following such registration and application, the commissioner shall make his decision concerning the type of warranty or similar protection that will be required within 30 days immediately following the receipt of the registration and application.

Note: This classification includes ASME Code constructed boilers and pressure vessels installed or contracted for prior to the enactment of applicable legislation regulating its use.

TITLE 15 - NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited 15 NCAC 2B .0311. The purpose of the proposed regulation is to reclassify the Myrtle Grove Sound Yacht Basin (south of Snows Cut) from Class SA to either Class SB or SC. This reclassification is being recommended based on information which indicates that there is not a shellfish resource in the area and the area has not been open for shellfishing since 1947. Information on the suitability and use of the area for swimming is requested from the public.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 7:00 p.m. on September 17, 1986 at Marine Resources Center - Fort Fisher, U.S. Hwy. 421 South, Kure Beach, NC.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five minutes at the discretion of the hearing officer. For further information or the submission of written comments, contact Bill Kreutzberger, DEM, P.O. Box 27687, Raleigh, NC, 27611, (919) 733-5083.

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 ASSIGNMENT OF STREAM CLASSIFICATIONS

.0311 CAPE FEAR RIVER BASIN

(b) The Cape Fear River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) January 1, 1986.

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B .0312. The purpose of the proposed regulation is to reclassify the freshwater swamp forest of the Roosevelt Natural Area as Class C-swamp and to classify all waters (freshwater and tidal saltwater) of the Roosevelt Natural Area as Outstanding Resource Waters. These actions will specifically classify the waters of the natural area and will provide additional protection to the unique ecological characteristics of the area.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 7:00 p.m. on September 18, 1986 at North Carolina Aquarium (formerly the Marine Resources Center), Roosevelt Drive (off Hwy. NC 58), Pine Knoll Shores, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five minutes at the discretion of the hearing officer. For further information or the submission of written comments, contact Bill Kreutzberger, DEM, P.O. Box 27687, Raleigh, NC, 27611. Telephone Number: (919) 733-5083.

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 ASSIGNMENT OF STREAM CLASSIFICATION

.0312 WHITE OAK RIVER BASIN

(b) The White Oak River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) December 13, 1979;
- (2) January 1, 1987.

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10F .0332(b). The purpose of the proposed regulations is to limit boats to no-wake speed within 50 yards of Taylorsville Beach Marina on Lake Hickory in Alexander County.

The proposed effective date of this action is January 1, 1987.

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

The public hearing will be conducted at 9:00 a.m. on September 15, 1986 at Room 386, Archdale Bldg., 512 N. Salisbury Street, Raleigh, NC.

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 September 16 to 5:00 p.m. on October 17, 1986. Such written comments must be delivered or mailed to the Wildlife Resources Commission, Archdale Bldg., 512 N. Salisbury Street, Raleigh, NC 27611.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0332 ALEXANDER COUNTY

(a) Regulated Area. This Rule applies only to those waters of Lake Hickory which are located in Alexander County.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within 50 yards of Taylorsville Beach Marina or within 50 yards of any public boat launching ramp while on the waters of the regulated area designated in Paragraph (a) of this Rule.

Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Wildlife Resources Commission intends to repeal regulations cited as 15 NCAC 10H .0601 through .0609. The purpose of the proposed regulations is to eliminate regulations applying to privately-owned hunting grounds which were adopted in 1976 and which were made obsolete by Article 21A of Chapter 113 of the General Statutes regulating hunting and fishing on registered property, effective January 1, 1982.

The proposed effective date of this action is January 1, 1987.

Statutory Authority: G.S. 113-134; 113-264; 113-305; 113-306.

The public hearing will be conducted at 9:00 a.m. on September 15, 1986 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

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 September 16, 1986, to 5:00 p.m. on October 17, 1986. Such written comments must be

delivered or mailed to The Wildlife Resources Commission, 512 N. Salisbury Street, Archdale Bldg., Raleigh, North Carolina 27611.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0600 - PRIVATELY OWNED PUBLIC HUNTING GROUNDS

- .0601 "RENEW" (REPEALED)
- .0602 DEFINITIONS (REPEALED)
- .0603 PURPOSES (REPEALED)
- .0604 REQUIREMENTS (REPEALED)
- .0605 COOPERATIVE AGREEMENT (REPEALED)
- .0606 POSTING (REPEALED)
- .0607 HUNTING PERMITS; FORMS (REPEALED)
- .0608 APPLICATION OF STATE LAW (REPEALED)
- .0609 RESPONSIBILITY OF HUNTERS (REPEALED)

TITLE 21 - LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Veterinary Medical Board intends to adopt and amend regulations cited as 21 NCAC 66 .0206; .0309; .0601. The purpose of the proposed regulations is to: .0206 - to upgrade mandatory continuing education as a condition precedent to license renewal and to exempt first-year licensees from requirements of continuing education; .0309 - to permit petitions for inactive status of licensees; .0601 - to establish committee to investigate complaints.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 90-185(1)(2)(6); 90-185(3)(6); 90-186(1).

The public hearing will be conducted at 9:00 a.m. on October 17, 1986 at 741 West Johnson Street, Raleigh, N.C. Telephone Number: 919-733-7689.

Comment Procedures: Written comments, opinions and arguments concerning these adoptions and amendment must be submitted by 10-12-86 to T. F. Zweigart, DVM,

Executive Secretary, North Carolina Veterinary Medical Board, P.O. Box 12587, Raleigh, N. C. Oral comments for no more than 10 minutes may be presented at the hearing.

CHAPTER 66 - VETERINARY MEDICINE

SECTION .0200 PRACTICE OF VETERINARY MEDICINE

.0206 MINIMUM STANDARDS FOR CONTINUING EDUCATION

The "minimum standards for continuing veterinary medical education," which standards shall be a condition precedent to the renewal of a license, shall be as follows:

- (1) Veterinarians are required to earn ~~10~~ 15 credit hours each year before becoming eligible for license renewal.
- (2) Veterinarians unable to earn credits because of sickness or other justifiable reasons may, at the discretion of the board, be exempt from all or part of the credit requirements.
- (3) Credit hours may be earned as follows: one hour credit for each hour of attendance at in-depth seminars such as: seminars sponsored by A.V.M.A., A.A.H.A., state association, academies, schools of veterinary medicine, etc. except only one hour credit be given for each local sectional meeting, veterinary audio review (one hour per year).
- (4) Each veterinarian must keep a record of credit hours earned. Each year he will be required to certify as to the number of credit hours earned on a form to be provided by the board. The form will be mailed to each veterinarian at the time of annual renewal.

- (5) For one year after receiving an initial license by examination, a veterinarian shall not be required to earn continuing education credits but in lieu thereof shall attend a board sponsored seminar, available twice a year to first year licensees during the examination period.

SECTION .0300 - EXAMINATION AND LICENSING PROCEDURES

.0309 PETITION FOR INACTIVE STATUS

(a) Any licensed veterinarian who is in good standing with the board and who has ceased the practice of veterinary medicine within the State of North Carolina may apply for inactive status. The board, in its discretion, may place the licensed veterinarian on an inactive list of members and thereafter the licensed veterinarian who has obtained the inactive status shall not practice veterinary medicine or be required to pay the annual license renewal as prescribed in G.S. 90-187.5 and board Rule .0302 or required to earn continuing education credits.

(b) Any veterinarian who has been placed on inactive status and who desires to be reinstated or to resume the practice of veterinary medicine within the State of North Carolina may be reinstated within the discretion of the board upon the determination by the board that the inactive veterinarian is competent to practice veterinary medicine; that the veterinarian pay the required license renewal fee for the current year in which the application is filed; and that the veterinarian earn the required continuing education credits in the year preceding reinstatement.

SECTION .0600 ADMINISTRATIVE HEARINGS: PROCEDURES

.0601 COMMITTEE ON INVESTIGATIONS

(a) Upon receipt of a charge alleging misconduct against a licensee or registrant of the board, the executive secretary shall inform the accused party of the nature of the charges as filed with the board.

(b) The accused party shall respond to the charges by filing a written answer with the board within 20 days of the receipt of the notification of charges.

(c) The complaining party shall be provided with a copy of the accused party's answer and within 20 days from receipt thereof shall file a reply to the accused party's answer.

(d) The charges as filed with the board, the answer and reply may be referred to the Committee on Investigations (hereinafter referred to as "Committee"). The committee

shall consist of three members of the board, one of whom shall serve as chairman.

(e) The committee shall investigate the complaints referred to it by the board and as part of the investigation may:

- (1) Assign the complaint to the board's investigator who shall submit a written report to the committee.
- (2) Invite the complaining party and the accused party before the committee to receive their oral statements as part of the investigation, but neither party shall be compelled to attend.
- (3) Conduct any other type of investigation as is deemed appropriate by the committee.

(f) Upon the completion of the investigation, the committee shall determine whether or not there is probable cause to believe that the accused party has violated any standard of misconduct which would justify a disciplinary hearing based upon the grounds as specified in Article 11 of Chapter 90 of the North Carolina General Statutes or Title 21, Chapter 66 of the North Carolina Administrative Code.

(g) If probable cause is found, the committee shall direct the legal counsel for the board to file a Notice of Hearing.

(h) If probable cause is found, but it is determined that a disciplinary hearing is not warranted, the committee may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a Notice of Hearing be issued pursuant to Chapter 150B of the North Carolina General Statutes or Title 21, Chapter 66 of the North Carolina Administrative Code. Such refusal and request shall be addressed to the committee and filed with the executive secretary for the board. The legal counsel for the board shall thereafter prepare and file a Notice of Hearing. If the letter of reprimand is accepted, a record of the reprimand shall be maintained in the office of the board.

(i) If no probable cause is found, the committee shall dismiss the charges as unfounded

or trivial and prepare a statement of the reasons therefore which shall be mailed to the accused party and the complaining party.

(j) If no probable cause is found, but it is determined by the committee that the conduct of the accused party is not in accord with accepted professional practice or may be the subject of discipline if continued or repeated, the committee may issue a letter of caution to the accused party stating that the conduct, while not the basis for a disciplinary hearing, is not professionally acceptable or may be the basis for a disciplinary hearing if repeated. A record of such letter of caution shall be maintained in the office of the board.

(k) A board member who has served on the committee is deemed disqualified to act as a Hearing Officer in any administrative disciplinary proceeding brought pursuant to a Notice of Hearing for which that member has sat in an investigative capacity as a member or chairman of the committee.

Renumber Section .0600 - Administrative Hearings Procedures as follows:

.0601 to .0602
.0602 to .0603
.0603 to .0604
.0604 to .0605
.0605 to .0606
.0606 to .0607
.0607 to .0608
.0608 to .0609
.0609 to .0610.

TITLE 25 - STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to adopt regulation cited as 25 NCAC 1B.0354. The purpose of the proposed regulation is to provide explanatory definitions of "Contested case arising under Chapter 126", "Disciplinary Action" and "Involuntary Resignation" for persons involved in contested case proceedings under Chapter 126.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 126-4(6), 126-4(7a), 126-37.

The public hearing will be conducted at 9:00 a.m. on

October 7, 1986 at 101 W. Peace Street, Raleigh, North Carolina.

Comment Procedures: Any persons may request information or copies of the proposed rule by writing or calling Drake Maynard, APA Coordinator, Office of State Personnel, 116 W. Jones St., Raleigh, N.C. 27611, (919) 733-7112. Written comments on this regulation may be sent to Mr. Maynard at the above address. Written and oral (no more than ten minutes) comments on this regulation may be presented at the hearing. Notice should be given to Mr. Maynard at least 3 working days prior to the hearing if you desire to speak.

SUBCHAPTER 1B - STATE
PERSONNEL COMMISSION

SECTION .0300 - CONTESTED CASE
HEARING PROCEDURE

.0354 DEFINITIONS

(a) A "contested case arising under Chapter 126" shall include only the following:

- (1) a dismissal;
- (2) a demotion as defined in 25 NCAC 1D .0401;
- (3) a suspension without pay, whether for investigative or disciplinary purposes;
- (4) an involuntary resignation;
- (5) a request to remove allegedly inaccurate and/or misleading material from a personnel file;
- (6) an allegation of discrimination prohibited by N.C. Gen. Stat. 126-16 in hiring, promotion, training, transfer, demotion, reduction in force or dismissal.

