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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: NOVEMBER 14, 1986

Volume 1 • Issue 8 • Pages 554-598



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 Administrative Code. Published in March and October by the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions forty dollars (\$40.00) per edition.

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	06/14/86	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	07/28/86	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
10/15/86	09/25/86	10/02/86	11/14/86	12/14/86	02/01/87
11/14/86	10/23/86	10/30/86	12/14/86	01/13/87	03/01/87
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

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 29

GOVERNOR'S TASK FORCE ON RACIAL, RELIGIOUS AND ETHNIC VIOLENCE AND INTIMIDATION

It is the policy of the State of North Carolina to protect the right of every person in the State to live and work in peace and to be free of violence and intimidation, irrespective of race, religion or ethnic origin.

Therefore, by the authority vested in me as Governor by the Constitution and laws of North Carolina, it is ORDERED:

Section 1. There is hereby established the Governor's Task Force on Racial, Religious and Ethnic Violence and Intimidation.

Section 2. The Task Force shall consist of eleven persons to be named by the Governor. Each such person shall serve for a term beginning immediately and expiring December 31, 1988.

The Chairperson of the Task Force shall be named by the Governor. A Vice Chairperson and Secretary of the Task Force shall be elected by The Task Force members.

Section 3. The Task Force shall meet at least once a month, or as frequently as desired by the Task Force members. The first meeting of the Task Force shall be held as soon as possible after the appointment of its members.

Section 4. The Task Force shall perform such duties as are assigned to it by the Governor and shall work closely with the staff of the North Carolina

Human Relations Council. The following shall be among its duties:

(a) Establish a uniform statewide system for reporting and recording incidents of racial, religious or ethnic violence and intimidation;

(b) Establish a statewide network through which information about hate group activity may be shared and used by organizations and agencies concerned with this problem;

(c) Establish a statewide assistance and support network for victims of racial, religious and ethnic violence and intimidation;

(d) Study present policies, procedures and laws concerning hate group activities and recommend changes or additions where necessary;

(e) Educate the public and law enforcement officials about racial, religious and ethnic violence and intimidation and provide counsel and advice to them in responding to hate group presence and activity.

Section 5. While on official business, members of the Task Force shall be entitled to such per diem and reimbursement for travel and subsistence as may be authorized for members of State Boards and Commissions generally. The North Carolina Human Relations Council staff shall provide the planning and administrative support for the Task Force.

Section 6. This Order shall become effective immediately and shall remain in effect until modified or rescinded by further Executive Order.

Done in Raleigh, North Carolina,
the 2nd day of October, 1986.

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.]

U.S. Department of Justice
Washington, D.C. 20530

WBR:MAP:TGL:jmc:gmh
DJ 166-012-3
P6334-6335
P9421

September 2, 1986

David A. Holec, Esq.
City Attorney
P.O. Box 1388
Lumberton, NC 28359-1388

Dear Mr. Holec:

This refers to the June 16 and July 21, 1986, annexations to the City of Lumberton in Robeson 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 submissions on July 1 and August 7, 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. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.42 and 51.48).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

STATEMENTS OF ORGANIZATION

ALARM SYSTEMS LICENSING BOARD

The Alarm Systems Licensing Board (ASLB) is established within the North Carolina Department of Justice for the purpose of administering the licensing of and setting the educational and training requirements for persons, firms, associations and corporations engaged in providing alarm systems and services to citizens of North Carolina.

This Board consist of five members appointed by the Attorney General, Governor, President of the Senate and Speaker of the House.

The Board's administrative offices, the Board's records, the Administrator and staff are located in the State Bureau of Investigation (SBI) Headquarters at 3320 Old Garner Road, Raleigh, NC 28626, Phone Number 919/779-1611. Normal office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. All business transactions should be referred to the administrator in the administrative offices.

Background investigations, complaint inquiries and audits of business records of licensees and other business transactions originate in the headquarters and are assigned to the appropriate field investigator whose offices are located in the SBI District Offices in Kannapolis, Greensboro, Jacksonville, Asheville and in the Board's administrative offices in Raleigh.

The results of and action required in connection with the investigations, inquiries, audits and other business are reported to the Board during their regular meetings the second Tuesday of every other month.

The Attorney General, or his representative, the Private Protective Services Board and the Administrator share in the administrative, investigative and prosecutorial power of the

PRIVATE PROTECTIVE SERVICES BOARD

The Private Protective Services Board (PPSB) is established within the North Carolina Department of Justice for the purpose of administering the licensing, setting education and training requirements for persons, firms, associations and corporations engaged in the Private Protective Services business within the State of North Carolina.

This Board consist of ten (10) members appointed by the Attorney General, Governor, President of the Senate, Speaker of the House and President Pro Tempore of the Senate.

This Board's administrative offices, the Board's records, the Administrator and staff are located in the State Bureau of Investigation (SBI) Headquarters at 3320 Old Garner Road, Raleigh, North Carolina 28626, Phone Number 919/779-1611. Normal office hours are Monday through Friday, 8:00 a.m. to 5:00 p.m. All business transactions should be referred to the administrator in the administrative offices.

Background investigations, complaint inquiries and audits of business records, and other board business transactions, originate in the headquarters and are assigned to the appropriate field investigator whose offices are located in the SBI District offices in Kannapolis, Greensboro, Jacksonville, Asheville and the administrative offices in Raleigh.

The results of and action required in connection with these investigations, inquiries and audits are reported to the Board during their regular meeting every six weeks.

The Attorney General, or his representative, the Private Protective Services Board and the Administrator share in the administrative, investigative and prosecutorial power of the Private Protective Services Act (NCGS 74C).

PROPOSED RULES

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Agriculture intends to amend regulations cited as 2 NCAC 9B.0022(12); .0032; 9K .0206(b) and (e); 34 .0602(a); .0904(9); 36 .0002(a) and (c); 38 .0201; 0301; .0401; to adopt 2 NCAC 9C .0601 and 43 M .0001; and repeal 2 NCAC 36 .0003.

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

Statutory Authority: 81A-2; 81A-4; 106-2; 106-4; 106-12; 106-22; 106.65.29; 106-131; 106-139; 106-245.16; 106-245.21; 106-248; 106-253; 106-267; 150-10; 150B-14; 150B-62.

The hearing will be conducted at 10:00 a.m. on January 14, 1987 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

The food and drug protection division adopts by reference the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter B (Food for Human Consumption), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug and Cosmetic Act:

~~(12)~~ ~~448~~ Cacao Products and Confectionery

.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 January 1, ~~1986~~ 1987.

SUBCHAPTER 9C -CURRENT GOOD MANUFACTURING PRACTICES FOR SPECIFIC FOOD INDUSTRIES

SECTION .0600 - PROCESSING OF EGGS

.0601 COMMINGLING OF SHELL AND EGG PROHIBITED

No person shall process any eggs for human food in any manner which:

- (1) does not allow examination of the content of individual eggs being processed; and
- (2) allows egg content to commingle with the egg shell or shell membrane during processing.

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

SECTION .0200 - FROZEN DESSERTS

.0206 FROZEN DESSERT MIX/STANDARDS FOR USE

(b) A person shall not distribute, sell or offer for sale any frozen dessert mix, other than yogurt mix or ultra-pasteurized frozen dessert mix, that is or has been frozen.

(e) Yogurt mix and ultra-pasteurized frozen dessert mix may be frozen at the point of manufacture. Ultra-pasteurized frozen dessert mix may be transferred to a retail outlet refrigerated or frozen. Prior to transferring to a retail outlet, the distributor must thaw the frozen mix under refrigeration temperatures of 35 degrees F. to 40 degrees F. Nothing herein shall be deemed to prohibit the department from considering a retail outlet to be a distributor if such outlet has sufficient and adequate refrigeration equipment to properly thaw the yogurt frozen mix as required by this Section.

CHAPTER 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0600 - WOOD-DESTROYING ORGANISM AGREEMENTS

.0602 WOOD-DESTROYING INSECT AND OTHER ORGANISM REPORTS

(a) Any written statement as to the presence or absence of wood-destroying insects or their damage in buildings or structures for sale shall be on a form ~~(s)~~ prescribed by the committee Form SP-100, "North Carolina Wood-Destroying Insect Information Report." Incomplete

or inaccurate Wood-Destroying Insect Reports shall not be acceptable and the issuance of such reports is grounds for disciplinary action by the committee. No Wood-Destroying Insect Reports or Wood-Destroying Organism Reports shall be issued before an inspection of the building or structure is made. Each Wood-Destroying Insect Report issued by a licensee shall be kept in the files of said licensee and made available, at the request of the enforcement agency, for inspection.

SECTION .0900 - DUTIES AND RESPONSIBILITIES OF LICENSEE

.0904 PROHIBITED ACTS

(g) No certified applicator, licensee or his employees shall represent to any property owner or his authorized agent or occupant of any structure that any specific pest is infesting said property, structure, or surrounding areas thereof, if unless strongly supporting visible evidence of such infestation does not exist s.

CHAPTER 36 - DEPARTMENTAL ORGANIZATION AND PROCEDURES

.0002 RULE MAKING AND ADMINISTRATIVE PROCEDURES

(a) The Model Administrative Procedure for Rule Making and Hearings Rules of Administrative Procedures, codified as Title 22, Subchapters 2B and 2C of the North Carolina Administrative Code, effective September 29, 1980, as amended through December 3, 1980 October 23, 1986, is hereby adopted to apply to actions of the North Carolina Department of Agriculture.

(c) Copies of 22 NCAC, Subchapters 2B and 2C and 22 NCAC 2A .0005 may be inspected in the Office of the Commissioner of Agriculture, 1 West Edenton Street, Raleigh, North Carolina. Copies may be obtained at a cost as determined by the publisher by contacting from the Office of Administrative Procedures Section of the Attorney General's Office, 407 Fayetteville Hearings, 424 N. Blount Street, Raleigh, North Carolina, for a charge of four dollars (\$4.00).

.0003 AUTOMATIC TERMINATION OF SECTIONS (REPEALED)

CHAPTER 38 - STANDARDS DIVISION

SECTION .0200 - APPROVAL OF WEIGHING AND MEASURING DEVICES

.0201 ADOPTION BY REFERENCE

The board hereby adopts the National Bureau of Standards, Handbook 44, 1986 1987 edition, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" except as otherwise indicated in this Chapter. The tolerances section of Section 5.56 of Handbook 44, relating to Grain Moisture meters, is specifically not included in this adoption by reference.

Copies of the above are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost of twelve fifteen dollars ~~(\$12.00)~~ (\$15.00) per copy by contacting the publisher at the following address: National Bureau of Standards, Department of Commerce, U.S. Government Printing Office, Washington, D.C.

SECTION .0300 - PACKAGE AND LABELING REQUIREMENTS

.0301 ADOPTION BY REFERENCE

The following are adopted by reference as standards for packaging and labeling and for determining compliance of packaged goods with net contents labeling requirement:

(1) National Bureau of Standards, Handbook 130, 1986 1987 edition, "Packaging and Labeling Regulation," with the exception of Sections 13, 14, and 15 of the "Packaging and Labeling Regulation" which are deleted;

(2) National Bureau of Standards, Handbook 133, Second Edition "Checking the Net Contents of Packaged Goods".

Copies of Handbook 130 and handbook 133 are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost of seven ten dollars ~~(\$7.00)~~ (\$10.00) and nine dollars (\$9.00), respectively, per copy, by contacting the publisher at the following address: National Bureau of Standards, Department of Commerce, U.S. Government Printing Office, Washington, D.C.

SECTION .0400 - METHOD OF SALE OF COMMODITIES

.0401 ADOPTION BY REFERENCE

The board hereby adopts the National Bureau of Standards, Handbook 130, 1986 1987 edition, "Method of Sale of Commodities Regulation" with the following additions and exceptions to the 1986 1987 "Method of Sale of Commodities Regulation:"

- (1) Delete Section 1. 2., "Bread", since this is addressed in General Staute 81A-41.
- (2) The preferred method for measuring fireplace and stove wood is by the cord or fractional parts of a cord, however, nothing in Section 2.3, "Fireplace and Stove Wood", shall be construed as preventing the purchaser and seller of fireplace or stove wood from agreeing on a quantity other than a cord or fractional parts of a cord.
- (3) Sections 2.9., 2.11., 2.19., 4., and 5. are deleted.
- (4) Section 2.18 applies only to kerosene sold in a container or kerosene sold through a retail device. In addition, a container or a device shall clearly and conspicuously indicate for 1-K kerosene "SUITABLE FOR USE IN UNVENTED HEATERS" and for 2-K kerosene "MAY NOT BE SUITABLE FOR USE IN UNVENTED HEATERS."