(b) A "Disciplinary action" which is a "contested case arising under Chapter 126 consists of the following actions only:

- (1) a dismissal;
- (2) a demotion;
- (3) a suspension without pay. Warnings, oral or written, are not "disciplinary actions" which are "contested cases arising under Chapter 126".

(c) An "involuntary resignation" is one in which the employee is given the choice of resigning or being fired, and the employee chooses resignation. Those cases in which the employee offers to

resign, to avoid being dismissed, are deemed to be voluntary resignations.

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to adopt regulation cited as 25 NCAC 1C .0413. The purpose of the proposed regulation is to provide for a new type of appointment to accommodate special employment needs of agencies in situations involving fluctuating seasonal work force demands.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 126-4.

The public hearing will be conducted at 9:00 a.m. on October 7, 1986 at 101 W. Peace Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling Drake Maynard, APA Coordinator, Office of State Personnel, 116 W. Jones St., Raleigh, N.C. 27611, (919) 733-7112. Written comments on this regulation may be sent to Mr. Maynard at the above address. Written and oral (no more than ten minutes) comments on this regulation may be presented at the hearing. Notice should be given to Mr. Maynard at least 3 working days prior to the hearing if you desire to speak.

SUBCHAPTER 1C - PERSONNEL
ADMINISTRATION

SECTION .0400 - APPOINTMENT

.0413 SEASONAL HOURLY

An appointment for a limited term, typically involving at least twelve weeks, but not a period which could be construed as continuous/permanent employment. This type appointment may apply to homogeneous classes of work in program or organizational situations having fluctuating seasonal work force demands. Employees will be paid on an hourly basis, receive policy defined fringe benefits, and be subject to modified personnel policies which may be set forth

in other sections of the Personnel Manual.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-12 that the OAH - Hearings Division intends to adopt regulations cited as 26 NCAC 1 .0002 and .0003. The purpose of the proposed regulations is to:

- .0002 - to state when a person may obtain a declaratory ruling concerning a rule of the Office of Administrative Hearings;
- .0003 - to set out the procedure for determining what insurance will be available through payroll deductions to employees in the Office of Administrative Hearings.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 58-194.3; 150B-11; 150B-17.

The public hearing will be conducted at 10:00 a.m. on October 15, 1986 at Williams-Cross Building, Hillsborough Street, Room 204, Raleigh, N. C.

Comment Procedures: Written comments may be sent to: Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, N. C. 27604, Attn: Molly Mason. Comments must be submitted by October 10, 1986.

CHAPTER 1 - GENERAL

.0002 DECLARATORY RULINGS: AVAILABILITY

Declaratory rulings pursuant to G.S. 150B-17 will be issued by the Office of Administrative Hearings upon written request only on the validity of a rule of the Office of Administrative Hearings or on the applicability of a rule or order of the Office of Administrative Hearings to stipulated facts. A declaratory ruling will not be issued on a matter requiring an evidentiary proceeding.

.0003 EMPLOYEE INSURANCE COMMITTEE

(a) The Employee Insurance Committee of the Office of Administrative Hearings shall be constituted pursuant to G.S. 58-194.3, to make insurance available to employees through payroll deduction.

(b) The Committee shall meet

periodically, but not less than once a year, to review the agency insurance program.

(c) At least annually, and prior to advertising for proposals or reviewing the current insurance program, the committee shall ask all employees their preferences for insurance availability. Based on information gathered, the committee shall decide what types of insurance coverage to consider.

(d) Advertisement for submission of proposals shall be published in the following newspapers: News and Observer, Charlotte Observer, Asheville Citizen-Times and the Wilmington Star.

(e) Any Insurer wishing to make a presentation to the Committee must submit a written proposal outlining its plan no less than 30 days prior to the date of the Committee meeting.

(f) All proposals shall be sent to the committee addressed as follows: Chairman, Office of Administrative Hearings, Employee Insurance Committee, P. O. Drawer 11666, Raleigh, N.C. 27604.

(g) The Committee may take no action unless a majority of the committee members vote for the action, and no vote may be taken unless all of the committee members are present.

Notice is hereby given in accordance with G.S. 150B-12 that the OAH - Hearing Division intends to amend regulations cited as 26 NCAC 3 .0011; .0026; .0028. The purpose of the proposed regulations is to:

- .0011 (a) - to amend a rule adopted pursuant to a statute that was repealed by Chapter 1022, 1985 Session Laws (Regular Session 1986); .0026 - to amend the rule to reflect statutory amendments passed by the General Assembly in Chapter 1022, 1985 Session Laws (Regular Session 1986); .0028 - to amend the rule to reflect statutory amendments passed by the General Assembly in Chapter 1022, 1985 Session Laws (Regular Session 1986).

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 7A-751 - 7A-756; 150B-11; 150B-23; 150B-26; 150B-34; and 150B-36.

The public hearing will be conducted at 10:00 a.m. on October 15, 1986 at

Williams-Cross Building,
Hillsborough Street, Room 204,
Raleigh, N. C.

Comment Procedures: Written
comments may be sent to: Office
of Administrative Hearings, P.
O. Drawer 11666, Raleigh, N.C.
27604, Attn: Molly Mason.
Comments must be submitted by
October 10, 1986.

.0011 CONSOLIDATION OF CASES

(a) The Chief Hearing Officer
of the Office of Administrative
Hearings may order a joint
hearing of any matters at issue
in contested cases involving
common questions of law or fact
or multiple proceedings
involving the same or related
parties, or may order the cases
consolidated or make other
orders to reduce costs or delay
in the proceedings. In
consolidated cases in the
Department of Human Resources
involving multiple aggrieved
persons, the Chief Hearing
Officer shall assign hearing
officers of the Office of
Administrative Hearings in
accordance with G.S. 150B-26.

.0026 HEARING OFFICER'S
RECOMMENDATION

(a) Unless The hearing officer
has determined in accordance
with G.S. 150B-33(b)(9) that a
rule as applied in the case is
void, he shall, within 30 days
after the expiration of the
period for filing exceptions to
the hearing officer's proposed
decision, prepare and serve upon
all parties his recommended
decision, opinion, order, or
report which shall become a part
of the official record in the
case and which shall contain:

- (1) All of the items
specified in Subparagraphs
.0025 (c)(1) through (8) of
this Chapter; and
- (2) A statement identifying
the agency that will make
the final decision in the
case.

(b) If the hearing officer
has determined in accordance
with G.S. 150B-33(b)(9) that a
rule as applied in the case is
void, he shall notify the
parties of his decision and of
their right to appeal under
Article 4 of Chapter 150B.

(c) (b) The hearing officer
shall promptly forward a copy of
the official record in the case
to the agency.

(d) (c) Extensions of time
limits.

(1) Upon good cause shown,
the Chief Hearing Officer
Chief Administrative Law
Judge may extend the time
limits for submission of the
proposed decision, filing of
exceptions, and for issuing
the recommended decision of
the hearing officer.

(2) Requests for extensions
must be submitted prior to
the expiration of the period
established by these Rules.

(3) Extensions shall not be
granted if inattention or
procrastination cause delay,
but shall be granted if the
delay is attributable to
honest mistake, accident, or
any cause compatible with
proper diligence.

.0028 RECONSIDERATION OR
REHEARING

(a) After a hearing officer
has issued a recommended
decision, the hearing officer
loses jurisdiction to amend the
decision except for clerical or
mathematical errors, unless
the recommended decision is
binding as a final decision
pursuant to G.S. 150B-23(a) or
G.S. 150B-33(b)(9).

(b) If the recommended decision
is binding on the agency as a
final decision, a petition for
reconsideration or rehearing may
be filed with the Office of
Administrative Hearings within
10 days of service of the
recommended decision upon the
petitioning party.

FINAL RULES

When the text of any adopted rule differs from the text of that rule as proposed, the text of the adopted rule is published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 - CORRECTIONS

SUBCHAPTER 2C - CLASSIFICATION

SECTION .0200 - DIAGNOSTIC CENTERS

.0202 ORGANIZATION

(a) Responsibility. The reception, orientation, and diagnostic processes are subject to review by the diagnostic and classification services section manager on behalf of the Director, Division of Prisons. In addition, this office is responsible for those other duties specified in 5 NCAC 2A .0102(1). Any variation in pertinent procedures and guidelines specified herein, or as specified in the Diagnostic or Classification Procedural Manuals, as amended, shall be immediately reported to the diagnostic and classification services section manager, for review and approval. Administrative directives will be issued by this office through the office of the Director of Prisons as required to specify and update procedures.

(b) Admitting Unit. The admitting unit receives inmates from sentencing courts and may provide for physical examinations, fingerprinting, identification photographs and completion of Inmate Classification Profiles (DC-134 and 134A) but does not complete a case evaluation for classification purposes.

(c) Reception Centers. The reception center receives inmates from sentencing courts and inmates recaptured after escape or returned by the

Division of Adult Probation and Parole or other state agencies. In addition to the services provided by an admitting unit, the reception center:

- (1) completes social histories;
 - (2) administers and scores psychometric tests;
 - (3) provides casework services for crisis intervention as necessitated by immediate problems of or with an inmate being processed;
 - (4) evaluates each case to identify crime-related problems, correctional goals, need for outer controls, and other factors relating to the classification process.
- (d) Diagnostic Center. The diagnostic center receives and evaluates:

- (1) inmates from sentencing courts;
- (2) inmates referred for reclassification;
- (3) inmates recaptured following escape or others referred to the division;
- (4) convicted but unsentenced offenders committed to the department for presentence diagnostic study.

A diagnostic center, in addition to performing the functions of a reception center, must provide psychological examination services, psychiatric evaluations, professional casework services, and case evaluations by personnel professionally qualified to interpret reports from the various professional disciplines. This information is made into a correctional case summary on which crime-related problem identification and correctional intervention may be based. The Diagnostic Center staff must meet minimum specification of state personnel and standards established by the diagnostic and classification services manager and approved by the Director, Division of Prisons.

(e) Procedure for Reviewing a Diagnostic Center. Each center will be reviewed annually as to its capability to function as an admitting unit, reception center, or diagnostic center, based on standards established by the diagnostic and classification services manager as approved by the Director, Division of Prisons.

History Note: Statutory Authority G. S. 148-11;

148-12(a);
Eff. February 1, 1978;
Amended Eff. September 1, 1986;
September 29, 1978.

.0203 PROCEDURE

(a) Admission. These procedures outline the essential functions which must be performed in the initial admission of an inmate to the Division of Prisons. Only those facilities which are designated as having admitting, reception, or diagnostic capabilities are permitted to receive new admissions. The following apply:

- (1) Offender Criteria. The criteria for accepting inmates are based upon age, sex, type of offense, and length of sentence of the offender. In general, a minimum custody facility cannot accept a felon, and a medium custody or more secure facility cannot accept a misdemeanor. Specific guidelines are as follows:
 - (A) The Correctional Center for Women receives all females;
 - (B) Central Prison receives all male felons, 22 years or older, with minimum sentences of more than twenty years;
 - (C) The Command Felon Diagnostic Centers at Southern Correctional Center and Piedmont Correctional Center receive male felons 22 years and older, who have minimum sentences 20 years or less;
 - (D) Polk Youth Center receives male felons 18 through 21 years of age;
 - (E) Western Correctional Center receives all males less than 18 years old;
 - (F) The Area Diagnostic Center at Triangle Correctional Center, Richmond County, Guilford II, and Rowan County receive all male misdemeanants, 18 years or older;
 - (G) Inmates referred from escape or attempted escape will be referred the designated felon or misdemeanor diagnostic center for reprocessing after disciplinary and legal procedures have been completed. Adult male felon inmates returned from a minimum or medium custody escape or

attempted escape will be processed at the Command Diagnostic Centers. Youthful felon offenders who escape or attempt escape from minimum or medium custody will be received at the appropriate Youth Services Diagnostic Center. Felons escaping or attempting to escape from close or maximum custody will be received at Central Prison to await disciplinary and legal proceedings, diagnostic processing, and reclassification;

- (H) The parole revocation process requires that a hearing be held at or reasonably near the location where the alleged violation occurred. Inmates pending parole revocation will be transferred from the jail or by a probation/parole officer to the appropriate prison unit as designated by the Director of Prisons. After completion of the parole revocation hearing, parole violators will be processed at the appropriate diagnostic centers in accordance with sentence guidelines specified in 2C .0203(A) through (G). Time remaining to be served will be the determining factor in referring an inmate to a particular center.
- (2) Commitment Receipt. A true copy of the sentencing court's commitment, complete with the court's impressed seal and certification, must be received prior to admission.
- (3) Personal Property. Personal property will be obtained, recorded, and processed in a manner consistent with departmental regulations.
- (4) Search. A strip search will be conducted and any contraband confiscated and reported as provided in division regulations.
- (5) Dress. Inmates will dress in appropriate prison clothing:
 - (A) "green clothes" for misdemeanants, safekeepers, and death row; and
 - (B) "brown clothes" for felons not identified in 5 NCAC 2C .0203 (a)(5)(A).
- (6) Count. The receiving

unit's count will be updated and the new admission noted on the official daily population reports.