CHAPTER 43 - MARKETS

SUBCHAPTER 43M - PROCESSING OF EGGS

.0001 COMMINGLING OF SHELL AND EGG PROHIBITED

No person shall process any eggs for human food in any manner which:

- (1) does not allow examination of the content of individual eggs being processed; and
- (2) allows egge content to commingle with the egg shell or shell membrane during processing.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the Cemetery Commission intends to adopt regulation cited as 4 NCAC 5D .0106 and amend regulations cited as 4 NCAC 5D .0202 and .0204.

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

Statutory Authority: 65-49, 65-66.

The public hearing will be conducted at 10:00 a.m. on January 15, 1987 at Room 2063, Dobbs Building, Salisbury Street, Raleigh, NC.

Comment Procedures: Written comments may be sent to the Cemetery Commission, Post Office Box 25249, Raleigh, North Carolina 27611. Requests for opportunity to present oral testimony and a summary of the testimony must be received at this address by January 12, 1987.

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5D - TRUST FUNDS

SECTION .0100 - MAINTENANCE AND CARE FUNDS (PERPETUAL CARE FUNDS)

.0106 CONTRACT DISCLAIMER

Each contract for the sale of a grave space, mausoleum niche or crypt shall state that the amount deposited in a perpetual care trust fund from the proceeds of the sale are for the perpetual care of the grave space, mausoleum niche or crypt only and does not include deposits which may be subsequently required for perpetual care of monuments, markers or other merchandise.

SECTION .0200 - PRE-NEED CEMETERY MERCHANDISE: PRE-CONSTRUCTED MAUSOLEUMS AND BELOW GROUND CRYPTS TRUST FUNDS

.0202 DELIVERY

(a) Vaults and crypts shall not be considered delivered unless installed or stored on the cemetery premises. If vaults are not to be installed, contract must so state in bold print that purchaser has accepted above ground delivery. If vault is to be installed, then the contract must be broken down into sales cost and installation cost.

(b) Markers, bases and vases shall not be considered delivered unless installed or stored at the cemetery or if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. No person, firm or corporation shall be deemed a supplier for purposes of this rule unless it:

- (1) permanently and

unalterably identifies each such merchandise item with the name of the purchaser; and when the item is manufactured and placed into the storage facility a Certificate of Title is prepared and issued to the lot owner through the cemetery;

(2) submits to the Cemetery Commission not less than annually a report by a certified public accountant of each merchandise item which has been purchased through a North Carolina cemetery company and which, at the date of such report, was then in storage;

(3) permits the Cemetery Commission or its designee, at any time, to examine all stored merchandise which was purchased through any North Carolina cemetery and to examine any document pertaining thereto;

(4) submits evidence of a bond insuring the existing and good title of any merchandise due any purchaser purchased through a North Carolina cemetery company; and which unconditionally guarantees to the North Carolina Cemetery Commission prompt delivery of an owner's merchandise item;

(5) submits evidence insuring that all merchandise purchased through a North Carolina cemetery company is insured for fire, casualty, theft or other loss normally assumed by a bailee for hire;

(6) submits a certified financial statement of the applicant company at the time of application for storage approval and annually thereafter for the approval of the Commission.

(c) if opening and closing of crypts at the time of interment are not included in the cost of this merchandise, then it must be so stated in bold print on the contract.

.0204 INTEREST

(a) If money is escrowed into a trust account for individual contracts with deposits and withdrawals keyed respectfully to payments and deliveries or cancellations on individual contracts, the interest shall be allowed to accumulate so long as the principal to which it is attributable remains on deposit in the trust account. When

principal is withdrawn from a trust account for which deposits and withdrawals are keyed to individual accounts in the manner described in Subsection (a) of this Rule, interest earned by the withdrawn principal may also be withdrawn.

(b) If money is escrowed into a trust account in a blanket sum sufficient to cover all contracts for preneed merchandise and services, where deposits and withdrawals are not made according to payments, deliveries, cancellations, or other activity on individual contracts, then the interest must accumulate until it equals one half of the principal. After it reaches one half of the principal, then all interest over the half may be withdrawn.

.0204 EXCESS FUNDS

(a) If money is escrowed into a trust account for contracts for preneed merchandise and services, excess interest may be withdrawn quarterly so long as the amount on deposit for each contract equals at least 60% of the proceeds received on account of such contracts for the sale of such merchandise or 125% of the current wholesale cost of such merchandise as determined by the commission, whichever is greater.

(b) The current wholesale cost as determined by the commission shall be the highest wholesale cost for each category of such merchandise charged in North Carolina by a vendor of such merchandise whose sales to cemeteries in North Carolina exceeded 200 units of such merchandise during the preceding year.

Notice is hereby given in accordance with G.S. 150B-12 that the Savings and Loan Division intends to amend regulation cited as 4 NCAC 16D .0302.

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

Statutory Authority: G.S. 54B-55.

The public hearing will be conducted at 10:00 a.m. on December 15, 1986 at Room 4205, Dobbs Building, Salisbury Street, Raleigh, NC.

Comment Procedures: Written comments may be sent to Savings and Loan Division, P. O. Box M-27945, Raleigh, NC 27611.

Request for opportunity to present oral testimony and a summary of the testimony must be received at this address by December 10, 1986.

CHAPTER 16 - SAVINGS AND LOAN DIVISION: SAVINGS AND LOAN COMMISSION

SUBCHAPTER 16D - OPERATION OF SAVINGS AND LOAN ASSOCIATIONS

SECTION .0300 - RECORDS

.0302 RETENTION: REPRODUCTION AND DISPOSITION OF RECORDS

(a) Each association shall take reasonable precautions to protect records from damage by fire, flood or other hazards, and to safeguard records from unnecessary deterioration as a result of excessive heat, humidity, dryness or lack of proper ventilation. Adequate safeguards shall be maintained to protect records from access or removal by unauthorized persons.

(b) Each association or branch office thereof shall retain all the records set forth in this Paragraph for at least the periods specified.

RECORDS TO BE--MINIMUM RETENTION RETAINED PERIOD (YRS.)

CORPORATE

Audit Reports.....	P 3
Pension Trust (IRS Ruling, Bylaws, Trust Agreements).....	P T+5
Annual Reports to Supervisors.....	P 5
Examination Reports and Supervisory Letters.....	P 5
Minute Books (Members, Stockholder, Directors and Committees).....	P
Charter, Bylaws and Amendments.....	P
Blanket Bonds.....	P T+5
Ballots and Proxy Votes of Members and Stockholders.....	3
Certificate of Insurance.....	P
FHLB Membership Certificate.....	P
Attachments, Executions and Releases.....	3
Claims, Court Orders and Restraining Orders.....	10
Deeds, Leases and Contracts; Titles to Vehicles.....	P T+5
U.S. Corporate Income Tax Forms.....	15
N.C. Corporate Tax Forms.....	15
Social Security and	

Unemployment Tax Records.....	15
Personal Property Tax Records.....	15

ACCOUNTING /ASSOCIATION

Bank Statements and Reconcilements.....	7 5
Cancelled Checks.....	+5 5
Check Vouchers or Stubs.....	+5 5
Duplicate Deposit Slips.....	7 5
Expense and Paid Bills File.....	7 3
FHLB and State Reports.....	P 5
General and Subsidiary Ledgers.....	P
General and Other Journals.....	P
Original Entry Records.....	+5 5
Pre-authorized Bank Forms.....	7 5
Tellers' Cash Proof Sheets.....	2
Trial Balances.....	2 3

WITHDRAWABLE ACCOUNTS

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Savings Certificates Vouchers or Stubs Record of Issue.....	20 T+5
Withdrawable Account Loan Notes.....	R
Withdrawable Account Loan Disclosures After Note "Paid".....	2
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Receipts..... T+ 3
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Authorizations..... T+ 3
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Recision..... T+ 3
Flood Insurance
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Credit, Credit Cards)**

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Journal..... 4 3
Loan Proceeds
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Records..... T +3
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Record..... 4 T+3
Loans Made
Record..... T+ 3
Loans Paid
Record..... T+ 3
Liability Card
and/or Ledger..... T+ 5 3
Loan Ledger
Cards..... T+ 5 3
Note and/or
Loan Register..... +0 P
Resolutions..... T+ 5 3
Charged-off Loan
Records..... 10
Collateral Records..... 10
Disclosure Document..... 2
CREDIT CARDS
Customer
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Resolutions..... T+5
Sales Ticket or
Drafts -Credit Card... 5 3
Statement of
Account - Credit Card..... 5
Posting or
Transactions Journal..... 4
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Workers Compensation..... 10
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Records..... T+6
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Safe Deposit Boxes
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Keogh
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KEY TO SYMBOLS USED

P - Permanent
 T - Termination (Closed,
 Paid-off or Settled)
 R - Return to Customer
 After Termination of
 Contractual Relationship

(c) Nothing in this Rule shall prohibit any association or branch office thereof from keeping and maintaining any and all of its records for a longer period of time than the time set forth as the retention period in Paragraph (b) of this Rule.

(d) Nothing in this Rule shall prohibit any association or branch office thereof from causing any or all of its records, whether permanent records or records designated to be retained for a minimum period of time, to be recorded, copied or reproduced by any photographic, photostatic, or miniature photographic process which is in common and general use and which forms a medium for copying or reproducing the original records on a film or other durable material as provided by Subsection (d) of G.S. 54B-55.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to adopt regulation cited as 10 NCAC 7A .0503.

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

Statutory Authority: 1986
 Session Laws, Chapter 1008,
 Section 2.

The public hearing will be conducted at 1:30 p.m. on December 17, 1986 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on this subject may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on this subject may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

CHAPTER 7 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 7A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0500 - PURCHASE AND DISTRIBUTION OF VACCINE

.0503 VACCINE FOR MEDICALLY INDIGENT PATIENTS

(a) The Department of Human Resources provides vaccines required by law free of charge to physicians and other health care providers to administer to medically indigent patients. These vaccines are provided to physicians and other health care providers by local health departments acting as agents of the state.

(b) Private physicians and health care providers shall be eligible to receive free vaccines from the department only if they annually sign an agreement with a local health department serving their practice area. This agreement will be prepared by the immunization program and will require the physicians to administer such vaccines only to eligible patients, to charge only a reasonable administration fee, to submit monthly vaccine reports on a form prepared by the Immunization Program by the fifth day of each month, to report adverse vaccine reactions through the Federal Monitoring System for Adverse Events Following Immunization (MSAEFI), to obtain a signed Important Information Statement for each dose of vaccine administered and to retain the signed portion for a period of ten years following the end of the calendar year in which the form was signed, or for ten years following the recipient's age of majority, whichever is longer, and upon

request, furnish copies of the signed portion to the above Health Department or the Centers for Disease Control, Department of Health and Human Services, to keep a record of the vaccine manufacturer, lot number, and date of administration for each dose of vaccine administered, to allow periodic inspection of their vaccine supplies and records by the Immunization Program, and to comply with the rules of this section.

(c) Patients are considered medically indigent and therefore eligible if their family income is less than the federal poverty level and they are not eligible for Medicaid.

(d) A physician or health care provider who fails to submit timely and accurate reports, as required in Paragraph (b), twice in any 12 month period shall have their eligibility to receive state vaccine suspended for a period of one year. A physician or health care provider who fails to comply with any of the other requirements of this Rule may have their eligibility suspended by the department for a period determined by the department and may be subject to an action brought pursuant to G.S. 130A-27. All suspensions of eligibility shall be in accordance with G.S. 130A-23.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to amend regulation cited as 10 NCAC 9A .0006.

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

Statutory Authority: G.S. 130A-326.

The public hearing will be conducted at 1:30 p.m. on December 17, 1986 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on this subject may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on this

subject may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

CHAPTER 9 - HEALTH: LABORATORY

SUBCHAPTER 9A - GENERAL POLICIES

.0006 FEES

(d) Fees for the analysis of public water supplies shall be as follows:

PARAMETER	FEE
Inorganic	
Chemistry...	\$140.00 <u>\$200.00</u>
Organic	
Chemistry...	\$130.00 <u>\$190.00</u>
Coliform...	\$12.00 <u>\$15.00</u>
Trihalomethanes..	\$45.00 <u>\$60.00</u>
Sodium and Corrosivity...	\$60.00
Radiochemistry:	
gross alpha and beta...	\$50.00
radium 226...	\$65.00
radium 228...	\$50.00
uranium...	\$75.00
Any single organic or inorganic parameter.....	\$10.00 <u>\$15.00</u>

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the N C Building Code Council intends to amend regulations cited as 11 NCAC 8 .0204 through .0207.

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

Statutory Authority: G.S. 143-138.

The public hearing will be conducted at 10:00 a.m. on December 9, 1986 at Room 700, Wake County Courthouse, Raleigh, NC.

Comment Procedures: Written comments should be submitted to Lee Hauser, Engineering Division, Department of Insurance, P. O. Box 26387, Raleigh, NC 27611.

CHAPTER 8 - ENGINEERING & 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 September 9, 1986 December 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 September 9, 1986 December 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 September 9, 1986 December 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 September 9, 1986 December 9, 1986.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt regulations cited as 11 NCAC 15 .0001 through .0010.

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

Statutory Authority: G.S. 131E-210 through 213.

The public hearing will be conducted at 10:00 a.m. on December 16, 1986 at Hearing Room, Third Floor, Dobbs Building, 430 N. Salisbury St., Raleigh, North Carolina.

Comment Procedures: Direct all written comments to Janis Curtis, Medical Database Commission, P. O. Box 26387, Raleigh, North Carolina, 27611. Phone 733-7141.

CHAPTER 15 - MEDICAL DATABASE
COMMISSION

.0001 SCOPE AND PURPOSE

11 NCAC 15 sets forth the requirements that providers defined in 11 NCAC 15 .0002 must meet in submitting to the Medical Database Commission a uniform data set describing the case mix of its patients and the charges for services provided to these patients. That data will be used for grouping providers and patients, comparing hospital charges and utilization, and disseminating information to interested persons, including health care providers, payers, health care consumers, and health care planners. The information base will include data on different types of health care services, including ambulatory care services and long term care services. The commission may collect health care data from hospitals, physicians, nursing homes, ambulatory surgical centers, and other types of health care providers.

.0002 DEFINITIONS

As used in this Chapter, unless specifically stated otherwise, the following words have the following meanings:

(1) Act. The North Carolina Medical Database Commission Act, G.S. 131E.

(2) Aggregate data. A grouping or categorization of the raw data such that the unit of observation is something other than an individual discharge. Reports of aggregate data with small cell counts will be edited to prevent potential identification of individual patients.

(3) Case mix data. Case specific discharge data which describe socio-demographic characteristics of the patient; total and component charges; principal and other diagnoses; treatment and services provided to the patient; as well as duration and status of the patient's stay in the hospital. Case mix data refers to the actual data elements abstracted from the UB-82 claim form as well as classifications resulting from groupings of specific data elements, e.g., DRG category.

(4) Charge data. The provider's usual published charges for the services provided. Charge data shall consist of the UB-82 data elements and codes specified in 11 NCAC 15 .0005.

(5) Commission. The Medical Database Commission established under G.S. 131E-208.

(6) Compilations. The arrangement of data collected by and furnished to the commission by any corporation, association, or entity acting under agreement with the commission for release and dissemination to the public.

(7) Executive Director. The chief operating officer of the commission.

(8) Hospital. Any facility licensed by the North Carolina Division of Facility Services under G.S. 131E-77 (Hospital Licensure Act) or under G.S. 122C-23 (Licensure of Facilities for the Mentally Ill, the Mentally Retarded and Substance Abusers), but does not include

(a) a facility with all of its beds designated for medical type "LTC" (long term care);

(b) a facility with the majority of its beds designated for medical type "PSY-3" (mental retardation); or

(c) a facility operated by the North Carolina Department of Corrections.

(9) Uniform hospital billing form. Form UB-82/HCF-1450, the hospital billing form developed by the National Uniform Billing Committee or its successor.

(10) Raw data. Patient specific records including those which have been stripped of all patient identifying information.

.0003 OUTSIDE CONTRACTOR

Subject to state law and regulation, the commission may enter into any contractual agreement with any corporation, association, or other entity it deems appropriate to:

(1) undertake the process of collecting the data;

(2) build and maintain the database;

(3) prepare such analyses and reports authorized by the commission.

The agreement may provide for the designated contractor to prepare and distribute or make available data in the name of the commission to health care providers, health care consumers, third-party payers, government, researchers, and the general public, in accordance with any rules of confidentiality that may apply and the rules of review by the commission as stated in 11 NCAC 15 .0009.

.0004 UNIFORM BILLING FORM

(a) All hospitals shall complete the uniform hospital billing form for every inpatient discharged after June 30, 1987, from any bed other than one designated medical type "LTC" regardless of the source of payment. For patients discharged after June 30, 1987 who were admitted prior to July 1, 1987, hospitals shall submit either an admit-through-discharge claim or the complete set of interim claims necessary to reflect the total length of stay and charges.

(b) The information submitted to the commission shall be reported only for the primary payer, including Medicare, Medicaid, other government programs, private insurance, health maintenance organizations, self-insured,

private pay patients, and others. Claims for secondary payers will be considered duplicate information and should not be submitted to the commission.

(c) Unless otherwise indicated in these rules, completion of the uniform hospital billing form shall be in accordance with the instructions and definitions in the manual developed by the National Uniform Billing Committee as adopted and finalized by the North Carolina Uniform Billing Committee. A copy of the manual is available for reference by contacting the Executive Director of the Medical Database Commission at the Department of Insurance, Post Office Box 26387, Raleigh, North Carolina, 27611.

.0005 DESCRIPTION OF DATA TO BE SUBMITTED

(a) The following UB-82 data elements must be submitted to the commission for every inpatient discharged regardless of payer:

DATA ELEMENT AND DESCRIPTION

- (1) Patient Control Number - Form locator 3 - As stated in the North Carolina UB-82 manual.
- (2) Bill Type - Form locator 4 - As stated in the North Carolina UB-82 manual.
- (3) Medicaid Provider Number - Form locator 8 - The number assigned to the provider by Medicaid or as assigned by the commission.
- (4) Zip Code of Patient Address - Form locator 11 - Only the zip code portion of this field is required. Code as stated in the North Carolina UB-82 manual.
- (5) Patient Birth Date - Form locator 12 - As stated in the North Carolina UB-82 manual.
- (6) Patient Sex - Form locator 13 - As stated in the North Carolina UB-82 manual.
- (7) Admission Date - Form locator 15 - As stated in the North Carolina UB-82 manual.
- (8) Admission Type - Form locator 17 - As stated in the North Carolina UB-82 manual.
- (9) Source of Admission - Form locator 18 - As stated in the North Carolina UB-82 manual.
- (10) Patient Status - Form locator 21 - As stated in the North Carolina UB-82 manual.
- (11) Discharge Date (Statement Covers Period) - Form locator 22 - As stated in the North Carolina UB-82 manual.
- (12) All revenue codes and

associated charges - Form locators 51 and 53 - As stated in the North Carolina UB-82 manual.

- (13) Payer Identification - Form locator 57A - Classification code and specific carrier identification code for primary payer.
- (14) Certificate/Social Security/Health Insurance Claim/Identification Number - Form locator 68 - As stated in the North Carolina UB-82 manual.
- (15) Insurance Group Number - Form locator 70 - As stated in the North Carolina UB-82 manual.
- (16) Principal Diagnosis - Form locator 77 - As stated in the North Carolina UB-82 manual.
- (17) Other Diagnoses (4 others maximum) - Form locators 78-81 - As stated in North Carolina UB-82 manual.
- (18) Principal Procedure and Date - Form locator 84 - As stated in the North Carolina UB-82 manual.
- (19) Other Procedures and Dates - Form locators 85 & 86 - As stated in the North Carolina UB-82 manual.
- (20) Attending Physician ID - Form locator 92 - Only the state license number of this field is required. Code as stated in the North Carolina UB-82 manual.
- (21) Other Physician ID - Form locator 93 - Only the state license number of this field is required. Code as stated in the North Carolina UB-82 manual.

(b) Any hospital which does not have a Medicaid provider number shall contact the commission for assignment of an identification number. This number shall be used in the Medicaid Provide Number field for all UB-82 records submitted to the commission.

.0006 DATA SUBMISSION

(a) Data Submission Requirements

- (1) At a minimum, hospitals shall submit the required data within 45 calendar days following the close of the calendar quarter during which the patient was discharged or died; therefore, data for the calendar quarters ending March 31, June 30, September 30, and December 31 shall be submitted before or on May 15, August 14, November 14,

and February 14, respectively. However, hospitals may submit data more frequently during the calendar quarter in which the patient was discharged or died.

- (2) The commission may, for good cause, extend the time for submitting data upon receipt of a written request for an extension from the provider.

(b) Format for Data Submission

- (1) All hospitals may submit UB-82 discharge data to the commission on one of three acceptable types of media: on paper UB-82 forms, on a magnetic tape, or on a personal computer (PC) diskette. Other types of media used to submit the required data, such as on-line transmission, must be approved by the commission.

- (2) The physical specifications of the magnetic tape shall be any size reel, recorded in nine track, Extended Binary Coded Decimal Interchange Code (EBCDIC) mode or ASCII, with density equal to 1600 BPI or 6250 BPI, unlabeled or with IBM standard labels. Acceptable specifications for submission of data on a floppy disk shall be 5 1/4 inch IBM-PC compatible diskette.

- (3) Data submitted via magnetic tape shall conform to the uniform record layout as required by the commission. Copies of the required format may be obtained by contacting the Executive Director of the Medical Database Commission at the Department of Insurance, Post Office Box 26387, Raleigh, North Carolina, 27611.

(c) Edit Criteria

- (1) Data elements that are considered critical fields for record editing purposes are Patient Control Number, Bill Type, Medicaid Provider Number, Zip Code, Date of Birth, Sex, Admission Date, Admission Type, Source of Admission, Patient Status, Statement Covers Period, Revenue Codes and Charges, Primary Payer, Principal Diagnosis, Attending Physician License Number. Records containing invalid UB-82 codes or all-blank fields for any of these data

elements will be designated as error records.

- (2) The last revenue code listed must be 001, Total Charge, and this charge must equal the sum of charges for all other revenue codes reported.

- (3) The following data elements must contain valid codes if present: Primary Payer - Specific Carrier Identification, Other Diagnoses, Principal Procedure Code and Date, Other Procedures one and two Codes and Dates, Other Physician License Number (if a procedure was performed).

- (4) Upon completion of the data error assessment, the commission or the designated contractor shall promptly notify each hospital whose records do not pass the critical edit checks. This notification shall identify the discharge records and the data items within them which do not pass the edits. Each hospital receiving an error notification report shall respond within 30 calendar days of the notification by making the necessary changes.

(d) Data Submission Arrangements

- (1) Each hospital or its designated agent shall submit the required UB-82 data directly to the commission or to the contractor designated by the commission to collect, process and hold the data.

- (2) Resubmissions of data as required by the commission or upon the initiative of a hospital will be accepted for the purposes of adding records, amending data elements or otherwise making modifications to a previous data submission. Resubmissions shall conform to the requirements of 11 NCAC 15 .0006(b).

.0007 PROVIDER VERIFICATION

Providers shall be given an opportunity to review and verify information pertaining to them in the database as follows:

- (1) Within ten calendar days after all error corrections have been made and preparation of the individual hospital's dataset by the commission is complete, hospitals will be notified in writing of the opportunity to review the dataset. A summary

compilation of the dataset, including number of discharges and total charges, will be attached to each provider's notification for data verification. Hospitals shall return the notice to the commission indicating that they have verified the accuracy of the summary compilation of the dataset.

(2) With 15 calendar days of the date of the commission's verification notice and summary compilation, a hospital that wishes to review the dataset shall submit a written request to the Executive Director. The commission shall respond to this request with ten calendar days of its receipt.

(3) Within 30 calendar days of the commission's release of the requested dataset, the hospital shall respond in writing to the commission challenging those portions of the dataset which the hospital believes are inaccurate along with arguments as to why they are inaccurate and any data which would assist in clarifying the possible inaccuracies.

(4) If the commission finds any error, the dataset shall be corrected before release of compilations for public use; notification of corrections shall be provided to the appropriate hospital by the commission in writing prior to public release. If the commission finds changes to the dataset are unnecessary or unwarranted, it shall notify the appropriate hospital of this conclusion in writing prior to public release, including a brief but complete explanation of its determination. The compilations from the dataset will be available to the public seven calendar days following commission adoption.

(5) The commission may, for good cause, grant an extension of these time limits upon receipt of written request from the hospital.

.0008 COMPLIANCE

Compliance with these regulations and the act will be determined on a quarterly basis. The commission shall consider a

hospital out of compliance with these regulations and the act when any of the following conditions apply:

(1) The hospital knowingly fails to submit data in accordance with the provisions of these regulations.