(7) Identification.

Appropriate measures will be taken to ensure the accurate identification of the inmate. These measures include completion of Inmate Classification Profile (DC-134 and 134A), Demographic Data (350C), fingerprints, photographing, and necessary distribution of these documents.

(8) Physical Exam. The

receiving unit will perform a physical examination of all newly admitted inmates as specified in division regulations.

(b) Orientation. Newly

admitted inmates will be assisted by the staff in adjusting to the prison environment. Orientation may occur on a group level or an individual level or a combination of both. An explanation of the rules, penalties, disciplinary procedures, and how to obtain health services will be provided. A description of the inmate's current situation, the diagnostic and classification process, custody levels, and a summary of available programs and work, will also be provided.

(c) Diagnostic. The

diagnostic portion of the process involves professional evaluation of the inmate to identify security requirements, crime-related problems, correctional goals, and required correctional intervention. The following will be accomplished:

(1) Psychometric Testing.

Appropriate psychometric tests will be administered, scored, and interpreted.

(2) Social History Data.

Relevant background information will be accumulated, recorded, and interpreted and entered into divisional files in accordance with operational procedures.

(3) Interviewing and

Counseling. To obtain pertinent information for effective classification decision-making and to assist the individual in making an adequate adjustment to incarceration, interviewing and counseling will be performed by qualified staff.

(4) Psychological and

Psychiatric Evaluation. As required either by division regulations or the offender's needs, psychological and psychiatric evaluation will be completed.

(5) Classification Action

Forms. The classification referral form, DC-121 I or DC-121-R, will be completed and referred to the appropriate classification committee upon completion of the diagnostic procedures. The referral will contain pertinent background information, a summary of relevant testing results, identification of the offender's assets and existing or probable problems, recommendations and rationale for housing, custody, work and program assignments, and other pertinent information.

(d) Special Procedures. These procedures present special cases which deviate from the normal orientation and diagnostic process. The following admission procedures will be completed in all cases:

(1) Death Row. The

warden at Central Prison or the superintendent at the Correctional Center for Women must receive capital punishment offenders.

(2) Pretrial Safekeeper.

Only the reception and orientation processes are applicable for safekeepers.

(3) Presentence Diagnostic

(PSD). Inmates admitted for presentence diagnostic receive the expanded diagnostic evaluation as outlined in the Diagnostic Center Procedural Manual.

(4) Court Recommended Work

Release. In any case in which an inmate sentenced to five years or less is court recommended for work release, the entire diagnostic process is not applicable. Only essential diagnostic functions, such as intelligence testing, fundamental interviewing, and attempts to verify work release jobs will be accomplished. Upon determination of eligibility and verification of employment, the inmate will be referred by using the DC-121 for immediate promotion to minimum custody, Level III, for work release only.

(5) One-third Parole Cases.

Only as much of the orientation and diagnostic process as time permits will be completed.

(e) Detailed procedures are specified in the Diagnostic Center Procedural Manual as maintained by the diagnostic and classification services section manager.

History Note: Statutory
Authority G. S. 148-11;
148-12(a);
Eff. February 1, 1978;
Amended Eff: September 1, 1986;
March 31, 1981;
September 29, 1978.

TITLE 10 - HUMAN RESOURCES

SUBCHAPTER 18A - MONITORING PROCEDURES

SECTION .0100 - REVIEW PROCESS FOR AREA PROGRAMS AND THEIR CONTRACT AGENCIES

.0125 DEFINITIONS

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

- (1) "APSM 40-1" means the division publication entitled "Review Process for Area Programs and Their Contract Agencies" as effective September 1, 1986. The manual may be reviewed at area program offices, regional offices, or the Publications Office of the division. Copies may be obtained from the Publications Office of the division at a charge which covers printing and postage.

History Note: Statutory
Authority G.S. 122C-113;
122C-141(b); 122C-142(a);
122C-191(d);
Eff. September 1, 1986.

.0126 GENERAL PROVISIONS

- (2) A rule may be judged "not applicable" only when it allows options of non-applicability or a waiver has been granted.
- (j) In addition to the review procedures prescribed in this Section other reviews may be conducted as follows:
- (1) The division director may, at any time, authorize an on-site review of any component.
- (2) Any area-operated or contract component may, at any time, with the approval of the area director, request an on-site review from its respective regional

office for the purpose(s) of consultation and technical assistance. such reviews shall not, however, exempt the component from other rules of this Section.

History Note: Statutory
Authority G.S. 122C-113;
122C-141(b); 122C-142(a);
122C-191(d);
Eff. September 1, 1986.

.0128 PROVISIONAL CERTIFICATION

(f) If all out-of-compliance or licensure issues are not fully resolved and documented, a notice shall be sent to the area director 30 days prior to expiration of the provisional certification that decertification procedures will be initiated by the regional office unless a request for waiver of a rule has been approved.

(g) A component shall not receive two consecutive provisional certifications.

History Note: Statutory
Authority G.S. 122C-113;
122C-141(b); 122C-142(a);
122C-191(d);
Eff. September 1, 1986.

.0131 ON-SITE VALIDATION PROCESS

(a) Each year the division director shall select six area programs from within the State for an on-site validation process. The selection of the area programs for on-site validation shall occur following the self-survey by all area programs within a region scheduled for self-survey that fiscal year. A stratified sample of all components of the selected area programs shall be reviewed.

History Note: Statutory
Authority G.S. 122C-113;
122C-141(b); 122C-142(a);
122C-191(d);
Eff. September 1, 1986.

TITLE 17 - REVENUE

SUBCHAPTER 5C - CORPORATE INCOME TAX

SECTION .2500 - FOREIGN SALES CORPORATION (FSC)

.2501 DOING BUSINESS ACTIVITIES OF FOREIGN SALES CORPORATION (FSC)
Every Foreign Sales Corporation

(FSC) doing business in this state shall be subject to income tax in this state. A FSC shall be considered doing business in this state if the United States business activities are in this state and such activities establish nexus.

History Note: Statutory
Authority G.S. 105-130.3;
105-130.4; 105-130.6;
105-130.7; 105-130.15;
105-130.16; 105-262;
Eff. August 1, 1986.

.2502 DETERMINATION OF FSC NET INCOME

The net income of a FSC shall be determined in accordance with the Revenue Laws of this State with no exclusion permitted for exempt foreign trade income as defined under the Internal Revenue Code.

History Note: Statutory
Authority G.S. 105-130.3;
105-130.4; 105-130.6;
105-130.7; 105-130.15;
105-130.16; 105-262;
Eff. August 1, 1986.

.2503 CONSOLIDATED RETURN

Every corporation doing business in this state which is a shareholder of a FSC shall file a consolidated return including the total income as defined under .2502 of the FSC.

History Note: Statutory
Authority G.S. 105-130.3;
105-130.4; 105-130.6;
105-130.7; 105-130.15;
105-130.16; 105-262;
Eff. August 1, 1986.

.2504 APPORTIONMENT - CONSOLIDATED RETURN

The net income computed on a consolidated return of a corporate shareholder and a FSC shall be apportioned to this state by use of the applicable apportionment formula set out in G.S. 105-130.4. Such apportionment formula shall include the property, payrolls and sales of the corporations making the consolidated return.

History Note: Statutory
Authority G.S. 105-130.3;
105-130.4; 105-130.6;
105-130.7; 105-130.15;
105-130.16; 105-262;
Eff. August 1, 1986.

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0100 - FILING

INDIVIDUAL INCOME TAX RETURNS

.0104 ITEMS REQUIRING SPECIAL ATTENTION

(1) The Form D-400 for the proper year should be used. Note: A 1985 form for a taxpayer whose calendar year ends December 31, 1985 and a 1984 form for a fiscal year taxpayer whose fiscal year begins in 1984 should be used.

History Note: Statutory
Authority G.S. 28A-15-8;
105-151; 105-152; 105-154;
105-155; 105-163.5(e);
105-163.7; 105-163.10;
105-251; 105-252; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; March 22, 1981;
February 4, 1978.

SECTION .0300 - PERSONAL EXEMPTION

.0303 TWO THOUSAND DOLLAR PERSONAL EXEMPTION

When a married individual dies before the major portion of the year has passed and he or she has the larger adjusted gross income of the married couple, he or she is entitled to the two thousand dollar (\$2,000) married person's exemption and the other spouse may be entitled to the two thousand dollar (\$2,000) head of household exemption provided the other spouse maintained a household for 183 days or more during the year after his or her spouse died. If the surviving spouse who qualified as the head of household for the major portion of the year has the larger adjusted gross income, that spouse is entitled only to the two thousand dollar (\$2,000) married person's exemption and if he or she by agreement with the deceased spouse's representative allows the deceased spouse to claim the two thousand dollar (\$2,000) married person's exemption, then the surviving spouse is entitled to only a one thousand dollar (\$1,000) personal exemption and is not entitled to the two thousand dollar (\$2,000) head of household exemption.

History Note: Statutory
Authority G.S. 105-149(a)(2);
105-149(a)(4); 105-149(a)(7);
105-149(a)(2a); 105-135;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;

May 1, 1984; June 1, 1982;
April 19, 1981.

.0316 CYSTIC FIBROSIS

An additional one thousand dollar (\$1,000) exemption may be claimed for the taxpayer or the taxpayer's dependent who has cystic fibrosis. To qualify for the exemption, eligible individuals must submit with their income tax return a certificate from the Division of Health Services of the North Carolina Department of Human Resources. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

History Note: Statutory
Authority G.S. 105-149(a)(8c);
105-262;
Eff. August 1, 1986.

.0317 SPINA BIFIDA

An additional one thousand dollar (\$1,000) exemption may be claimed for the taxpayer or the taxpayer's dependent who has spina bifida, an open neural tube defect. To qualify for the exemption, eligible individuals must submit with their income tax return a certificate from the Division of Health Services of the North Carolina Department of Human Resources. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

History Note: Statutory
Authority G.S. 105-149(a)(8f);
105-262;
Eff. August 1, 1986.

.0318 MULTIPLE SCLEROSIS

An additional one thousand dollar (\$1,000) exemption may be claimed for the taxpayer or the taxpayer's dependent who has multiple sclerosis. To qualify for the exemption, eligible individuals must submit with their income tax return a supporting statement from a physician or county health department. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

History Note: Statutory
Authority G.S. 105-149(a)(8g);
105-262;
Eff. August 1, 1986.

.0319 SEVERE HEAD INJURY

An additional one thousand dollar (\$1,000) exemption may be claimed for the taxpayer's dependent who is in either (1) a vegetative state or (2) a severely disabled condition as assessed by the Glasgow Outcome Scale. To qualify for the exemption, a supporting statement from a physician must be attached to the income tax return verifying that the dependent has one of these conditions. This exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed.

History Note: Statutory
Authority G.S. 105-149(a)(8h);
105-262;
Eff. August 1, 1986.