(2) More than three percent of the hospital's discharge records, on a quarterly basis, are excluded from the database by the commission because the records do not pass the critical edit checks as specified in 11 NCAC 15 .0006(c) and the total percentage of discharge records failing critical edits for the preceding three quarters and the submitting quarter exceeds three percent. Upon notification by the commission, hospitals will be allowed to submit the corrected records in accordance with the requirements of 11 NCAC 15 .0006.

(3) The hospital has not submitted data for all of its discharges to the commission in accordance with the required submission deadlines in 11 NCAC 15 .0006(a).

Hospitals not complying with these regulations are subject to penalties established by the commission in pursuance of the act.

.0009 DATA ACCESSIBILITY

(a) The UB-82 data, i.e., the individual forms, computer tapes, or other types of media, collected by and furnished to the commission or to the designated contractor, pursuant to the act shall not be public records under the North Carolina Public Record Act (G.S. 132) and shall not be subject to public inspection.

(1) The raw data may be released by the commission only to providers who have submitted that particular data to the commission, and who request to see and review their dataset for purposes of verifying information in the commission's database pertaining to the provider. These datasets are not public records.

(2) Commission approval is required for all requests by interested parties for data which have been submitted to

the commission and which are not yet public record.

- (3) Data collected by the commission shall not be shared among other state agencies unless the information is approved by the commission as a public record.

(b) The commission shall require the designated contractor to prepare aggregate reports on hospital charges and utilization in North Carolina. Compilations prepared and approved for release and dissemination by the commission are public records and shall be accessible to the public in accordance with the State Public Record Act and the rules adopted by the commission. These reports shall include, but not be limited to comparative information on average charges, total and ancillary charge components, utilization rates length of stay on diagnosis specific and procedure specific categories, and number of discharges, compiled in aggregate by provider, by diagnosis, and by primary payer category.

- (1) Compilations are not available for release and dissemination and are not public records until the provider verification process has been completed.

- (2) The commission shall not release any compilation of data for special studies and analysis for a purpose other than one authorized by the act. Compilations of data shall not contain patient identifiable information. Only the UB-82 information which can be released under requirements of the act shall be released.

- (3) Nothing in the act or these regulations shall prevent a hospital from receiving upon request a copy of that hospital's final edited dataset as it exists in the possession of the commission.

(c) Requests for Special Compilations. Any person, organization, governmental agency, or other entity may request the preparation of compilations of data collected by and furnished to the commission in a specific manner or format not already used by the commission. This includes requests for subsets of information already available from the commission in compiled form.

- (1) All requests for compilations of data shall be made in writing to the Executive Director of the Commission. At minimum, the written request shall contain the name, address, and telephone number of the requester, a description of the requested compilation of data, a short, plain statement of the reason for the request, and the relationship of the requested compilation to a legitimate purpose. A "legitimate purpose" is a purpose consistent with the intent, policies, and purposes of the act.

- (2) The commission shall review each request for a compilation of data and determine whether to approve or deny the request. The commission shall notify the public of requests made for compilations by listing the requester, and providing a short description of the request on its official meeting agenda. Such requests shall be approved by the commission which shall designate the form in which the information shall be made available. The approval or denial by the commission of requests for compilations of data shall be within the discretion of the commission. The commission may deny a request for a compilation of data for reasons including, but not limited to, unavailability of data, the requested compilation is already available from the commission or another source, the requested compilation of data would endanger patient confidentiality, the commission lacks sufficient resources to fulfill the request, or the request is not related to a legitimate purpose.

- (3) The commission shall notify the requester in writing of its decision. Denial of a request shall include a brief explanation of the reason for the denial.

- (4) The commission or the designated contractor in consultation with the commission shall also determine a fee to be charged to the requesting agency or private sector organization to cover the

direct and indirect costs for producing special compilations. The fee should include staff time, computer time, copying costs, and supplies. For charging purposes, each compilation will be considered an original.

- (5) No person, organization, governmental agency, or other entity receiving data from the commission shall redistribute that information for a fee in the same form without prior written approval from the commission.

.0010 CONFIDENTIALITY OF DATA

(a) The commission shall institute appropriate administrative procedures and mechanisms to ensure that it is in compliance with state laws on patient confidentiality. The commission shall ensure that any contract entered into with other parties for the purposes of processing and analysis of data collected under this regulation shall contain assurances that such other parties shall also comply with the provisions of state law regarding patient confidentiality.

(b) The patient control number (UB-82 form locator 3) and the certificate, social security, health insurance claim, identification number (UB-82 form locator 68) shall be used only for the purpose of establishing an audit trail in the event that it is necessary to retrieve the primary source document for validation of the abstracted data. The commission shall also ensure that data collected under this regulation and disclosed to other parties shall be purged of patient control numbers, certificate, social security, health insurance claim, identification numbers and dates of birth prior to disclosure.

(c) All steps necessary under state law to protect patient confidentiality shall be undertaken by the commission to prevent the identification of individual patient records.

(d) Raw data submitted to the commission or to the designated contractor by hospitals pursuant to the act shall be privileged and confidential, and shall not be disclosed in any manner. The foregoing includes, but shall not be limited to, disclosure, inspection or copying under the State's Public Record Act. However, these prohibitions

shall not apply to the reports prepared for release and dissemination by the commission.

(e) For compilations released, the commission will develop procedures to prevent small cell counts from potentially identifying and individual patient.

TITLE 15 - NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend regulations cited as 15 NCAC 7H .0208, .0309 and adopt 15 NCAC 7J .0312.

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

Statutory Authority: G.S. 113A-107; 113A-113; 113A-124.

The public hearing will be conducted at 10:00 a.m. on December 17, 1986 at Conference Room, Division Marine Fisheries Building, 3411 Arendell Street, Morehead City, NC.

Comment Procedures: Written comments may be submitted within 30 days prior to the hearing to: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(b)

(6)

(C) Piers shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters by:

(i) not extending beyond the established pier length along the same shoreline for similar use;

(ii) not extending into the channel portion of the water body; and

(iii) in no case extend more than one-third the width of a natural water body or man-made canal or basin. Measurements to determine widths of

the channels, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body.

- (E) Piers shall not extend beyond the established pier length along the same shoreline for similar use, and in no case extend more than one third of the width of a natural water body or man made canal or basin.

SECTION .0300 - OCEAN HAZARD AREAS

.0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development may be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campgrounds that do not involve substantial permanent structures;
- (2) parking areas with clay, packed sand or similar surfaces;
- (3) outdoor tennis courts;
- (4) elevated decks not exceeding 500 square feet;
- (5) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (6) unenclosed, uninhabitable gazebos with floor areas of 200 square feet or less;
- (7) uninhabitable storage sheds with floor areas of 200 square feet or less;
- (8) temporary amusement stands; and
- (9) swimming pools.

In all cases, this development shall only be permitted if it is landward of the vegetation line, involves no significant alteration or removal of primary or frontal dunes or the dune vegetation, has overwalks to protect any existing dunes, is not essential to the continued existence and/or use of an associated principal development, and meets all other non-setback requirements of this Subchapter.

SUBCHAPTER 7J - PROCEDURES FOR HANDLING MAJOR DEVELOPMENT PERMITS: VARIANCE REQUESTS: APPEALS FROM MINOR DEVELOPMENT PERMIT DECISIONS: AND DECLARATORY RULINGS

SECTION .0300 - HEARING PROCEDURE

.0312 SETTLEMENT

(a) It is the policy of the Coastal Resources Commission that, whenever possible, disputes between the department and any other person that concern the issuance or failure to issue a CAMA and/or Dredge and Fill permit should be settled through informal procedures.

(b) The Coastal Resources Commission hereby delegates to the Director of the Division of Coastal Management on behalf of the department the authority to enter into informal settlements of permit appeals at any time prior to commencement of the contested case hearing on subject appeal. Such settlements shall not require the approval of the Coastal Resources Commission and shall not be considered a final commission decision, but shall be subject to appeal pursuant to G.S. 113A-121.1. Unless such settlement results in a written withdrawal of the permit appeal, the settlement agreement shall be submitted to the hearing officer in the form of a proposed consent order. The hearing officer shall then present the proposed consent order to the commission at its next regularly scheduled meeting with a recommendation for adoption or rejection of the consent order.

(c) The Coastal Resources Commission further delegates to the Director of the Division of Coastal Management the authority to enter into negotiations to informally settle permit appeals subsequent to commencement of a contested case hearing on the subject appeal. Any settlement agreement reached subsequent to commencement of a contested case hearing and prior to final commission decision on the contested case shall be submitted to the designated hearing officer in the contested case proceeding in the form of a proposed consent order. The hearing officer shall present the proposed consent order to the commission at its next regularly scheduled meeting with a recommendation for adoption or rejection of the consent order.

(d) All parties to a settlement reached subsequent to commencement of a contested case hearing on the subject appeal shall, prior to commission consideration of the proposed consent order, waive the period for final commission decision of

the contested case as set out in G.S. 113A-122(c).

(e) Adoption of the proposed consent order shall constitute a final commission decision for purposes of G.S. 113A-123. In the event the commission does not adopt the consent order as proposed, the hearing officer shall issue such orders as are deemed necessary to complete the contested case process.

TITLE 21 - LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the Board of General Contractors intends to amend regulations cited as 21 NCAC 12 .0204; .0205; .0407; and .0503.

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

Statutory Authority: G.S. 87-1, 10, 15.1.

The public hearing will be conducted at 10:00 a.m. on December 17, 1986 at Jane S. McKimmon Center, Corner of Western Blvd. and Gorman Street, Raleigh, North Carolina 27695.

Comment Procedures: Persons wishing to present oral data, views or arguments may file notice with the board at least ten days prior to the hearing. Any person may also file with the board a written submission containing data, comments or arguments within ten days after the hearing.

CHAPTER 12 - CONTRACTORS

SECTION .0200 - LICENSING REQUIREMENTS

.0204 ELIGIBILITY

(b) Limited License. The applicant for such a license must:

(2) be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least seven thousand five hundred dollars ~~(\$7,500)~~ ten thousand dollars (\$10,000);

(c) Intermediate License. The applicant for such a license must:

(2) be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents

exceed the total current liabilities by at least ~~thirty five thousand dollars (\$35,000)~~ fifty thousand dollars (\$50,000) as reflected in an audited financial statement prepared by a certified public accountant or by a qualified independent accountant who is engaged in the public practice of accountancy;

(d) Unlimited License. The applicant for such a license must:

(2) be financially stable to the extent that the total current assets of the applicant or the firm or corporation he represents exceed the total current liabilities by at least ~~sixty five thousand dollars (\$65,000)~~ one hundred thousand dollars (\$100,000) as reflected in an audited financial statement prepared by a certified public accountant or by a qualified independent accountant who is engaged in the public practice of accountancy;

.0205 TERMINATION OF EXAMINEE'S EMPLOYMENT

(b) Persons, acting as qualifiers for a new applicant, who have taken a required examination for any classification and have passed that examination, but have not been granted a license or engaged in general contracting renewed their license for at least two years prior to the date of the filing of a new application for license must be reexamined again for that classification.

(c) Filing Deadline. The application for a new applicant being qualified by a licensee shall be filed no later than the first day of the month preceding any regularly scheduled meeting of the board. At such meeting the board will consider the application. The regular meetings of the board are in January, April, July and October of each year.

SECTION .0400 - EXAMINATION

.0407 RE-EXAMINATION

A person who has failed an examination or a part thereof is allowed to take the examination or the part he failed to pass again at the next regularly scheduled examination upon payment of the additional fee as provided in G.S. 87-10; however, if an applicant fails twice

he/she may not be re-examined until the second regularly scheduled examination following such failure and shall submit a new application with the appropriate examination and license fees.

SECTION .0500 - LICENSE

.0503 RENEWAL OF LICENSE

(c) Form. The application for renewal requires the holder of a valid license to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the holder to give a financial statement of the business in question. the financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the holder of the license on the form itself. However, the board reserves the right in its sole discretion to require a license holder to submit an audited financial statement if the circumstances deem such submission necessary. Except as provided herein, the financial statement will be subject to approval by the board in accordance with the requirements of Section .0204 of this Chapter.

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Nursing intends to amend regulation cited as 21 NCAC 36 .0211.

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

Statutory Authority: G.S. 90-171.29; 90-171.30.

The public hearing will be conducted at 2:00 p.m. on January 21, 1987 at Europa A, Hotel Europa, Chapel Hill, NC 27514.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rule may register at the door before hearing begins and present hearing officer with a written copy of testimony. Written statements may be directed, five days prior to the hearing date, to the North Carolina Board of Nursing, P. O. Box 2129, Raleigh, NC 27602.

CHAPTER 36 - BOARD OF NURSING

SECTION .0200 - LICENSURE

.0211 EXAMINATION

(e) Passing the examination entitles the applicant to a certificate of registration and a license to practice nursing for the remainder of the calendar year satisfies one of the qualifications for eligibility for licensure by examination.

(f) When all of the qualifications for eligibility for licensure have been met, the applicant will be issued a certificate of registration and a license to practice nursing for the remainder of the calendar year.

(f) to (g)

(g) to (h)

FINAL RULES

When the text of any adopted rule differs from the text of that rule as proposed, upon request from the adopting agency, the text of the adopted rule will be published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2B - INMATE CONDUCT RULES: DISCIPLINE

SECTION .0200 - DISCIPLINARY PROCEDURES

.0201 GENERAL

(c) Investigations

(1) The designated officer shall begin his investigation as soon as possible, and in any event within 24 hours after being notified of a suspected offense, unless criminal prosecution is contemplated, in which case the criminal investigators should initiate their investigation before the investigation for disciplinary procedures begins. He shall discuss the matter with the person reporting the incident and with the inmate or inmates accused. Where necessary to ascertain the true facts, he should interview other witnesses, make searches, and employ other appropriate investigatory techniques.

(4) The accused inmate shall be advised by the investigating officer that:

(A) He has the right to submit names of requested defense witnesses and have them called to testify provided the calling of witnesses does not jeopardize or threaten

institutional or individual security,

(B) The number of witnesses will be limited to avoid useless repetition of the same evidence to be presented at the hearing. Physical evidence will only be preserved upon written request of the inmate and provided that retaining or presenting the evidence does not threaten institutional or an individual's security.

(5) The investigating officer shall take written statements from all witnesses. If statements are not taken from all witnesses, the investigating officer shall record their names with an explanation for not taking their statements.

(6) The investigating officer shall make written notes of any observations made by him during the course of the investigation which directly relate to the alleged offense, and he shall take under his control any physical evidence available. Upon completion of the investigation, this officer shall make such changes in the status of the accused as seem warranted by the facts found.

(7) The results of the investigation shall be presented to the superintendent as soon as possible. If more than 48 hours are required to make the investigation and present the results, authority to extend the time shall be obtained in writing from the unit superintendent or institution head who shall establish the time period of extension. Before the superintendent grants the extension of time, he shall indicate on the DC-138A whether the inmate will be placed or continued on administrative segregation and the reasons for this decision.

History Note: Statutory Authority G.S. 148-11; Eff. February 1, 1976; Amended Eff. December 1, 1986; June 1, 1984.

.0203 DISCIPLINARY COMMITTEES

(b) Area Disciplinary Committee

(2) Cases referred to an area

disciplinary committee shall be scheduled for a hearing within fourteen days of the referral. The accused shall receive not less than 72 hours prior to the hearing, written notice of the charges against him, unless such 72 hour notice be waived in writing by the accused. If a delay for any other reason is desired by the unit superintendent or his designated representative or the accused, the one desiring the delay shall state his reason in a written request to the area administrator who may grant such a delay for good cause.

- (4) The chairman of the disciplinary committee shall document reasons for declining to call requested witnesses and declining to present items of physical evidence on the DC-138. The factors that the chairman may consider when ruling on an inmate's request to call witnesses or present items of physical evidence shall include but not be limited to:

- (A) Relevance;
- (B) Cumulative Testimony;
- (C) Necessity; and
- (D) Hazards presented by an individual case.

- (5) The unit superintendent may appoint a member of his staff to present the case to the area disciplinary committee. The accused may request that a particular member of his unit's staff be appointed to assist him. The unit superintendent should allow this request unless the accused requests one of his accusers or other inappropriate persons, in which event the Superintendent shall appoint another staff member. The chosen or appointed representative should assist the accused both in preparing for the hearing and at the hearing. The staff assistant does not serve as an advocate. His role is only to assure that the inmate has an opportunity to present his version of the facts. The representative should document on a DC-138B the way in which he assisted the accused either before or during the hearing.

- (6) If the chosen or

appointed representative has prior knowledge that the accused is guilty, he should inform the accused of that fact so that another staff member may be chosen if desired. Still, an appointed or chosen staff member can and should aid the accused in gathering evidence, even though he thinks that the accused is probably guilty.

- (7) The chairman of the area disciplinary committee shall begin the hearing by reading the charges to the accused and asking him whether he admits to committing the offense. If the accused denies guilty, the evidence bearing on this issue shall be presented. The accused shall be given an opportunity to refute or explain evidence against him and to present evidence and make a statement in his own behalf. Witnesses presenting relevant testimony on his behalf may testify in person or by telephone. Whenever the presentation of live testimony or physical evidence would jeopardize or threaten institutional or individual security, written statements of the facts of the incident gathered by the investigating officer may be used. Written statements of the adverse witnesses, including the accuser, may be used. The inmate shall not be permitted to cross-examine witnesses. If the chairman deems it necessary to withhold the identify of the primary accuser or any other witness due to the threat of reprisal, the accused shall be informed of the part of testimony or statement of the accused which can be revealed without disclosing his identify.

- (8) After all evidence relating to guilt or innocence has been presented, the chairman will have the room cleared of all persons who are not voting members of the committee, except uninvolved people permitted to observe committee deliberations for educational or training purposes. If the committee does not feel that a proper decision can be reached on the basis of the information at its disposal, the

chairman may reopen the hearing for additional questioning, postpone the hearing for one week in an attempt to obtain additional information, or dismiss the charges.

(9) Upon reaching a decision as to the guilt or innocence by majority vote, the chairman shall enter the committee's findings and rationale on the record and reopen the hearing to advise the inmate of the decision. If he has been found guilty or if he admits guilt when the charges are read, the committee should hear any matter pertinent to the issue of proper disposition and then close the hearing for deliberation on this issue. Upon reaching a decision by majority vote as to the disposition and having noted the reasons for this determination on the record, the chairman shall reopen the hearing to advise the inmate of the decision, inform him of the fact that it will be reviewed, and permit him to have entered on the record any objections he may have to the decision. The chairman shall explain to the inmate that if he voices an objection, any punitive aspect of the decision will not take effect until the case is reviewed and the punishment is approved by the reviewing authority, while if no objection is made the decision will take effect immediately but be subject to being overturned or amended by the reviewing authority.

(10) If the accused admits guilt or if he is found guilty of a minor offense by the area disciplinary committee, the committee may impose one or more of the measures authorized for minor offenses. If he admits guilt or if he is found guilty of a major offense by the area disciplinary committee, the committee may impose one or more of the measures authorized for minor offenses and in addition or in lieu thereof one or more of the measures authorized for major offenses. The committee may suspend such imposition on specified conditions for a stated period of time not to exceed

six months. When an inmate is found guilty of possessing funds in a form other than that authorized by Division of Prisons policies or in excess of the authorized amount, the chairman shall make a separate ruling that the unauthorized funds shall be permanently confiscated and placed in the Welfare Fund.

(11) The chairman of the committee shall be responsible for ensuring that all forms are properly completed. The inmate shall be entitled to a copy of a written statement of the evidence relied on by the committee and the reasons for the disciplinary action. Certain items of evidence may be excluded if necessary to protect a witness or informant from reprisal. When information supplied by confidential informants is relied upon, the chairman shall document in the record the reasons why the information provided was trustworthy or that the informant has provided reliable information in the past. Copies of the DC-138 and DC-138(c) shall be forwarded to Combined Records and placed in the inmate's headquarter jacket. The original of these forms will be placed in the inmate's field jacket.

History Note: Statutory
Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. December 1, 1986;
June 1, 1984.

SECTION .0300 - LIST OF INFRACTIONS

.0302 DISCIPLINARY OFFENSES

The offenses numbered 16 through 42 shall be dealt with as major offenses unless the presence of matters in mitigation justify the handling as a minor offense. It shall be a major offense to:

(41) Possess funds in the form other than that authorized by the Division of Prisons policies or in excess of the authorized amount;

(42) Attempt to commit any of the above listed offenses, aid another person to commit any of the above-listed offenses, or make plans to commit any of the above-listed offenses shall be a major offense. It shall

be no defense that an individual was prevented from completing any of the above offense by prison staff or intervening circumstances.

History Note: Statutory
Authority G.S. 15A-1340-7;
148-11; 148-13;
Eff. February 1, 1976;
Amended Eff. December 1, 1986;
August 10, 1981.

SUBCHAPTER 2C - CLASSIFICATION

SECTION .0500 - PROMOTION OF FELONS TO MINIMUM CUSTODY

.0503 CRITERIA FOR CONSIDERATION OF AND REVIEW FOR PROMOTION

(b) The following rules should be applied in the determination of a felon inmate's eligibility for minimum custody review.

- (1) Except as otherwise provided by this Section, no felon inmate shall be considered for promotion to minimum custody unless such inmate is within sixty months from a prospective release date, which shall include expiration of sentence, community service parole eligibility date, or other parole eligibility date.

History Note: Statutory
Authority G.S. 148-4;
148-11; 148-33.1(a);
Eff. February 1, 1976;
Amended Eff. December 1, 1986;
December 1, 1984; August 1, 1983;
September 29, 1978.

SUBCHAPTER 2E - TREATMENT

SECTION .0100 - DIETARY POLICY

.0102 MENU

A master menu will be posted in the dining room at each unit and institution. All food containing pork will be clearly marked with an asterisk on the menu. Inmates whose religious beliefs prohibit consumption of pork must notify the unit superintendent or institution head in writing. Those inmates who have given such written notice will be served as follows:

- (1) When pork is the meat item on the menu, no other substitute meat will be allowed. However, to meet basic nutritional needs, other food items containing

equivalent amounts of protein will be served to replace the pork meat, such as cheeses, dried beans and peas, eggs, and peanut butter;

- (2) When any non-meat food items containing pork or pork seasoning are served, sufficient quantities of that same item will be served without pork or pork seasoning;
- (3) Utensils used for the preparation and serving of pork items shall be thoroughly washed before using to prepare and serve non-pork items;
- (4) At least one of the three daily meals will contain a non-pork meat as the main meat item; and
- (5) Pack-out lunches shall follow the same dietary requirements as the master menu, and shall be subject to the exceptions in this Rule.

History Note: Statutory
Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. December 1, 1986.

SECTION .0700 - WORK RELEASE

.0701 PURPOSE

The Work Release Program provides selected inmates the opportunity for employment in the community during the period of incarceration. The Department of Correction operates the Work Release Program to:

- (1) Respond to statutory requirements, by:
 - (a) Establishing rules and regulations for work release;
 - (b) Designing units for quartering work release inmates;
 - (c) Ensuring consideration and placement for inmates court ordered or court recommended for work release; and
 - (d) Managing and disbursing work release earnings as required by statute or court order.
- (2) Respond to the transitional needs of soon to be released inmates and the program and maintenance needs of longer term inmates.
- (3) Respond to community labor needs.
- (4) Respond to the need to support inmate families and to reduce the economic costs of prison.

History Note: Statutory

Authority G.S. 148-11;
148-33.1;
Eff. February 1, 1976;
Amended Eff. December 1, 1986;
July 1, 1985; October 10, 1977.

.0702 WORK RELEASE ELIGIBILITY
Eligibility for work release participation is determined by the sentencing court, as follows:

(1) Inmates sentenced for misdemeanor crimes after July 1, 1986, who are court ordered for work release are to be placed on work release as specified in the court order. Authorization for work release placement in this eligibility category is the sentencing court and consideration is not subject to custodial and correctional considerations as defined in Rule .0703(2)(c)(i)(A)(i) and (D).

(2) Inmates sentenced to a total sentence length of five years or less who are court recommended for work release are to be placed on work release immediately. Authorization for immediate work release placement in this eligibility category is granted to the Director of Prisons by the Secretary of Correction unless:

(a) A suitable work release facility is unavailable in the area of the proposed employment, or

(b) Custodial and correctional consideration as defined in Rule .0703(2)(c)(i) would preclude granting work release.

(3) Inmates sentenced for crimes committed after July 1, 1981, who are not court recommended for work release are eligible for work release under the conditions set forth in Rule .0703(3). Authorization for work release placement in this eligibility category is granted to the Director of Prisons by the Secretary of Correction.

(4) Inmates sentenced for crimes committed prior to July 1, 1981, serving terms greater than five years are eligible for work release under the conditions set forth in Rule .0703(4) and only after approval by the North Carolina Parole Commission. Authorization for work release placement in this eligibility category is granted to the Secretary of

Correction by the Parole Commission.