SECTION .0500 - DIVORCED OR
SEPARATED PERSONS

.0501 GENERAL

(a) Under G.S. 105-141.2 alimony and separate maintenance payments are includable in the gross income of the recipient for North Carolina income tax purposes to the same extent that such payments are includable in gross income for federal income tax purposes. The spouse making such payments may claim a miscellaneous deduction under G.S. 105-147(21) for the amount includable in the gross income of the spouse receiving such payments.

(b) In administering these sections of the North Carolina law, the Department of Revenue follows federal rules and regulations which are not contrary to the context and intent of North Carolina law.

(c) When a husband and wife are divorced, legally separated, or voluntarily separated without court intervention, the tax consequences for income tax purposes must be determined with respect to the reporting and deducting of alimony and separate maintenance payments, property settlements, legal fees, and personal exemption.

(d) These provisions of the statute are deemed for North Carolina income tax purposes to apply not only to those individuals legally divorced as the result of court proceedings, but also to those individuals separated with the intent to remain separate and apart (estranged).

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Amended Eff. August 1, 1986;
 March 22, 1981.

.0502 INCOME (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0503 DEDUCTIONS (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0504 NONDEDUCTIBLE
 PAYMENTS (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0505 MINOR CHILDREN
 (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Amended Eff. June 1, 1982;
 Repealed Eff. August 1, 1986.

.0506 PERIODIC PAYMENTS
 (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0507 LUMP-SUM SETTLEMENT
 (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0508 LARGE EARLY PAYMENTS
 (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0509 SETTLEMENT OF
 PROPERTY RIGHTS (REPEALED)

History Note: Statutory

Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0510 TRANSFER OF
 APPRECIATED PROPERTY
 (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0511 RETROACTIVE EFFECT
 OF A DECREE (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0512 EFFECT OF LOCAL
 LAW (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0513 PAYMENTS FROM A
 TRUST (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0514 MEDICAL EXPENSES
 (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(11); 105-147(21);
 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0515 LIFE INSURANCE
 PREMIUMS (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Repealed Eff. August 1, 1986.

.0516 TAXES:INTEREST:
 INSURANCE:UTILITIES (REPEALED)

History Note: Statutory
 Authority G.S. 105-141.2;
 105-141(a)(3); 105-144;
 105-147(5); 105-147(6);
 105-147(21); 105-262;
 Eff. February 1, 1976;
 Amended Eff. March 22, 1981;
 Repealed Eff. August 1, 1986.

.0517 BACK ALIMONY PAYMENTS

(REPEALED)

History Note: Statutory
Authority G.S. 105-141.2;
105-147(21); 105-262;
Eff. February 1, 1976;
Repealed Eff. August 1, 1986.

.0518 PAYMENT AFTER WIFE'S
DEATH OR REMARRIAGE (REPEALED)

History Note: Statutory
Authority G.S. 105-141.2;
105-147(21); 105-262;
Eff. February 1, 1976;
Amended Eff. May 1, 1984;
Repealed Eff. August 1, 1986.

.0519 LEGAL EXPENSES
(REPEALED)

History Note: Statutory
Authority G.S. 105-141.2;
105-147(2); 105-147(21);
105-262;
Eff. February 1, 1976;
Repealed Eff. August 1, 1986.

.0520 PERSONAL EXEMPTION
(REPEALED)

History Note: Statutory
Authority G.S. 105-141.2;
105-147(21); 105-149;
105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1982;
March 22, 1981;
February 11, 1978;
Repealed Eff. August 1, 1986.

SECTION .0600 - OUT-OF-STATE
INCOME AND TAX CREDITS

.0602 RESIDENTS

(d) An individual moving into this state during the income year must report his income earned or received from all sources after he becomes a resident of North Carolina, and he will be allowed a personal exemption in the proportion that his income reportable to this state bears to the total income earned both within and without this state. For the purpose of prorating personal exemption, the following formula would be used:

$$\frac{\text{Adj. gross income in N.C.}}{\text{Total adj. gross income}}$$

$$\times$$

$$\text{Personal exemption} =$$

$$\text{allowable exemption}$$

An individual moving out of North Carolina must report income from all sources while a resident of this state, and after becoming a resident of the other state or country he will report to North Carolina only such income as he may receive from sources in this state. His

personal exemption must be prorated by use of the same formula described in this Rule for the taxpayer moving into this state. If the individual reports income from all sources for the entire year to North Carolina and claims no deduction for income earned outside North Carolina, he may claim the full personal exemption. Individuals moving into or out of North Carolina may claim only those business deductions incurred in connection with earning the North Carolina income and only those itemized nonbusiness deductions (contributions, medical, etc.) actually paid while residents of North Carolina. If these individuals elect to claim a standard deduction in lieu of itemized deductions, the allowable amount is determined by multiplying by 10 percent of the total adjusted gross income in all states or five hundred and fifty dollars (\$550.00), whichever is less, by the proration percentage used for prorating the personal exemption.

History Note: Statutory
Authority G.S. 105-135(13);
105-141(a); 105-147(9);
105-149(b); 105-151;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; June 1, 1982;
December 17, 1978.

.0603 NONRESIDENTS

(b) A nonresident individual is required to report to North Carolina all income derived from sources within this state. No tax credit is allowed by North Carolina to a nonresident.

A nonresident may claim a deduction on his North Carolina income tax return for business expenses paid in connection with the earning of income in North Carolina. Also, a nonresident may claim itemized nonbusiness deductions or the standard deduction on the basis that his North Carolina adjusted gross income relates to his total adjusted gross income, provided the nonresident's state of residence allows similar apportionment to North Carolina residents. Residents of states not having an income tax will be allowed itemized nonbusiness deductions on their North Carolina income tax return. From information available, residents of the other 49 states and the District of Columbia would be allowed apportioned

nonbusiness deductions or the standard deduction when filing a North Carolina tax return.

G.S. 105-142(c) provides that if an established business in North Carolina is owned by a nonresident individual or by a partnership having one or more nonresident members and if the business is operating in one or more other states, the net income of the business attributable to North Carolina for the purpose of computing the North Carolina income tax liability of the nonresident individual or nonresident partner must be determined by multiplying the total net income of the business by the allocation ratio ascertained under the provisions of G.S. 105-130.4. (This allocation of income does not effect the reporting of income by the resident individual or resident partner because he is taxable on his share of the net income of the business whether or not any portion of it is attributable to another state or country.)

History Note: Statutory
Authority G.S. 105-130.4;
105-134; 105-135(13);
105-142(c); 105-147(18);
105-151; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; June 1, 1982.

SECTION .0700 - ACTIVE AND
RESERVE DUTY MILITARY PAY

.0704 ESTIMATED INCOME TAX
RETURNS

A serviceperson or serviceperson's spouse files an estimated income tax where the net estimated tax is forty dollars (\$40.00) or more.

History Note: Statutory
Authority G.S. 105-163.15;
105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
February 11, 1978.

SECTION .0900 - SALE OF
PRINCIPAL RESIDENCE

.0902 RULES

(c) The new residence must be used as the individual's principal residence within two years before or after the sale of the old residence.

The replacement period is suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their

residence) serves on extended active duty with the Armed Forces of the United States after the date of sale of the old residence. In no case, however, may the period be suspended longer than four years after the date of the sale of the old residence. The replacement period if suspended for up to eight years for members of the Armed Forces stationed outside the United States or for members required to reside in government quarters at a remote site. This eight year suspension applies to those residences sold after July 18, 1984.

The replacement period for purchasing a new principal residence to postpone the tax on the gain from the sale of a principal residence is suspended up to four years after the date of sale during the time an individual has his tax home outside of the United States.

An individual will be allowed to postpone the taxing of gain on the sale of more than one principal residence within the replacement period if the proceeds are reinvested in a new principal residence and he relocates for employment purposes and qualifies to deduct moving expenses.

History Note: Statutory
Authority G.S. 105-144.2;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; March 29, 1981;
February 11, 1978.

SECTION .1400 - INCOME AND
DEDUCTIONS OF DECEDENTS

.1402 THE REPORTING OF
INCOME

(a) The income of the decedent is determined in the same way it would have been determined had he lived. If he was on a cash basis, only that income actually or constructively received up to and including the date of his death is to be included in his final return. Income may be considered to be constructively received by a cash basis taxpayer when it is credited to him without restriction and made available to him to the extent that he can draw upon it and bring it immediately into his possession and control. If the decedent was on the accrual basis, there should be included on the final return filed for him his income accrued up to and including the date of death;

however, any income accruable only because of his death should not be included on his final return.

History Note: Statutory
Authority G.S. 105-142;
105-142.1; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
June 1, 1982.

SECTION .1700 - EXEMPT INCOME

.1706 GOVERNMENT OBLIGATIONS
(b) Even though interest on these obligations is exempt, any gain realized on the sale or redemption of them is taxable except in cases where the exemption of gain is specified by a particular law which authorized their issuance. Interest on bonds, notes, or other obligations of states other than North Carolina, or political subdivisions of such states, or of countries other than the United States and its possessions is taxable income to a North Carolina resident.

History Note: Statutory
Authority G.S. 105-141(a);
105-141(b)(4); 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
June 1, 1982; February 18, 1978.

.1748 NORTH CAROLINA RETIREMENT BENEFITS

(a) Legislative retirement benefits received by retired members of the General Assembly, from the Legislative Retirement Fund, are taxable under the annuity rules set forth in G.S. 105-141.1. The amendment to the law which established the Legislative Retirement Fund incorporates certain provisions of Chapter 135 of the General Statutes but does not incorporate the provision relating to exemption from taxation.

History Note: Statutory
Authority G.S. 120-4.4;
120-4.23; 105-262;
Eff. May 1, 1984;
Amended Eff. August 1, 1986.

.1749 PUNITIVE DAMAGES
Amounts which represent payment for punitive damages are taxable; however, amounts received as damages (whether by suit or agreement) on account of injuries or sickness are exempt (examples: black and brown lung benefits).

History Note: Statutory

Authority G.S. 105-141(b)5;
105-262;
Eff. August 1, 1986.

.1750 FOSTER PARENTS REIMBURSEMENT

Payments to a foster parent by a child-placing agency are not taxable income provided the payments received do not exceed the expenses incurred for taking care of the child in your home.

History Note: Statutory
Authority G.S. 105-141(a);
105-262;
Eff. August 1, 1986.

.1751 CHILD AND DEPENDENT ASSISTANCE PAID BY EMPLOYER

Effective for income tax years beginning on or after January 1, 1983, amounts paid or incurred by an employer for child and dependent care assistance are excluded from the gross income of the employee to the extent excluded from gross income for federal income tax purposes. Amounts excluded by an employee as child and dependent care assistance payments may not qualify for any other type of income tax deduction or tax credit.

History Note: Statutory
Authority G.S. 105-141(b)(9)c.;
105-262;
Eff. August 1, 1986.

.1752 FOREIGN INCOME EXCLUSION

Income earned outside the United States is subject to a foreign income exclusion to the same extent allowable for federal income tax purposes. Federal Form 2555, Foreign Earned Income, should be attached to the state tax return when this exclusion is claimed. North Carolina law does not exempt any income from taxation because of a tax treaty between the United States and another country.

History Note: Statutory
Authority G.S. 105-141(b)(22);
105-262;
Eff. August 1, 1986.

SECTION .1900 - EMPLOYEE DEATH BENEFITS

.1902 THE FIVE THOUSAND DOLLAR EXCLUSION

(5) The exclusion applies, even though the employee had a nonforfeitable right to the proceeds had he lived, where the total distribution

payable under a pension, profit sharing, stock bonus, or annuity trust or plan which qualifies under the provisions of G.S. 105-161(f)(1)a. is paid within one taxable year of the beneficiary. The total distribution payable means the balance to the credit of an employee which becomes payable to the beneficiary on account of the employee's death, either before or after separation from the service of the employer. Effective for income tax years beginning on or after January 1, 1985, the five thousand dollar (\$5,000) death benefit exclusion is also available to beneficiaries and estates of self-employed individuals on amounts distributed under these trusts and plans.

History Note: Statutory Authority G.S. 105-141(b) (11); 105-141.1; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986; February 18, 1978.