(5) Inmates sentenced to multiple terms which place them in conflicting eligibility categories as defined herein will be determined as follows:

(a) Inmates sentenced to a misdemeanor offense with court ordered work release and also sentenced to a felony sentence are not eligible for immediate work release placement until the additional conditions of Rule .0703(2), (3) and (4) are met.

(b) Inmates sentenced for crimes committed before and after July 1, 1981, with sentence lengths greater than five years must meet the conditions of Rule .0703 (3) and (4).

(c) Inmates serving indeterminate sentences with a minimum of five years or less and a maximum of more than five years will be considered in the same category as inmates serving sentences greater than five years.

History Note: Statutory
Authority G.S. 148-11;
148-33.1;
Eff. February 1, 1976;
Amended Eff. December 1, 1986;
July 1, 1985; October 10, 1977.

.0703 WORK RELEASE CONDITIONS

The following specific requirements must be met in order to grant work release for each eligibility category listed in Rule .0702:

(1) Misdemeanants court ordered for work release.

(a) The commitment or court order from the sentencing court should provide:

(i) The date work release is to begin;

(ii) The prison or local confinement facility to which the offender is to be committed;

(iii) A provision that work release terminates the date the offender loses his job or violates the conditions of the work release program established by the Department of Correction; and

(iv) A determination as to whether the earnings of the offender are to be disbursed by the Department of Correction or by the clerk of the

sentencing court in the manner that the court in its order directs.

- (b) A misdemeanor court ordered for work release will be housed at the prison facility specified by the court. However, if the facility specified cannot house work release inmates due to overcrowding or other administrative purposes, inmates can be assigned to some other appropriate prison facility. For the purposes of this Rule, "overcrowding" refers to a population count above the designated capacity for the facility. "Administrative purposes" are defined as management practices which determine the classification, custody, programs and security at each unit.
- (c) The inmate must not be awaiting trial on felony charges or have any felony detainers pending.
- (d) The inmate will be in minimum custody level III by the date work release is ordered to begin.
- (e) A misdemeanor court ordered for work release will be processed as outlined in Rule .0706(a).
- (f) If court ordered work release is delayed or disapproved, the classification authority will document the reasons for such action on the DC-121. The inmate should be notified by a letter which shall set forth the reasons for the delay or denial.
- (g) If an inmate who is court ordered for work release and has suitable employment is disapproved, the Area Administrator/Institution Head or his designee will notify the sentencing judge by letter noting the reasons for disapproval.
- (2) Inmates sentenced to a total sentence length of five years or less who are court recommended for work release and therefore requiring immediate work release placement.
 - (a) The inmate must not be awaiting trial on felony charges or have any felony detainers.
 - (b) The inmate must have suitable employment at the time of commitment in an area where there is a field unit or other facility

suitable for housing the inmate.

- (i) "Suitable employment" shall require that:
 - (A) The employer must pay at least the current minimum wage;
 - (B) The employer must participate in an insurance program, preferably the Worker's Compensation Program, which will compensate the inmate for injury by accident arising out of and in the course of employment;
 - (C) The work setting must provide an appropriately supervised environment. Employment by family members should be closely scrutinized to determine if supervision can be satisfactorily maintained; and
 - (D) Inmates disciplined by a regulatory body established by laws for conduct related to their work will not be placed in the same or similar work without consultation with the regulatory body and prior approval of the Secretary of Correction.
- (ii) The processing diagnostic center will confirm the job offer. Verbal verification will be followed up with a letter of confirmation except with a regular work release employer. The processing diagnostic center will notify the proposed unit of housing for work release directly by telephone and will request an investigation of the work release job plan. Information concerning the inmate, the crime, the job plan particulars, and the other information as appropriate will be provided. The receiving unit will conduct the job investigation and will provide return notification to the referring diagnostic center by telephone within three working days. Diagnostic center staff will send a notification to the receiving area via a DCI terminal transmission stating a request for an

- investigation has been made.
- (iii) If a suitable facility is not within normal commuting distance of the inmate's employment, a contract may be negotiated with the county sheriff for housing the inmate at a local confinement facility.
 - (iv) If suitable employment is not available at the time of the commitment, all other provisions in this Subsection do not apply until such employment is secured. The following procedure shall be followed:
 - (A) The staff of the diagnostic center shall counsel and assist the inmate in his job search. The assistance shall include contacts with prospective employers on behalf of the inmate.
 - (B) If suitable employment is not secured at the completion of the regular diagnostic process, the inmate shall be assigned to an appropriate field unit by the classification authority. The assignment should be made to facilitate the inmate's search for employment. The classification authority should consider promoting the inmate to minimum custody level III for work release only if otherwise eligible to further facilitate work release development and placement. The following is a suggested priority list of assignment locations.
 - (I) An appropriate unit close to the inmate's home;
 - (II) An appropriate unit within commuting distance of a promising job market;
 - (III) An appropriate unit which is a reasonable compromise of the above priorities.
 - (C) The program staff of inmate's field unit shall counsel and assist the inmate in his job search. The assistance

shall include contacts with prospective employers. While seeking work release employment, the inmate may be given any appropriate duty assignment by the classification authority but the duty assignment shall not impair the inmate's opportunity for work release. When suitable employment is obtained, the inmate shall immediately be processed in accordance with this Subsection.

- (c) The following custodial and correctional considerations, as defined in (i) of this Rule, will preclude the inmate's participation in the work release program.
 - (i) Even though an inmate is court recommended for work release, the inmate may be denied work release privileges by the classification authority under the following conditions:
 - (A) The inmate has a prior criminal or prison record of escape or assaultive behavior which would normally result in the denial of work release privileges to an inmate who had not been recommended by the court;
 - (B) The inmate has committed infractions subsequent to commitment under the sentence recommending work release which would normally result in the denial of work release privileges to an inmate who had not been recommended by the court;
 - (C) The inmate has a serious health problem, mental or physical, which warrants immediate treatment or observation on a continuing basis. This problem shall be fully documented on the DC-121R; or
 - (D) The inmate has committed major rule violations during a previous term of confinement during work release participation of sufficient magnitude to give cause for current program disapproval.
 - (ii) If there is reason to

believe that an inmate is subject to denial of work release privileges, his placement on the work release program may be temporarily delayed by the classification authority pending further study of his case and the final decision of the classification authority.

(iii) If court recommended work release is delayed or disapproved, the classification authority will document the reasons for such action on the DC-121. The inmate should be notified by a letter which shall set forth the reasons for the delay or denial.

(iv) If an inmate who is court recommended for work release and has suitable employment is disapproved pursuant to the conditions of Rule .0703(2)(c)(i)(A) through (D), the Area Administrator/ Institution Head or his designee will notify the sentencing judge by letter noting the reasons for disapproval.

(d) Subject to the considerations set forth in Rule .0703(2)(c), all inmates with court recommendations for work release are immediately to be placed in a minimum custody level III, for the purpose of work release only. The inmate will not have any other community privileges unless approved as provided in the existing policy relating to outside activities (5 NCAC 2F .0600).

(e) Transfer to the appropriate field unit will be processed by the classification authority. Court ordered/recommended inmates approved for work release shall receive first priority for housing assignments and transfers. A priority list shall be established within each area. Court recommended and approved inmates shall receive the top priority based on the length of time in the prison system. The remainder of the list shall be composed of other inmates approved for work release in order of length of time since receipt of approval.

(f) Inmates with a court recommendation for work release should be processed,

transferred and placed on work release within ten working days of admission unless custodial and correctional considerations clearly preclude such an assignment or a work release facility is unavailable in the area of proposed employment.

(g) A court recommendation which states work release is recommended or which states immediate work release is recommended will be interpreted as requiring immediate work release placement.

(3) Inmates sentenced for crimes committed after July 1, 1981, who are not court recommended for work release.

(a) Inmates serving sentences totaling five years or less are eligible for immediate work release consideration. Those sentenced to greater than five years must be within three years of the maximum release date or parole eligibility date except as approved by the Director of Prisons.

(b) The inmate must not be awaiting trial on felony charges or have any felony detainers pending.

(c) Suitable employment as defined in Rule .0703(2)(b)(i) must be available prior to work release placement but approval for the work release program can be granted before an employment plan is developed.

(d) If a suitable facility is not within normal commuting distance of the inmate's employment, a contract may be negotiated with the county sheriff for housing the inmate at a local confinement facility.

(e) The inmate must be in minimum custody level III by the date work release is to begin.

(f) The inmate must not have had either an escape within six months or a major infraction within three months of work release approval.

(4) Inmates sentenced for crimes committed prior to July 1, 1981, with sentences greater than five years.

(a) The inmate must be within three years of the maximum release date or parole eligibility date, except as approved by the Director of Prisons.

- (b) The inmate must have approval of the Parole Commission. For those inmates on approved MAPP Agreements with a total sentence length of less than thirty years, the MAPP Agreement represents work release approval by the Parole Commission.
- (c) The inmate must not be awaiting trial on felony charges or have any felony detainers pending.
- (d) Suitable employment, as defined in Rule .0703(2)(b)(i) will be required for placement and may be required for Parole Commission approval as stated in Rule .0707(f).
- (e) If a suitable facility is not within normal commuting distance of the inmate's employment, a contract may be negotiated with the county sheriff for housing the inmate in a local confinement facility.
- (f) The inmate must be in minimum custody level III status on the date he is to begin participating in work release. However, approval for work release may be requested through the Parole Commission prior to attaining minimum custody level III.
- (g) The inmate must not have had either an escape within six months or a major infraction within three months of work release approval.

History Note: Statutory Authority G.S. 148-11; 148-33.1; Eff. February 1, 1976; Amended Eff. December 1, 1986; April 1, 1986; December 1, 1985; July 1, 1985.

.0704 CONCURRENT: CONSECUTIVE SENTENCES

(a) Inmates Received at the Diagnostic Center

- (1) In certain situations an inmate will have concurrent or consecutive sentences and not be court recommended for work release on all sentences and therefore the negative finding controls. However, if the total sentence length is five years or less, the inmate remains eligible for immediate work release consideration. If the total sentence length is greater than five years, the inmate must be approved for work

release in accordance with Rule .0703(3).

- (2) It is possible that a sentencing judge may have simply neglected to make a finding regarding work release. This is most likely in cases where the same judge imposes both sentences or where the sentence without the recommendation is a less serious misdemeanor. When this occurs, the director of the diagnostic center should be notified as soon as possible. The diagnostic center director will send a letter to the inmate informing him that he is ineligible for the work release program but that he may be placed on the program if the inmate or the inmate's lawyer can secure a recommendation from the sentencing judge. If he cannot, he must be specifically approved in accordance with Rule .0703(3).

- (3) A recommendation may be presented in the form of a corrected commitment or a letter of recommendation from the sentencing judge. Upon receipt of a corrected commitment or letter of recommendation, the addressee shall immediately notify the approving authority within the area or institution to which the inmate is assigned. The approving authority shall process the inmate in accordance with Rule .0703(2). If total sentence length is five years or less.

(b) Inmates presently assigned to Work Release. When an inmate is already assigned to the work release program and a second sentence without a recommendation for work release is received the following procedure should be followed:

- (1) If the second sentence is five years or less and consecutive sentences total a maximum of five years or less, the approving authority may either leave the inmate on work release pending clarification of the court's intentions or, depending upon the nature of the second offense, remove the inmate from work release pending clarification. If the nature of the offense resulting in the second sentence is such that it

appears that the inmate's presence in the community would create an unnecessary risk, the inmate should be removed from the work release program pending clarification. The inmate should be informed of his status by letter. The letter should instruct the inmate that reinstatement is possible if he or his lawyer can secure a recommendation from the sentencing judge in the form of a corrected commitment or a letter of recommendation. If a recommendation is received, the inmate will be immediately processed in accordance with Rule .0703(2). If no recommendation is received, the inmate normally shall be removed from the work release program unless otherwise eligible under Rule .0703(3). Careful consideration with justification documented should be afforded inmates who are allowed to remain on work release without some form of recommendation from the sentencing judge. The Court's recommendation for work release on the first sentence should be considered as a positive factor if other condition of Rule .0703(3) are fulfilled.

(2) If the second sentence is for more than five years or if consecutive sentences add-up to a maximum of more than five years, the inmate should be informed by letter that he must be removed from his work release job and that he can not be reinstated without the approval of the Parole Commission or the Area Administrator/ Institution Head if sentenced for a crime after July 1, 1981.

History Note: Statutory
 Authority G.S. 148-11;
 148-33.1;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1986;
 July 1, 1985; October 10, 1977.

.0705 PROBATION REVOKED

Only the court which revokes probation may make an acceptable recommendation for work release. If the revoking court recommends work release in a case with a sentence of five years or less, the inmate shall be processed in accordance with Rule .0703(2). If the revoking court fails to

recommend work release, and the judgment suspending sentence does recommend work release, a letter should be sent to the inmate informing him that he is ineligible for the work release program but that he may become eligible if he or his lawyer can secure a recommendation from the revoking court. If a recommendation is received, the inmate shall be processed in accordance with Rule .0703(2).

History Note: Statutory
 Authority G.S. 148-11;
 148-33.1;
 Eff. February 1, 1976;
 Amended Eff. December 1, 1986;
 July 1, 1985; October 10, 1977.

.0706 PROCESSING PROCEDURES

The following procedures specify actions to be taken to process work release for each eligibility category defined in Rule .0702.

- (1) The following applies to all misdemeanants who are court ordered for work release.
 - (a) Processing for misdemeanants who are court ordered for work release will include fingerprints, photographs, completion of DC-134 and 134A, personal property inventory, medical examination, psychological testing administered on a need to know basis, completion of DC-121I to include promotion to minimum custody level III for work release only and unit assignment. Verification of employment in accordance with Rule .0703(2)(b)(ii) and subsequent completion of sections A, B, C and D or the DC-190 will be accomplished.
 - (b) A misdemeanor court ordered for work release who has a job plan recognized or acknowledged by the sentencing court by notation on the commitment or other court document will be placed on that job upon verification of employment in accordance with Rule .0703(2)(b)(iii). A work release job plan acknowledged by the court will not be required to meet the standards of suitable employment specified in Rule .0703(2)(b)(i) and work release placement will move forward. The Area Administrator, Institution Head or designee will write the sentencing judge stating

- work release placement on the court acknowledged job plan has been approved based on the court order but that approval would not have been granted otherwise due to the job not meeting Department of Correction requirements for suitable employment. The letter should explain why the job plan does not qualify as suitable employment under Department of Correction guidelines [Rule .0703(2)(b)(i)].
- (c) If the sentencing court has not acknowledged a specific job plan for work release, policy requirements for suitable employment will apply.
- (d) An inmate court ordered for work release who does not have a job plan at the time of commitment to prison will receive normal staff assistance in the job search as defined in Rule .0703(2)(b)(iv).
- (e) The director of the processing diagnostic center is designated as the approving authority for promotion and work release approval for misdemeanants who are court ordered for work release by the sentencing court.
- (f) Transfer to the specified unit of assignment will be accomplished to ensure the inmate begins work release on the date specified in the court order or as soon thereafter as possible.
- (g) The date the inmate begins work will be written in section G of the DC-190 by the superintendent. The appropriate copies of the DC-190 will then be forwarded to the Work Release Accounting Office in Raleigh for clearing of section C and the opening of the Work Release Account.
- (2) The following applies to all inmates serving sentences of five years or less and recommended for work release by the sentencing court.
- (a) After completions of the reception process as defined in Rule .0706(1)(a) of this Rule, the director of the processing diagnostic center will approve promotion to minimum custody level III for work release only and will approve work release by signing the appropriate DC-121 and DC-190, unless custodial and correctional considerations preclude work release participation by the inmate. A negative finding at this level, however, will be referred to the Area Administrator or Institution Head for final disposition. In any event, the approving authority will sign section h of the DC-190.
- (b) After approval, the inmate will be transferred directly to the final unit of assignment by the processing diagnostic center to begin work release. The sending unit will be the approving authority for this classification action.
- (c) The date the inmate begins work will be written in section G of the DC-190 by the superintendent. The appropriate copies of the DC-190 will then be forwarded to the Work Release Accounting Office in Raleigh for clearing of section C and the opening of the Work Release Account.
- (3) The following applies to all inmates serving sentences of five years or less who were either not recommended for work release by the sentencing court, or while court recommended, were not initially approved for the program.
- (a) Sections A, B, C and D of form DC-190 are to be filled out by the program committee and submitted to the superintendent for approval (Section H). The superintendent will ensure that the conditions outlined in Section B are met. Generally, the DC-190 and DC-121 should be submitted in a package for consideration.
- (b) After approval by the superintendent, the DC-190 is submitted for approval. If the inmate is housed in a county unit, the Area Administrator is the approving authority. If the inmate is housed in an institution, the Institution Head is the approving authority. The approving authority shall sign Section H of the DC-190. If the recommendation is disapproved, all copies of the DC-190 should be returned to the origination unit or institution.
- (c) After approval by the Area Administrator/Institution Head, the inmate may begin work. The date the inmate begins work will

be written in Section G of the DC-190 by the superintendent. The appropriate copies of the DC-190 will then be forwarded to the Work Release Accounting Office in Raleigh for clearing of Section C and the opening of the Work Release Account.

(4) The following applies to all inmates serving sentences greater than five years.

(a) Sections A, B, C and D of the DC-190 are to be filled out by the program committee and referred to the superintendent for approval (Section H). The superintendent will ensure that the conditions outlined in Section B are met. Generally, the DC-190 and DC-121 should be submitted in a package for consideration.

(b) After approval by the superintendent, the DC-190 is submitted for approval. If the inmate is housed in a county unit, the Area Administrator is the approving authority. If the inmate is housed in an institution, the Institution Head is the approving authority. The approving authority shall sign Section H of the DC-190. If the recommendation is disapproved, all copies of the DC-190 should be returned to the originating unit or institution.

(c) Following approval by the Area Administrator/Institution Head, the DC-190 is forwarded to the Parole Commission except for inmates sentenced for crimes committed after July 1, 1981. Inmates sentenced for crimes committed after July 1, 1981, are placed on work release following final approval by the Area Administrator/Institution Head.

(d) The inmate, superintendent, area office, and Work Release Accounting will be notified in writing (PC-28 and DC-190) by the Parole Commission of its decision for cases requiring Parole Commission approval.

(e) The DC-190 is then submitted by the unit superintendent to Work Release Accounting Office in Raleigh after the inmate begins work. Work Release Accounting will open the work release account and

will clear DC-190, Section C, with the Division of Social Services.

History Note: Statutory Authority G.S. 148-11; 148-33.1; Eff. February 1, 1976; Amended Eff. December 1, 1986; July 1, 1985; October 10, 1977.

.0707 OTHER REQUIREMENTS/ CONDITIONS

(a) If an inmate is to be transferred for the purpose of work release a DC-121R outlining classification actions and objectives should accompany the inmate's record to the receiving unit.

(b) The inmate should be in the appropriate minimum custody level for work release at the time of transfer. This will prevent unnecessary delays.

(c) The issue of restitution must have been considered and resolved by the reviewing authority with the completion of the appropriate forms if the inmate has been court recommended or court ordered for restitution.

(d) Appropriate disciplinary action for major infractions committed while on the work release program shall be at the discretion of the Area Disciplinary Committee.

(e) Mutual agreement programming (individual contracts) should be considered, especially with felons, by the classification/program committee whenever possible. These arrangements should include programs such as G.E.D./A.B.E., alcohol, drug treatment.

(f) For inmates who are recommended to the Parole Commission for work release approval, the commission will require:

(1) Employment investigation on specific cases which the Parole Commission will designate during the review process.

(2) Specific job plan investigation by a Probation/Parole Officer for inmates whose sentences total thirty years or more. This requirement for investigation applies to job changes as well as the initial job plan for inmates whose sentences total thirty years or more.

(3) Parole Commission approval for work release shall automatically be withdrawn anytime an inmate is removed from work release

because of an infraction resulting in demotion to medium custody.

History Note: Statutory
Authority G.S. 148-11;
Eff. February 1, 1976;
Amended Eff. December 1, 1986;
July 1, 1985.

.0708 TRANSPORTATION

Transportation to and from work release can be provided by the Department of Correction, by public transportation or by private individuals, subject to the following requirements:

- (1) Inmate transported by the Department of Correction will be charged a daily rate set by the Director of Prisons.
- (2) Inmate who use public transportation will be limited to the most direct route to and from the job site. The form of transportation and route to be used will be approved by the superintendent of the work release unit.
- (3) Private individuals including members of the inmate's family can be approved to provide transportation to work release inmates by the superintendent of the work release unit. Those persons providing transportation must have a valid drivers license. More than one individual can be approved to provide transportation for a work release inmate and persons providing transportation can transport more than one work release inmate. The superintendent can disapprove any person requesting to provide transportation for any reason if in the judgment of the superintendent approval would not be in the best interest of the inmate or would be contrary to continued successful participation on work release. The fee for private transportation will be determined at the time of approval. Those persons providing transportation to work release inmates shall be required to use the most direct route to and from the job site.
- (4) Work release inmates will not be permitted to drive to and from the unit to the job site; however, work release inmates can be granted driving privileges as part of their work release employment

if recommended by the Unit Superintendent and approved by the Area Administrator/Institution Head under the following conditions:

- (A) The work release employer provides a letter stating driving privileges are necessary to perform the job to which the inmate is employed;
- (B) The vehicle to be driven is owned and insured by the employer;
- (C) The inmate has a valid drivers license;
- (D) The inmate has not been convicted of driving while impaired; and
- (E) The inmate's driving record shows no moving violations for the two years prior to admission to prison.

History Note: Statutory
Authority G.S. 148-11;
Eff. December 1, 1986.

SECTION .1300 - STUDY RELEASE

.1301 GENERAL

(a) This Rule sets forth the requirements, conditions, and procedures for inmate participation in the study release program.

(b) Study release is a community-based program of rehabilitation that includes any situation in which an inmate participates in an academic or vocational training program away from the correctional facility and is not supervised during the classroom training period by a correctional employee or an agent of the Department of Correction. Study release program activities include such programs as: sheltered workshops, on-the-job training, learning lab activities, specialized enrichment programs, and community college or university level course work leading to a certificate or degree. Authority to grant approval for inmates to participate in the study release program has been extended to command Managers, Area Administrators and Institution Heads from the secretary through the Director of Prisons.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1302 ELIGIBILITY REQUIREMENTS

Inmate participation in the study release program is subject to the following requirements:

- (1) The inmate must be in minimum custody, level III and must have participated in other community-based activities outside the correctional facility.
- (2) The inmate must have the potential for release through parole, work release or sentence expiration following the completion of the designated study release program.
- (3) For those inmates who are found to be eligible and who are under consideration for study release participation, the following factors must be determined:
 - (a) The course of study which the inmate wishes to pursue is not available on-site at an appropriate correctional facility;
 - (b) The course of study for the participant will significantly enhance the inmate's opportunity of being a productive citizen upon release.
 - (c) There is reasonable cause to believe that the inmate has the capability of successfully completing the designed study release program; and
 - (d) There is reasonable cause to believe that the inmate will honor all the conditions of the study release participation and not abuse the privilege.
- (4) For those inmates who are court-recommended for study release participation, additional consideration will be afforded inmates in this category provided that the inmate has met all other prerequisites for study release. A court order for study release is neither a prerequisite nor a mandate for an inmate to participate in the study release program.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1303 STUDY RELEASE CONDITIONS

A participant in the study release program shall adhere to the following conditions:

- (1) The inmate participant will proceed directly to and from the correctional facility using an approved means of transportation and an approved route to and from the educational facility.
- (2) Upon completion of course work at the end of the class day, the inmate will return

immediately to the correctional facility by an approved route and means of transportation.

Participation in activities and being at locations other than classrooms and activities associated with the classrooms are prohibited without prior approval of the unit superintendent/institution head.

- (3) The inmate will be subject to any and all rules currently described in the Division of Prisons Policies and Procedures Manual while participating in community-based programs.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1304 APPLICATION PROCEDURE

(a) The Study Release Action Form (DC-356) will be completed in Sections A, B, C, D, and F to place an inmate on study release. The following procedures will be followed in completing the DC-356:

- (1) Circle 01 in Section "Transactions" of the Study Release Action Form (DC-356) if the inmate is a new applicant. If he/she is a former study release student and is applying for reinstatement, circle 04.
- (2) Complete Parts A, B, and C of Form DC-356.
- (3) The rules and regulations of the Department of Correction and the conditions upon which study release is granted will be carefully explained to the inmate. He acknowledges his understanding by signing his name on the appropriate line in Part D of Form DC-356. The correctional official witnessing this is to sign his name on the designated line in Part D.
- (4) The unit or institutional recommendation is to be noted by the Superintendent/institution head in the appropriate section of Part F of Form DC-356.

(b) All applications, whether approved or not, and the supporting material will be sent from respective units to the area office; and for the Youth Centers and Institutions to the Command Manager's Office.