SECTION .2500 - RETIREMENT PLANS

.2502 FEDERAL PRACTICE TO BE FOLLOWED

(b) Contributions by employees to a qualified employees' retirement plan are generally not deductible; however, voluntary contributions to qualified plans described in Internal Revenue Code Section 401 (k) are excludable to the same extent allowable for federal income tax purposes.

(c) Amounts actually distributed from a qualified employees' retirement plan including a self-employed plan is taxable in the year distributed. If the employee has made contributions to the plan and the benefits are received as a lump sum, the recipient will be taxed on the amount distributed to the extent such amount exceeds the contributions. If the employee has made contributions and the benefits are received as periodic payments, the amounts annually received will be taxed under the annuity rules. When distributions are received from such qualified plans by an individual after moving to North Carolina and becoming a resident, the amount received is taxable; however, distributions received by an individual after

having moved out of North Carolina and becoming a nonresident is not taxable.

History Note: Statutory Authority G.S. 105-147(20); 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986; May 1, 1984; June 1, 1982.

SECTION .2600 - CARRY-OVER LOSS

.2604 APPORTIONMENT

When an individual is required to apportion to North Carolina his net apportionable income, as defined by statute, only such proportionate part of the net economic loss of a prior year may be claimed as a deduction as would be determined by the use of the apportionment ratio computed under the corporate apportionment provisions in effect for the year in which the loss occurred.

An individual who has sustained a net economic loss in another state prior to moving to North Carolina cannot claim a deduction for a carry-over loss resulting from such net economic loss.

If a nonresident or part-year resident with income reportable to North Carolina and also with income not taxable to North Carolina has a loss on the North Carolina income, he must reduce the loss by the income not taxable to North Carolina under this division before he may carry the loss over to the ensuing year.

History Note: Statutory Authority G.S. 105-147(9)d.; 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986.

SECTION .2800 - TAXES PAID

.2805 DEDUCTIBLE BY RESIDENTS (2) Intangibles Tax;

History Note: Statutory Authority G.S. 105-147(6); 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986; April 5, 1981; March 11, 1978.

.2806 NONDEDUCTIBLE (13) taxes paid for another individual; (14) import (customs) duties.

History Note: Statutory Authority G.S. 105-147(6); 105-262;

Eff. February 1, 1976;
Amended Eff. August 1, 1986;
March 11, 1978.

LIMITATIONS AND FEDERAL CHANGES

SECTION .3000 - CONTRIBUTIONS

.3005 LIMITATIONS

(b) A deduction is also allowed without limit for contributions to public-supported community foundations or public-supported community trusts which are deemed to be publicly supported for purposes of the Internal Revenue Code and the federal regulations, and for a contribution an individual designates on his tax return which is to be used by the North Carolina Nongame and Endangered Wildlife Fund. (For more information on the North Carolina Nongame and Endangered Wildlife Fund see Other Items, 17 NCAC 6B .3803.)

History Note: Statutory
Authority 105-147(15);
105-147(15a); 105-147(16);
105-163.16(e); 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; February 21, 1979;
March 11, 1978.

.3006 AMOUNT DEDUCTIBLE

(b) If a contribution is made in property, the fair market value of the property at the time the property is donated is the measure of the contribution. The fair market value of property generally represents the amount which an owner, who is not under necessity of selling, is willing to take and which another individual, who is not under a necessity of buying, is willing to pay. If the value of the property is more or less than its basis, no gain or loss is recognized because the contribution made in property is not generally considered as a taxable exchange. Where appraisals, schedules, etc. are required to be attached to an individual's federal income tax return, the same information would also be required to be attached to the individual's state tax return.

History Note: Statutory
Authority G.S. 105-147(15);
105-147(16); 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
April 5, 1981.

SECTION .3400 - STATUTE OF

.3406 REFUNDS

(d) For refunds barred by the three-year statute of limitations, G.S. 105-267.1 provides for the refunding of taxes which through clerical error, or misinterpretation of the law, or otherwise have been paid in excess of the amount legally due; provided, the demand for such refund is made within two years from the time of the payment. This two-year statute of limitations does not apply in cases where the tax is due and payable to another state. Any refund made under this statute must be certified by the Director of the Individual Income Tax Division, approved by the Attorney General, and will not include any interest.

History Note: Statutory
Authority G.S. 105-163.16;
105-241.1; 105-262;
105-266;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; December 17, 1978.

SECTION .3700 - ESTATES AND TRUSTS

.3709 ORDINARY DEDUCTIONS

(a) An estate or trust may deduct ordinary and necessary expenses incurred in carrying on a trade or business, expenses paid during the year for production or collection of income, expenses paid during the year for the management, conservation, or maintenance of property held for the production of income, and expenses paid in connection with the determination, collection, or refund of any tax. Reasonable amounts paid or incurred by the fiduciary of an estate or trust as administration expenses are deductible to the extent that they are not allocable to tax exempt income.

History Note: Statutory
Authority G.S. 105-161(d);
105-142.1(e); 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
June 1, 1982.

SECTION .3800 - MISCELLANEOUS RULES

.3801 INCOME

(e) A dividend or a portion of a dividend which is in fact a return of capital will be

treated as a reduction in the basis of the stock on which the dividend was declared and not as taxable income.

(g) Embezzlement proceeds are reportable as income regardless of whether or not the embezzlement was condoned by the victim. Also, kickbacks, side commissions, push money, or similar payments are reportable as income.

(p) Strike benefits based solely on need are considered gifts and are not taxable; however, strike benefits paid for other reasons are fully taxable to recipients regardless of whether or not picket duty is required.

(q) Unemployment compensation benefits received by a resident of North Carolina are taxable to this State, even, if the benefits were received because of working in another state. Benefits received by a non-resident in North Carolina are not taxable to this State, even if received because of working in North Carolina. Trade re-adjustment allowances (TRA), airline deregulation benefits, and disaster unemployment assistance are considered unemployment compensation benefits and are taxable.

(u) Fees received for services as a witness, a member of a jury or an election precinct official are reportable as income.

(w) An individual landowner who owns one thousand acres or less of private forestland or owns forestland that has been approved by the U.S. Secretary of Agriculture for cost-sharing under Section 4(c) of the Federal Cooperative Forestry Assistance Act of 1978, may elect to report one-third of income from the sale of timber products for the forestland in the year of sale and one-third in each of the next two succeeding years. Once an election is made, the individual may not change from one reporting method to another after the due date of the tax return.

When an individual dies after having made an election to report the gain over the three-year period, the balance of the gain may be reported on the individual's final income tax return or an election may be made to continue to report the gain as originally elected; however, no personal exemption, itemized deductions or standard deduction would be allowed on

returns filed for years after the year in which the taxpayer dies. In the case of the taxpayer who dies after selling the timber but before making the election to report the timber sale over the three-year period, the administrator/executor of the individual's estate may make the election for the deceased individual, subject to the provisions stated in this Rule.

History Note: Statutory Authority G.S. 105-141(a); 105-141.1; 105-144(c); 105-147(7); 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986; May 1, 1984; June 1, 1982; April 12, 1981.

.3802 DEDUCTIONS

(u) Effective for income tax years beginning on and after January 1, 1985, a deduction may be claimed for the marketing assessment fee paid on tobacco grown in North Carolina. The deduction should be entered on the Farm Schedule, or where applicable the fee may be shown as a deduction in Part II of Schedule B, Supplemental Schedule of Income.

(v) Effective for income tax years beginning on and after January 1, 1985, a deduction is allowed of up to three thousand dollars (\$3,000) for payments made for the maintenance and care of one or both of an individual's parent(s). The deduction must be reduced by the total of all gifts received from the parent(s) during the tax year which exceed one hundred dollars (\$100.00). If payments are made for one parent, the deduction may be claimed only if:

- (1) the parent was age 65 or over by the last day of the income year;
- (2) the parent's total disposable income from all sources other than gifts or inheritances did not exceed nine thousand dollars (\$9,000) for the year;
- (3) the parent was a North Carolina resident for more than half the year (183 days or more);
- (4) the parent is not claimed as a dependent on the individual's State income tax return; and
- (5) the parent was not in a public or private institution for more than half the year (183 days or more).

If payments are made for both

parents, the deduction may be claimed on if:

- (1) at least one parent was age 65 or over by the last day of the income year;
- (2) the parents' combined disposable income from all sources other than gifts or inheritances did not exceed nine thousand dollars (\$9,000) for the year;
- (3) both parents were North Carolina residents for more than half the year (183 days or more);
- (4) the parent is not claimed as a dependent on the individual's State income tax return; and
- (5) neither parent was in a public or private institution for more than half the year (183 days or more).

If an individual makes payments to one parent and both parents benefited from the payments, they are considered to have been made for both parents.

Disposable income is defined as total income from all sources, except gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. Disposable income includes all nontaxable income such as social security, child support, welfare payments, etc.

A public or private institution includes, but is not limited, to a hospital, nursing home, rest home, retirement home, etc.

Qualifying maintenance and care payments are those actual monetary payments actually incurred for the parent's care. The qualifying expenses will generally include those items normally considered in determining the support of a dependent. Support includes expenditures used for providing food, clothing, education, medical and dental care, recreation, transportation, and similar necessities. Maintenance and care payments for support items can be made either directly to the parent(s) or directly for the parent's benefit. For example, payments made by an individual to a doctor for a parent's benefit would qualify as made for the maintenance and care of the parent. When an individual owns a home in which the parent(s) reside, no deduction is allowable for any portion of the house payments or for the fair rental value of the parents' lodging. In this case, the individual has not actually paid

any amount for the maintenance of the parent(s) and the house payments are his or her investment in the property. If an individual pays the rent on a home in which the parent(s) reside or pays the house payments on a home in which the parent(s) reside and own, a deduction is allowable for the portion of the rent or house payments paid for the parent(s). If a taxpayer resides rent free (or for less than fair value) in a home owned by the parent(s) (or on which the parents pay the rent), the maintenance and care payments the taxpayer makes for the parent(s) must be reduced by the amount which the fair rental value of the taxpayer's lodging exceeds the rent the taxpayer pays.

In the case of married individuals, each spouse may claim a deduction only for those qualifying payments he or she made for his or her own parents. One spouse may not deduct payments he or she made for the maintenance and care of the other spouse's parents, nor may a deduction be claimed by the other spouse for these payments since the other spouse did not make the payments.

In determining the amount of qualifying maintenance and care payments made by each spouse from a joint checking account, each spouse will be considered to have made the payments for his or her own parent(s). If both spouses made payments to his or her parent(s), each spouse must file a separate Form D-470 and each spouse may be entitled to claim a deduction of up to three thousand dollars (\$3,000) for the amount he or she paid for his or her own parents.

History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-147(7); 105-147(9)a; 105-147(10); 105-147(24); 105-147(28); 105-148(1); 105-148(2); 105-148(8); 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986; June 1, 1982; April 12, 1981; January 21, 1979.

.3803 OTHER ITEMS

(k) Effective for income tax years beginning on or after January 1, 1983, an individual may elect to contribute all or any portion of his income tax refund, at least one dollar (\$1.00) or more, to the North Carolina Nongame and Endangered

Wildlife Fund. Once the election is made to contribute, the election cannot be revoked after the return has been filed.

The amount contributed may be claimed as a contribution on the following year's income tax return provided the individual itemizes his non-business deductions.

The contribution will be used to assist in the management and protection of North Carolina's many nongame species, including endangered wildlife. The Nongame and Endangered Wildlife Fund will be the primary source of money to support much needed research, public education, and management programs designated specifically to benefit nongame wildlife.

(n) Individuals who receive tax exempt income relating to an otherwise allowable business or non-business deduction may not deduct any amounts allocable to tax exempt income. Federal rules and regulations in effect during the income year will be followed in determining the extent to which a deduction is allocable to tax-exempt income which are not deemed to be contrary to the context and intent of state law.

(o) A loss arising from an activity entered into without the expectation of profit is not deductible (example, hobby losses and losses on vacation homes). If the profit motive is factually established, the amount of loss that may be deducted is limited to the amount actually sustained during the income year; thus, the loss cannot exceed the amount of capital or property the taxpayer has at risk in the activity. In determining the profit motive and the amount the taxpayer has a risk, the department follows the Federal practice to the extent it is not contrary to the context and intent of state law.

(p) An individual may elect to have his or her income tax refund applied to estimated income tax for the following year. For example, and individual due a refund on his 1985 income tax return may have all or any portion of the refund applied to his estimated tax for 1986. The individual may not however, file a 1985 return in 1987 and request the refund be applied to his 1987 estimated tax since the refund can only be applied to the tax year which follows the year for which the request for refund is made.

(q) Cancelled checks, receipts,

or other evidence to substantiate deductions on the tax return should be kept for a period of at least three years from the due date of the return or three years from the date the return is filed, whichever is later. Lack of adequate records could result in the disallowance of all or part of the deductions claimed.

A cancelled check, money order stub, or Departmental receipt showing payment of tax should be kept for at least five years from the due date of the tax return.

History Note: Statutory

Authority G.S. 8-45.3;
105-142(a); 105-144(a);
105-144.3; 105-147(1)h;
105-147(9)a; 105-147(17);
105-147(19); 105-148(1);
105-159.1; 105-163.16(c);
105-163.16(e); 105-251;
105-262; 147-77;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; June 1, 1982;
January 21, 1979.

SUBCHAPTER 6C - WITHHOLDING

SECTION .0100 - WITHHOLDING INCOME TAXES

.0109 MINISTERS

An ordained or licensed clergyman who performs services for a church of any religious denomination may file an election with the Secretary of Revenue and the church he serves to be considered self-employed instead of an employee of the church. Wages paid by a church to a clergyman who elects to be considered self-employed are not subject to withholding.

History Note: Statutory

Authority G.S. 105-163.1A;
105-163.2; 105-163.18;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
February 21, 1979.

SUBCHAPTER 6D - ESTIMATED TAX

SECTION .0100 - FILING ESTIMATED INCOME TAX PAYMENTS

.0101 FORMS

(a) The form for paying estimated individual income tax, Form NC-40, is available from the Department of Revenue in the form of a personalized payment book or a non-personalized, four-page, tear-off sheet. Both types of forms include the necessary vouchers and

instructions for making payments. Instructions are printed on the back of the form.

(b) For taxable years 1986 and after, an individual will no longer be required to file a declaration of the estimated income tax as in the past; however, the individual will be required to make payments of estimated income tax. This change in State law is similar to the change in Federal law.

History Note: Statutory
Authority G. S. 105-163.15;
105-254;
105-262; 105-163.18;
Eff. February 1, 1976;
Amended eff. August 1, 1986.

.0102 REQUIREMENTS FOR FILING

(a) For taxable years before 1986, an individual is required to file a Declaration of Estimated North Carolina Income Tax, Form NC-40, if he has income of one thousand dollars (\$1,000) or more which is not subject to North Carolina withholding and if he can reasonably expect his net North Carolina income tax to be forty dollars (\$40.00) or more after deducting the amount expected to be withheld or allowed as a tax credit.

(b) If a husband and wife file on a combined declaration, Form NC-40, they must also file on a combined return, Form D-400.

(c) The forty dollar (\$40.00) minimum is applicable to the husband and wife separately before their estimated taxes are combined.

(d) A taxpayer filing a short-period return because of changing his income year is required to make the declaration of estimated income tax and payments of estimated tax on the installment dates which fall within the short period and 15 days after the close of the short period which would have been due had he not changed his income year. The penalty for underpayment of estimated income tax for a short period will be computed for the period of underpayment based on the tax shown due on the short-period return and computed in the same manner as it would have been computed had the taxpayer not changed his income year.

(e) For taxable years beginning on and after January 1, 1986, an individual is required to make estimated income tax payments if the tax

shown due on the income tax return for the taxable year, reduced by the North Carolina tax withheld and allowable tax credits, is forty dollars (\$40.00) or more regardless of the amount of income the individual has that is not subject to withholding. Form NC-40, North Carolina Estimated Income Tax for Individuals, is the form required to be used when making payments.

History Note: Statutory
Authority G.S. 105-163.15;
105-262; 105-163.18;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 1, 1984; February 21, 1979.

SECTION .0200 - PENALTY FOR UNDERPAYMENT

.0201 GENERAL

(a) For taxable years before 1986, there are two types of penalties, criminal and civil, which apply to the declaration of estimated income tax. The criminal penalty is for willfully filing a false return or for willful failure to file a declaration return or pay the estimated tax. The civil penalty is a penalty computed at the applicable rate upon the amount of the underpayment of estimated tax for the period of the underpayment.

(b) For taxable years beginning on and after January 1, 1986, the only penalty is the civil penalty for underpayment of estimated income tax.

History Note: Statutory
Authority G.S. 105-163.15;
105-236(9); 105-241.1(i);
105-262; 105-163.18;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
February 21, 1979.

.0205 REQUIREMENTS FOR ESTIMATED TAX PAYMENTS (TAXABLE YEARS AFTER 1986)

The penalty for underpayment of estimated income tax will not apply if the individual makes payments of estimated income tax on each installment date for 25 percent of the lesser of (1) 80 percent (66 2/3 percent for farmers and fishermen) of the tax on the current year's return, (2) 100 percent of the tax on the preceding year's return (provided it was a taxable year of 12 months and the individual filed a return for that year), or (3) 80 percent (66 2/3 percent for farmers and fishermen) of the

tax figures by annualizing the income received during the year up to the month in which the installment is due. Also, no penalty for underpayment will be due if an individual had no tax liability for the preceding year. If a required payment is computed on the basis of an annualized installment and is less than the regular required installment, the penalty may be avoided for that installment due; however, the amount that the annualized method reduces an installment must be recaptured by increasing the amount of the next required installment which is determined under the regular method.

History Note; Statutory Authority G.S. 105-163.15; 105-163.18; 105-262; Eff. August 1, 1986.

SUBCHAPTER 7B - STATE SALES AND USE TAX

SECTION .0100 - GENERAL PROVISIONS

.0101 IMPOSITION OF AND LIABILITY FOR COLLECTING AND REMITTING TAX

(a) All retail sales of tangible personal property are subject to the three percent, two percent or the one percent sales or use tax unless specifically exempt by statute. Effective January 1, 1985, the gross receipts derived by a utility from sales of electricity, piped natural gas or intrastate telephone service are subject to the three percent state rate of sales tax, other than receipts from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes. The gross receipts derived by a utility from sales of electricity and piped natural gas are not subject to the local sales or use tax. Wholesale sales are not subject to the tax if made pursuant to the conditions set forth in the statutory definition of wholesale sale. Every person making retail sales of taxable tangible personal property is required to register with the department and collect and remit all tax due on such sales.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6;

105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
February 1, 1986;
February 8, 1981;
March 15, 1980.

SECTION .1700 - SALES TO OR BY THE STATE: COUNTIES: AND OTHER POLITICAL SUBDIVISIONS

.1702 REFUNDS TO COUNTIES: CITIES: ETC.;

(a) Governmental entities, as defined by G.S. 105-164.14(c), are entitled to an annual refund of sales and/or use taxes paid by them on their direct purchases of tangible personal property, subject to the terms and conditions herein set forth. The refund provisions of this Rule are not applicable to sales taxes incurred by employees on purchases of food, lodgings or other taxable travel expenses paid by employees and reimbursed by governmental entities. Such expenses are personal to the employee since the contract for food, shelter and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. The governmental entity has not paid any sales tax liability. In such cases, it has chosen to reimburse a personal expense to the employee. The statute prohibits the refund of any sales tax paid on purchases of electricity, piped natural gas and intrastate telephone services. Furthermore, the refund provisions of the statute are not applicable to the occupancy taxes which are levied and administered by certain counties and cities in this state. Governmental entities and the Federal Government are entitled to annual refunds of sales and/or use taxes paid in North Carolina by their contractors on purchases of building materials, supplies, fixtures, and equipment which become a part of or are annexed to any building or structure being erected, altered or repaired under contract with such governmental entities which is owned or leased by such governmental entities.

History Note: Statutory Authority G.S. 105-164.14 105-262; Eff. February 1, 1976; Amended Eff. August 1, 1986; May 1, 1985; March 1, 1984; January 1, 1982.

SECTION .2100 - COAL; COKE; FUEL
OIL; OXYGEN; ACETYLEME;
HYDROGEN; LIQUEFIED PETROLEUM
GAS AND OTHER
CONBUSTIBLES

.2101 IN GENERAL

(a) Sales of electricity, piped natural gas, bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas or other combustibles to users or consumers are subject to the three percent rate of sales or use tax except those sales exempt from tax under the provisions of G.S. 105-164.13 and those sales which are subject to the one percent rate of tax or are exempt from tax under the provisions of G.S. 105-164.4. The gross receipts derived by a utility from sales of electricity and piped natural gas are not subject to the local sales or use tax.

History Note: Statutory
Authority G.S. 105-164.4;
105-164.6; 105-164.13;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
February 1, 1986; May 1, 1985;
January 1, 1982.

SECTION .2400 - VETERINARIANS

.2401 SALES TO VETERINARIANS

(a) Veterinarians are engaged in rendering professional services and are the users or consumers of medicines or drugs and other tangible personal property which they purchase for use in administering treatment to animals. Purchases by veterinarians of medicines or drugs for use in the treatment of pets, such as birds, dogs and cats, are subject to sales or use tax notwithstanding such medicines and drugs may be of the type usually sold on the prescription of a veterinarian. Veterinarians should remit the tax due on such purchases to their suppliers who collect and remit North Carolina sales and/or use taxes. When such purchases are made from out-of-state suppliers who do not collect and remit the applicable sales or use tax, the veterinarians are liable for remitting the use tax due thereon directly to the North Carolina Department of Revenue. Purchases and sales by veterinarians of medicines and drugs for use in the treatment

of livestock and poultry, including cattle, horses, mules, sheep, chickens, turkeys and other domestic animals usually found on a farm, and other animals or poultry held or produced for commercial purposes are exempt from sales or use tax.

(b) Veterinarians who make purchases of medicines or drugs for use in the treatment of livestock, poultry and pets, and by reason of the multiple uses to be made of the medicines or drugs cannot determine the application of tax thereto until they are used may, in connection with such purchases, furnish Veterinarian's Certificate, Form E-567, to their vendors and assume liability for payment of the applicable tax to the Secretary of Revenue on that portion which is used in the treatment of pets. Veterinarians making purchases pursuant to a Veterinarian's Certificate, Form E-567, must register with the department for the purpose of remitting the use tax due on that portion of such medicines and drugs used in treating pets.

(c) Sales to veterinarians of medical supplies, including such items as cotton, gauze, adhesive tape, bandages and other dressings and medical instruments and equipment, such as knives, needles, scissors, microscopes, x-ray machines and other laboratory equipment used for testing and diagnosis, and for the prevention, treatment or cure of diseases in animals are subject to the sales or use tax.

History Note: Statutory
Authority G.S. 105-164.4;
105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 11, 1979.

.2402 SALES BY VETERINARIANS

(a) Effective July 1, 1985, sales of drugs and medicines on the written prescription of a veterinarian, whether from an inventory of medicines and drugs maintained by the veterinarian or whether by or through an independent pharmacy or drug store, are exempt from sales or use tax. The terms "medicines" and "drugs" shall mean medicines in the generally accepted sense of the term and also includes remedies and tonics for internal use, vaccines, vitamins, ointments, liniments, antiseptics and other medicinal substances having preventive and

curative properties in the prevention, treatment or cure of disease in animals.

(b) When a veterinarian maintains an inventory of medicines and drugs from which sales are made pursuant to a veterinarian's written prescription, to persons who actually receive the medicines or drugs for subsequent administration, such sales are exempt from sales or use tax provided adequate records are maintained which clearly segregate such prescription sales. In the absence of a written prescription, a copy of which is kept on file, veterinarians making such prescription sales must clearly show on the patients' medical records, cards or charts the diagnosis of the illness or ailment, the kind and amount of medicines or drugs prescribed, the sales price of such medicines or drugs and the frequency with which such medicines or drugs are to be administered to the patient. Records must be maintained that show charges to customers for professional services and such records must be kept in a manner so that such prescription sales of medicines and drugs can be related or traced to the patients' medical records, cards or charts. The foregoing does not apply to medicines or drugs that are administered by the veterinarian to the patient in connection with the treatment of patients since veterinarians are the users of any such medicines or drugs so administered.

(c) Sales of medicines or drugs by a pharmacy on the written prescription of a veterinarian are exempt from sales or use tax. Sales of medicines and drugs by a pharmacy pursuant to a veterinarian's telephone (oral) prescription are exempt from sales or use tax provided the prescription is reduced to writing, signed by the pharmacist and filed in the same manner as an original written prescription. Medicines or drugs sold pursuant to the refilling of a veterinarian's prescription are likewise exempt from tax. Vendors making sales of medicines or drugs pursuant to a veterinarian's prescription or refilling the same must keep sales records which will clearly segregate such prescription sales. All original prescriptions must be filed and kept available for inspection by

the Secretary of Revenue or her authorized agent.

(d) Veterinarians who maintain an inventory for the purpose of making sales of medicines, drugs, flea powder, soap, pet food, dog collars and similar items at retail must register with the department and collect and remit the applicable tax on such sales. A veterinarian who uses tangible personal property in rendering professional services and also makes sales of the same type property may, in connection with such purchases, furnish Certificates of Resale, Form E-590, to his vendors. The veterinarian is then liable for remitting the applicable use tax on the property which is used and the applicable sales tax on sales of such property to users or consumers.

History Note: Statutory
Authority G.S. 105-164.4;
105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
May 11, 1979.

SECTION .3100 - RADIO AND TELEVISION STATIONS: MOTION PICTURE THEATRES

.3106 COMMERCIAL CABLE TELEVISION COMPANIES

(b) Taxable tangible personal property purchased by cable television companies other than towers, antennas and purchases of broadcasting equipment and parts and accessories thereto are subject to tax at the rate of three percent.

History Note; Statutory
Authority G.S. 105-164.4;
105-164.6;
105-262;
Eff. March 1, 1984;
Amended Eff. August 1, 1986;
December 1, 1984.

SUBCHAPTER 7C - LOCAL GOVERNMENT AND MECKLENBURG COUNTY SALES AND USE TAX ACTS

SECTION .0100 - LOCAL GOVERNMENT SALES & USE TAX ACT

.0103 SALES TAX IMPOSED

(1) the sales price of those articles of tangible personal property now subject to the three percent sales tax imposed by the state under G.S. 105-164.4(1) but not on sales of electricity, piped natural gas or intrastate telephone service

taxed under G.S.
105-164.4(4a);

History Note: Statutory
Authority G.S. 105-467;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986.

SECTION .0200 - MECKLENBURG
COUNTY SALES AND USE TAX ACT

.0202 SALES TAX IMPOSED
(1) the sales price of
those articles of tangible
personal property now subject
to the three percent sales
tax imposed by the state
under G.S. 105-164.4(1) but
not on sales of electricity,
piped natural gas or
intrastate telephone service
taxed under G.S.
105-164.4(4a);

History Note: Statutory
Authority G.S. 105-262;
Session Laws, Chapter 1096,
Section 4 (1967);
Eff. February 1, 1976;
Amended Eff. August 1, 1986.

CHAPTER 8 - INTANGIBLE TAX

SECTION .0400 - ACCOUNTS
RECEIVABLE

.0403 ACCOUNTS RECEIVABLE
SUBJECT TO TAXATION
(18) delete

History Note: Statutory
Authority G.S. 105-201;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
December 1, 1985;
December 1, 1983;
March 1, 1982.

.0404 DEDUCTIBLE ACCOUNTS
PAYABLE

(11) delete
(12) certain short term
notes payable may qualify as
accounts payable provided
they were issued or made for
a term of one year or less
and are not deducted as notes
payable under G.S. 105-202.
(This deduction does not
apply to notes "payable on
demand" or the current
portion of long term debt.);

History Note: Statutory
Authority G.S. 105-201;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
December 1, 1985;
December 1, 1983;
March 1, 1982.

.0405 ACCOUNTS NOT
DEDUCTIBLE

(8) floor plan notes which
are payable on demand or
which are made for a term of
more than one year; such
notes payable are deductible
under G.S. 105-202;
(11) notes made for a term of
more than one year and notes
"payable on demand".

History Note: Statutory
Authority G.S. 105-201;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
August 1, 1982; March 1, 1982;
August 31, 1981.

SECTION .0500 - NOTES: BOND
AND OTHER EVIDENCES OF DEBT

.0504 NOTES, BONDS,
ETC. SUBJECT TO TAXATION
(18) delete

History Note: Statutory
Authority G.S. 105-202;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
December 1, 1985;
March 1, 1982;
October 30, 1980.

SECTION .1500 - EXEMPTIONS

.1505 DOMESTIC TRUSTS FOR
NONRESIDENTS OR EXEMPT
ORGANIZATIONS

(b) "Net income distributed"
shall mean the net income of a
trust actually paid to a
beneficiary or beneficiaries
during the calendar year. "Net
income distributable" shall mean
the net income which by the
terms of a trust instrument is
required or authorized to be
distributed during the calendar
year, but which has not been
distributed. Such income, if
required to be distributed,
shall be deemed "distributable"
to the beneficiary to whom it is
required to be distributed.
Such income, if authorized to be
distributed at the trustee's
discretion, shall be deemed
"distributable" to the
beneficiaries, whether resident,
nonresident or exempt
organization, in equal shares,
unless the trust instrument
provides otherwise.

History Note: Statutory
Authority G.S. 105-212;
105-262;
Eff. February 1, 1976;
Amended Eff. August 1, 1986;
November 1, 1984.

TITLE 18 - SECRETARY OF STATE
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;
- (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;
- (3) Purchase an approved notary public manual.
- (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.

TITLE 19A - TRANSPORTATION

SUBCHAPTER 2E - MISCELLANEOUS
OPERATIONS

SECTION .0800 - SOLICITATION OF
CONTRIBUTIONS FOR
RELIGIOUS PURPOSES
AT REST AREAS

.0802 PERMITS REQUIRED

(a) All organizations desiring to solicit under the provisions of this Section must first obtain a permit from the Department of Transportation for the stated purpose of allowing their members to solicit at designated areas on the state highway system.

(b) Written requests for permits for religious solicitation shall be sent to the Office of the State Highway Administrator of the North Carolina Department of Transportation.

(c) Written requests must include all of the following:

- (1) copy of certificate showing that the applicant is exempt from federal income tax as a religious, educational or charitable organization as provided in 26 USC 501(c)(3) together

with the applicant's tax exemption number;

- (2) a statement indicating the locations where the organization intends to solicit contributions;
- (3) the name and address of each individual authorized to solicit for the applicant;
- (4) the name of an officer of the applicant, together with an address, to whom the permit is to be sent and complaints are to be directed;
- (5) if the request for a permit is from a non-religious educational or charitable organization, a detailed written description of the organization's past efforts serving and promoting the safety of the traveling public.

(d) When all the appropriate information required in Paragraph (c) of this Rule has been provided by the applicant, a permit shall be issued by the State Highway Administrator, or his duly authorized representative, and said permit will be effective for a period of thirty days from the date of issuance.

(e) Each permit issued shall describe the activity authorized, the area in which it may be conducted, and the period of time for which the permit is issued.

History Note: Statutory

Authority G.S. 20-175;
136-18;

Eff. November 1, 1984;

Amended Eff. September 1, 1986;

August 1, 1986;

September 1, 1985.

TITLE 26 - OFFICE OF
ADMINISTRATIVE HEARINGS

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

SECTION .0200 - GENERAL FILINGS
REQUIREMENTS

.0201 ADOPTION OF RULES

(e) If the adopted rule differs in anyway from the proposed rule published in the North Carolina Register, the filing shall be accompanied by a copy of the proposed rule as submitted for publication noting the changes between the proposed rule and the adopted rule with changes identified by striking through deleted portions in a contrasting color and

highlighting added portions in a different contrasting color, and a statement of the volume, issue and page or pages of the notice publication.

.0203 REPEAL OF RULES

(b) The original and one copy of a statement of repeal shall be filed with the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.

(b) In order to be acceptable for filing with the Office of Administrative Hearings, a statement of a repeal of a rule shall be accompanied by a Submission of Filing form.

(c) In order to be acceptable for filing with the Office of Administrative Hearings, a statement of a repeal of a rule shall be accompanied by a Submission of Filing form.

(c) The original and one copy of a statement of repeal shall be filed with the Office of Administrative Hearings. The original shall be in proper form as required by Rule .0402 of this Subchapter.

.0204 REQUEST FOR TRANSFER

(b) The request for recodification shall be submitted to the Office of Administrative Hearings on a Transfer and Recodification form and accompanied by a table of contents setting out the catchline and number for each rule for each section affected by the requested transfer.

.0207 RULE SUMMARIES

For distribution and publication purposes, the Chief Hearing Officer Chief Administrative Law Judge of the Office of Administrative Hearings has statutory authority to summarize rules which he judges would be impracticable to distribute or to publish in full. An agency with rules which it believes would be impracticable to distribute or publish may request that the Chief Hearing Officer Chief Administrative Law Judge examine such rules. If he determines that the submitted rules are inappropriate for distribution or publication, he may allow request the agency to draft a summary rule, and file The full rule or rules in their existing form or such other form as he may specify. must be filed and the summary published in the North Carolina

Administrative Code in accordance with statutory requirements.

SECTION .0300 - TEMPORARY RULEMAKING

.0302 SUBMISSION FOR FILING FORM

Each temporary rule that is filed shall be filed with a accompanied by a Submission for Filing form; provided that, more than one temporary rule may be included on the same form if they are filed for the same reason, to be effective on the same date, and for the same period of time.

SECTION .0400 - PHYSICAL FORMAT

.0402 ORIGINAL COPY OF RULES

(c) Repealed rules shall be combined with a single history note if the rules are consecutive numerically and the effective dates and proposed repealed dates are identical. Authority cites and any other dates are to be combined.

.0405 HISTORY NOTE

(c) Authorities cited in history notes shall be cited according to the most current edition of the rules of citation contained in "A Uniform System of Citation", (11th Ed. 1967) copy of which is available in the Office of Administrative Hearings, except that the General Statutes of North Carolina shall be identified by the designated "G.S." rather than "N.C. Gen. Stat.".

.0406 HISTORY NOTE:
TEMPORARY ADOPTIONS:
AMENDMENTS: REPEALS

(a) A temporary rule adoption will have a history note which starts with the following statement: "Filed as a Temporary Rule Eff. (date), for a Period of (length) Days to Expire on (date)". The next line would then contain the citation of authority.

SECTION .0500 - CODIFICATION OF RULES

.0501 CODIFICATION SYSTEM

(a) All rules to be filed with the Office of Administrative Hearings shall be codified within the system described in this Section, which has been adopted by the Office of Administrative Hearings for codification of the

North Carolina Administrative Code.

(b) The North Carolina Administrative Code has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the North Carolina Administrative Code is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order.

The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

(d) The official citation to a rule in the North Carolina Administrative Code identifies the rule material cited by title, chapter, or subchapter (if any), and section, or rule number. Once codified, a rule number may not be changed. This number is permanent and remains even when the rule is repealed.

.0505 RULE

The rule is represented by the second two digits of the four numbers following a decimal. Rules shall be numbered consecutively, starting with Rule ~~0101~~. The last two digits of the first rule will be "01".

SECTION .0700 -

COMPUTER ELECTRONIC FILINGS

.0701 RULES FILED THROUGH ATMS COMPUTER SYSTEM

(c) In using this process, the agency shall submit with the filing a Computer Electronic Filing form. The Office of Administrative Hearings shall return a copy of the form notifying the contact person with of the transmittal date. At this time, the agency may delete the document from its storage.

SUBCHAPTER 2B - NORTH CAROLINA REGISTER

SECTION .0300 - PHYSICAL FORMAT

.0302 ORIGINAL COPY OF PROPOSED ADOPTIONS RULES

SECTION .0400 - ELECTRONIC FILINGS

.0401 SUBMISSIONS THROUGH ATMS COMPUTER SYSTEM

(c) In using this process, the agency shall submit with the filing an Electronic Filing form. The Office of Administrative Hearings shall return a copy of the form notifying the contact person with of the transmittal date. Upon receipt of the form containing the transmittal date, the agency may delete the document from its storage.

CHAPTER 3 - HEARINGS DIVISION

.0001 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

(1) The Rules of Civil

Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.

.0002 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

(1) "Chief Hearing Officer"

"Chief Administrative Law Judge" means the Director of the Office of Administrative Hearings appointed according to G.S. Chapter 7A, Article 60.

(3) "Hearing Officer" means the person assigned by the Chief Hearing Officer, pursuant to G.S. Chapter 7A, Article 60, and G.S. 150B-32, to hear the contested case. an Administrative Law Judge appointed under G.S. 7A-753, or a Temporary Hearing Officer appointed under G.S. 7A-757, assigned by the Chief Administrative Law Judge to conduct a contested case.

.0003 COMMENCEMENT OF CONTESTED CASE: NOTICE

(b) Within 5 days of the filing of a petition found sufficient by the Office of

Administrative Hearings to commence a contested case, the Chief Hearing Officer Chief Administrative Law Judge shall assign a hearing officer to the case. Within 10 days of the filing of a petition commencing a contested case, the Executive Secretary of the Office of Administrative Hearings shall serve a Notice of Contested Case Filing and Assignment upon all who are parties to the dispute. The notice shall contain the following:

(b)

- (4) A request for a written response to the petition within 10 days of service of the Notice of Contested Case Filing and Assignment; that the party send within 10 days a copy of the document constituting agency action which cause the filing of the petition.

.0004 ORDER FOR PREHEARING STATEMENTS

The hearing officer may serve all parties with an Order for Prehearing Statements together with or after service of the Notice of Contested Case Filing and Assignment. The parties thus served shall, within 20 30 days of service, file the requested statements setting out the party's present position on the following:

.0007 SETTLEMENT CONFERENCE

(b) Upon the request of any party or the hearing officer, the Chief Hearing Officer Chief Administrative Law Judge shall assign the case to another hearing officer for the purpose of conducting a settlement conference. Unless both parties and the hearing officer agree, a unilateral request for a settlement conference will not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the hearing officer. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference.

.0008 PREHEARING CONFERENCE/NOTICE

(b) Upon the request of any

party or upon the hearing officer's own motion he may hold a prehearing conference prior to each contested case hearing. The hearing officer may require the parties to file prehearing statements in accordance with Rule .0004 of these Rules. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing officer. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing officer. The hearing officer shall give the parties not less than 15 days notice before the scheduled date of a prehearing conference. Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-24.

.0009 NOTICE OF HEARING

(a)

- (5) Notification of the right of a party to represent himself, to be represented by an attorney, or to be represented by a person of his choice if not otherwise prohibited as the unauthorized practice of law; authorized to do so by specific State Statute or federal law;

- (10) A statement advising the parties that a notice of appearance, representation, containing the name of counsel or other representatives, if any, must be filed with the hearing officer within 10 days of the date of service of the Notice of Hearing if a party intends to appear at the hearing; and

.0011 CONSOLIDATION OF CASES

(a) The Chief Hearing Officer Chief Administrative Law Judge of the Office of Administrative Hearings may order a joint hearing of any matters at issue in contested cases involving common questions of law or fact or multiple proceedings involving the same or related parties, or may order the cases consolidated or make other orders to reduce costs or delay in the proceedings. In consolidated cases in the Department of Human Resources involving multiple aggrieved persons, the Chief Hearing Officer Chief Administrative Law Judge shall assign hearing officers of the Office of

Administrative Hearings in accordance with G.S. 150B-26.

(c) Upon determining whether cases should be consolidated, the Chief Hearing Officer Chief Administrative Law Judge shall serve a written order on all parties which contains a description of the cases for consolidation and the reasons for the decision.

(d) Nothing contained in this Rule shall be deemed to prohibit the parties from stipulating and agreeing to a consolidation which shall be granted upon submission of a written stipulation signed by all the parties to the Chief Hearing Officer Chief Administrative Law Judge.

(e) Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and filing it with the Office of Administrative Hearings at least 7 days prior to the first scheduled hearing date. If the Chief Hearing Officer Chief Administrative Law Judge finds that the consolidation will prejudice any party, he shall order the severance or other relief which will prevent the prejudice from occurring.

.0012 DISCOVERY

(g) Sanctions for failure of a party to comply with an order of the hearing officer made pursuant to the discovery rules of this Chapter shall be as provided for by G.S. 1A-1, Rule 37, to the extent that a hearing officer may impose such sanctions, and Rule .0014 of this Chapter.

.0013 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the hearing officer, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. Upon receiving such written request or upon his own motion, the hearing officer shall issue the requested subpoenas.

(c) Objection to Subpoena

(1) Upon receipt of a written request for the revocation of a subpoena, the hearing officer shall schedule and conduct a hearing on the motion. with not less than 5 days notice to the parties of the date, time, and place of the hearing. The hearing officer shall quash the subpoena if he finds that it is invalid according to law on grounds of relevancy, lack of particularity, or for any other legal insufficiency.

.0014 SANCTIONS

(b) In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the hearing officer presiding may refer the matter to the Chief Hearing Officer of the Office of Administrative Hearings who may conduct such investigation as he deems necessary and decide whether the matter should be referred to: ~~(1)~~ apply to the Superior Court for contempt proceedings in accordance with G.S. 150B-33(b)(8) or may refer the matter to ~~(2)~~ the Disciplinary Hearing Commission of the North Carolina State Bar, or both.

.0015 MOTIONS

(a) Any application to the hearing officer for an order shall be by motion which shall be in writing, unless made during a hearing, and must be filed and served upon all parties not less than 10 days before the hearing, if any, is to be held either on the motion or the merits of the case. The nonmoving party shall have 10 days from the date of service of the motion to file a response which shall be in writing. The written motion shall advise other parties that opposition to the motion must be in the form of a written response filed with the hearing officer and served on all parties not less than 5 days before the hearing or disposition date requested in the movant's motion. Motions practice in contested cases before the Office of Administrative Hearings shall be governed by Rule 6 of the General Rules of Practice for the Superior and District Courts.

.0018 CONTINUANCES

(a) Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the hearing officer and shall be served upon all parties of record. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within 5 days of the hearing shall be denied unless the reason for the request could not earlier have been ascertained.

(1) "Good cause" shall include, but is not limited to: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement, and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary to complete authorized discovery or other mandatory preparation for the case and the parties and the hearing officer have agreed to a new hearing date, or, the parties have agreed to a settlement of the case which has been or will likely be approved by the final decision maker.

(2) "Good cause" shall not include: intentional delay; unavailability of counsel or other representative because of engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness testimony can be taken by deposition, and failure of the attorney or representative to properly utilize the statutory notice

period to prepare for the hearing.

(b) During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the hearing officer shall either order the additional testimony taken by deposition or continue the hearing to a future date and oral notice on the record shall be sufficient.

(c) A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory or regulatory deadline.

.0019 RIGHTS AND RESPONSIBILITIES OF PARTIES

(e) Nonparties

(1)

With the approval of the hearing officer, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the hearing officer.

(2) The hearing officer may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record.

.0022 OFFICIAL RECORD

(2) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. The requesting party shall pay the cost of such transcript or copy thereof that the party orders and this cost shall include the cost of an original for the Office of Administrative Hearings. Cost shall be determined under supervision of the Chief Hearing Officer Chief Administrative Law Judge who, in cases deemed appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party which submitted it.

.0023 VENUE

Venue in a contested case shall be determined in accordance with G.S. 150B-24.

.0025 HEARING OFFICER'S

PROPOSAL FOR DECISION:
EXCEPTIONS

(b) The hearing officer's proposed decision shall be based exclusively on:

(4) Any other items in the official record not excluded by G.S. 150B-29(b).

.0026 HEARING OFFICER'S
RECOMMENDATION

(1) Upon good cause shown, the Chief Hearing Officer
Chief Administrative Law

Judge may extend the time limits for submission of the proposed decision, filing of exceptions, and for issuing the recommended decision of the hearing officer.

.0027 EX PARTE
COMMUNICATIONS

Ex parte communications in a contested case are governed by G.S. 150B-35.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EDITION X, NO. 5

EFFECTIVE: August 1, 1986

	AGENCY			ACTION TAKEN
<u>CORRECTION</u>				
5	NCAC	2B	.0104	Amended
<u>CULTURAL RESOURCES</u>				
7	NCAC	3A	.0001-.0002	Amended
			.0003-.0008	Repealed
		3C	.0101-.0105	Repealed
			.0301-.0307	Repealed
			.0401-.0406	Repealed
			.0601-.0605	Repealed
			.0901-.0904	Repealed
			.1001-.1004	Repealed
			.1101-.1103	Repealed
			.1201	Repealed
			.1203	Repealed
			.1205	Repealed
			.1401-.1406	Repealed
			.1501-.1506	Repealed
			.1601-.1605	Repealed
			.1701-.1708	Repealed
			.1801-.1805	Repealed
			.1901-.1904	Repealed
			.2001-.2005	Repealed
			.2101-.2104	Repealed
		3D	.0001-.0011	Repealed
<u>HUMAN RESOURCES</u>				
10	NCAC	26D	.0001	Amended
			.0006	Amended
<u>INSURANCE</u>				
11	NCAC	8	.0204-.0207	Amended
<u>NATURAL RESOURCES AND COMMUNITY DEVELOPMENT</u>				
15	NCAC	3B	.0504	Amended
			.0601	Repealed
			.0602	Amended
			.0603	Repealed
			.1002	Amended
			.1403	Amended
			.1406-.1408	Adopted
		7J	.0405	Amended
<u>REVENUE</u>				
17	NCAC	5C	.2501-.2504	Adopted
		6B	.0104	Amended
			.0303	Amended
			.0316-.0319	Adopted
			.0501	Amended
			.0502-.0520	Repealed
			.0602-.0603	Amended
			.0704	Amended
			.0902	Amended
			.1402	Amended
			.1706	Amended
			.1748	Amended
			.1749-.1752	Adopted
			.1902	Amended
			.2502	Amended
			.2604	Amended
			.2805-.2806	Amended
			.3005-.3006	Amended
			.3406	Amended
			.3709	Amended

		.3801-.3803	Amended
6C		.0109	Amended
6D		.0101-.0102	Amended
		.0201	Amended
		.0205	Adopted
7B		.0101	Amended
		.1702	Amended
		.2101	Amended
		.2401-.2402	Amended
		.3106	Amended
7C		.0103	Amended
		.0202	Amended
8		.0403-.0405	Amended
		.0504	Amended
		.1505	Amended

TRANSPORTATION

19A	NCAC	2B .0312	Amended
		2D .0412-.0413	Repealed
		2E .0407	Amended
		.0801-.0804	Amended

CERTIFIED PUBLIC ACCOUNTANTS BOARD

21	NCAC	8G .0201-.0202	Amended
		.0208-.0210	Amended
		.0211	Adopted
		8J .0007	Amended

OFFICE OF ADMINISTRATIVE HEARINGS

26	NCAC	1 .0001	Adopted
		2A .0101-.0102	Amended
		.0201-.0207	Amended
		.0209-.0210	Amended
		.0301-.0302	Amended
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		.0601-.0602	Amended
		.0701	Amended
		2B .0101-.0104	Adopted
		.0201-.0204	Adopted
		.0301-.0302	Adopted
		.0401	Adopted
		3 .0001-.0029	Adopted

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4	Commerce, Department of
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8	Elections, State Board of
9	Governor
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control, Department of
15	Natural Resources and Community Development
16	Education, Department of
17	Revenue, Department of
18	Secretary of State
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	Personnel, Department of State
26	Office of Administrative Hearings

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
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28	Landscape Contractors, Registration Board of
30	Law Examiners, Board of
31	Martial & Family Therapy Certification Board
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36	Nursing, Board of
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62	Sanitarian Examiners, Board of
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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