- (1) The original and all copies of Study Release Action Form DC-356.
- (2) Written verification of

financial assistance; and
(3) Written verification of acceptance by the educational institution.

(c) The Area or Command action is to be noted by the Area Director or designated official in the appropriate section of Part F of the Study Release Action Form DC-356. The Area/Command action will constitute the Department of Correction's approval or disapproval of applicants for both full-time and part-time study release.

(d) The Area or Command Office is to distribute the DC-356 forms as follows:

- (1) Two copies (original and one copy) to the Education Office in Raleigh;
- (2) One copy to the Area study release file; and
- (3) One copy to the unit jacket.

(e) The supporting material should be returned to the unit to be filed in the inmate's field jacket as follows:

- (1) One copy of the written verification of financial assistance; and
- (2) One copy of the written verification of acceptance by the educational institution.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1305 REINSTATEMENT

If an inmate has been on the study release program previously and wishes to re-apply, comply with the regular application procedure. Circle 04 in Section "Transactions" at the top of Form DC-356.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1306 STUDY RELEASE FISCAL POLICIES AND PROCEDURES

(a) Inmates in need of financial assistance will be allowed to seek assistance from one or more of the following sources:

- (1) Vocational rehabilitation,
- (2) Veterans benefits,
- (3) Family donations,
- (4) Personal funds,
- (5) Scholarships,
- (6) Basic education opportunity grants, or
- (7) Other authorized sources.

(b) The program staff at the correctional facility or institution where the inmate is

housed shall assist him/her in contacting the necessary financial source.

(c) Financial support from any of the above-named sources for the purpose of study release activities, including tuition, books, and special equipment, shall be paid directly to the educational agency by the funding source. Financial support from funding source's paid directly to the inmate will be deposited into the inmate's trust fund account under a separate ledger card identified as "Educational Financing", with the requirement that withdrawal from this account will only be authorized by the unit superintendent/institution head or his designee. Unused funds following the completion or termination of study release will be placed in the inmate's regular trust fund account.

(d) Financial support from the sponsoring educational and/or training agency where the financial support for the participant is for work performed for the sponsoring educational and/or training agency by the study release participant, such support will be deposited directly into the inmate's trust fund account. Time spent performing work tasks must not exceed the number of hours spent in class by a study release participant. The maximum number of working hours allowable shall be limited to not more than twenty hours per week.

(e) Receipts from study release participants as a result of their work for employers other than the sponsoring educational and/or training agency shall be handled within the framework of the Work Release Program. Under this condition, an inmate must be appropriately approved for the Work Release Program prior to initiating a combined Study/Work Release Program. All guidelines, including financial and programmatic requirements, will be applied and participation in the Work Release Program is to be assured prior to the initiation of the program. If the participation in work release is part-time, per diem will be deducted at the rate of eight hours per diem for every eight hours of work release participation.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1307 CHANGE IN EDUCATION PLAN
If there is any change in the inmate's course of study or education plan, the sponsoring unit/institution is requested to do the following:

- (1) Complete a new Study Release Action Form (DC-356), circle 02 in section "Transactions", designate the name and number of the inmate in Part A, and note the change in Part C; and
- (2) Forward the original and all copies of the new Form DC-356 according to the procedures set forth in Rule .1304 of this Section.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1308 AFTER THE INMATE IS
APPROVED FOR STUDY RELEASE

The following information is to be forwarded to the Education Office in Raleigh, with the inmate's 15 - digit number written on all of the following:

- (1) A copy of the quarter or semester grades;
- (2) A copy of diplomas or certificates; and
- (3) Academic or other honors (Dean's list, elected officer, etc.).

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

.1309 REMOVAL FROM OR
COMPLETION OF
STUDY RELEASE

- (1) Part E of a new Study Release Action Form (DC-356) is to be completed by the superintendent or designated official if any inmate is removed from study release for any of the following reasons:
 - (a) Completed study (i.e., graduated);
 - (b) Disciplinary reasons;
 - (c) Parole/Conditional Release;
 - (d) Escape;
 - (e) Release;
 - (f) Failure to meet academic requirements of the educational institution; and
 - (g) Other (inmate put on release, voluntarily terminated study release, never placed on study release).
- (2) Circle 03 section "Transactions" on Form DC-356.
- (3) Note the name and number

of the inmate in Part A of Form DC-356.

- (4) The superintendent or designated official is to note his approval or disapproval of the action in Part F.
- (5) The original and all copies are to be forwarded to the Area office.
- (6) The Area Administrator Command Official, Correctional Programs Director, or designated official is requested to note his/her approval or disapproval of the action in Part F.
- (7) The Area or Command officials are to distribute Form DC-356 according to the procedure established in Rule .1304 of this Section.

History Note: Statutory
Authority G.S. 148-11; 148-13;
Eff. December 1, 1986.

SUBCHAPTER 2H -RELIGIOUS
PRACTICE

SECTION .0100 - ISLAMIC SERVICES
AND PRACTICES

.0101 GENERAL

The purpose of this policy is to provide information and guidelines for administration and staff on the practice of the Islamic faith by those holding such beliefs within the Division of Prisons. The basic tenets and practices of the Islamic faith include:

- (1) Declaration of Faith;
- (2) Prayer;
- (3) Charity;
- (4) Fasting; and
- (5) Pilgrimage (not permitted during confinement).

History Note: Statutory
Authority G.S. 148-11;
148-24;
Eff. December 1, 1986.

.0102 MEMBERSHIP

A written Declaration of Faith for purposes of religious identification may be made voluntarily by any inmate in the Division of Prisons who desires to be a Muslim. The inmate making the declaration may obtain declaration forms from the Office of Islamic Services Coordinator, with one copy placed on file in the Office of Islamic Services Coordinator or the Unit Chaplain's office for religious purposes.

History Note: Statutory
Authority G.S. 148-11;

148-24;
Eff. December 1, 1986.

.0103 ISLAMIC PRACTICES

(a) Prayers.

(1) Daily Prayers. According to prescribed Islamic schedule, the Muslim should be given the opportunity to offer the five daily prayers which occur:

- (A) up to one hour before sunrise;
- (B) early afternoon (noon to 2:30 p.m.);
- (C) late afternoon (2:30 p.m. to sunset);
- (D) after sunset; and
- (E) before retiring.

Time for accomplishing these prayers ranges from five to fifteen minutes. Prayers may be done before normal working hours, during the noon hour, at breaks from work or study, or after the working day. Ablution, or ceremonial washing, is normally required before prayers. Where feasible, inmates should be given access to water in a way to accomplish ablutions. The five daily prayers are preferably done in congregation but may be done individually in cells, dormitories, or an available clean area which does not negatively affect the security or management of the institution.

(2) Jumah. Provisions should be made for Muslim inmates in the regular population to observe Jumah, the Friday Congregational Prayer for the Islamic Holy Day, for a period of one hour to begin not earlier than 11:00 a.m., and to conclude not later than 2:30 p.m. Efforts should be made to schedule Jumah to minimize conflicts with work, education, and program activity, and to maximize the opportunity for Muslim inmates to choose to attend.

(A) The Jumah Service will be supervised by the unit chaplain or other unit personnel and will be conducted by an Islamic chaplain, an Imam from the community, or an approved Muslim inmate prayer leader.

(B) Selection, training, certification, and religious supervision of inmate prayer leaders will be the responsibility of the coordinator of Islamic

Services. Inmate prayer leaders will be selected based on their knowledge of the faith, sincerity, emotional maturity, positive leadership and responsible behavior. Certification of the inmate prayer leader is subject to the approval of the Unit Superintendent.

(b) Zakat (Charity). Money collected for charity and the propagation of the faith may be permitted, using the trust fund accounting system as with other inmate organizations.

(c) Ramadan (Fasting). Provisions shall be made for Muslims to fast during the Islamic month of Ramadan. As a result of the rotation of the months of the Islamic Calendar, the date of the fast will be sent out prior to the beginning of Ramadan by the Director of Prisons on recommendation of the Islamic Services Coordinator.

(1) In the development of guidelines for Islamic inmates participating in Ramadan, the following activities are the only authorized observances:

(A) Muslims desiring to observe Ramadan shall make their intentions known in writing to the unit superintendent one week prior to the beginning of Ramadan. Those transferred during Ramadan should be allowed to continue the fast from the previous unit.

(B) The observance of Ramadan will not interfere with regular work or program assignments.

(C) The regular menu will be the source of all food for inmates observing Ramadan with the traditional exception of pork and pork derivatives. Every reasonable effort will be made within the Division of Prisons to make the morning and evening meals available on a timely basis consistent with unit operations.

(D) Since the purpose of Ramadan is to develop individual discipline and self-restraint, it is not necessary to monitor the participation of individual inmates unless this activity causes a security problem. Islamic law states the fast shall be resumed if it is broken because of illness,

- arduous work, travel or extreme discomfort.
- (2) The following activities shall be authorized for inmates who have requested participation in Ramadan:

(A) Muslim inmates shall be permitted to fast during the daylight hours and to observe prescribed times of prayer and reading of the Holy Quran individually after lockup provided the required work schedules and other activities have been accomplished.

(B) A morning meal to be eaten before dawn, and an evening meal immediately after sunset are to be made available to those inmates observing the fast. Specific times for these meals will be contained in the memorandum from the director's office.

(i) Inmates observing the fast may be authorized to eat with the kitchen crew before dawn;

(ii) A pack-out meal may be provided the night before or before dawn;

(iii) Inmates observing the fast are authorized to be served in the dining hall from the regular menu;

(iv) Pack-out meals may be provided in a suitable location;

(v) The evening meal should include a balance of non-pork meat, vegetables, bread, fruit, milk, and liquids to maintain nutritional balance. The place and method of providing the meal is to be determined by operational staff and based on considerations related to security, hygiene, orderly administration, and the morale of the prison population.

(C) At least one of these two meals should be served hot, if at all possible.

(D) The observance of one special day during Ramadan shall be authorized for congregational gathering of Muslim inmates with community ministers or staff to be available to supervise the service. The Night of Power is the observance of the night in

which the first revelations of the Quran began during Ramadan. This observance is marked by prayer and Quranic reading after sunset to be supervised by staff, staff chaplains, or volunteer Muslim Imams. The specific date and time will be in a memorandum to be issued by the director.

(E) Religious Holidays.

The observance of two holidays following Ramadan shall be authorized for congregational gathering of Muslim inmates with community ministers or staff to be available to supervise the services. These days are:

(i) Eid al Fitr (Prayer and Feast of the Fast Breaking).

This celebration consists of a prayer service to be held before noon and a special meal on that day. The prayer service should last no more than one hour. The prayer services should occur in the morning before noon on the day after the last fasting day while the special meal may be on any one of the first three days after the last fasting day. The celebration meal may consist of the regular menu enhanced by fruit punch and other special food items available if the local Islamic community is able to assist. Only one day may be selected. A final determination of the day of the fast shall be based on unit operations by the unit superintendent or institution head.

(ii) Eid al Adha

(Celebration of the Sacrifice of Abraham). This celebration follows the end of Ramadan by approximately ten weeks. The specific date will be issued in a memorandum from the director. The observance consists of a prayer service to be held before noon, and lasting no more than one hour. A special meal is to be served to those persons of the Islamic faith. The meal may consist of the regular

menu enhanced by fruit punch and other special items. Special food items may be prepared if a local Islamic community is available to assist.

History Note: Statutory
Authority G.S. 148-11; 148-24;
Eff. December 1, 1986.

.0104 ISLAMIC DIET
Dietary policy for Islamic inmates whose religious beliefs prohibit the consumption of pork and pork derivatives are codified in 5 NCAC 2E .0102.

History Note: Statutory
Authority G.S. 148-11; 148-24;
Eff. December 1, 1986.

.0105 APPROVED RELIGIOUS PARAPHERNALIA
(a) Prayer Rugs - Muslim inmates shall be allowed to purchase with their own funds a prayer rug not to exceed twenty-two inches by forty-four inches. Approved order forms and distributors will be utilized for the purchase.
(b) Kufi Prayer Caps - Muslim inmates may possess and wear Kufis for prayer and religious services. Kufis may be worn as part of daily dress in the same manner as other caps are worn throughout the Division of Prisons. Kufis shall be removed for search and shall not be worn in dining halls. Muslim inmates may purchase Kufi caps with their own funds as with other approved personal clothing items.

History Note: Statutory

Authority G.S. 148-11; 148-24;
Eff. December 1, 1986.

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 6 - INDIVIDUAL INCOME TAX

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .3500 - PARTNERSHIPS

.3501 DEFINITION
A partnership may be defined, generally, as the relationship existing between two or more persons who join together to carry on a trade or business with each person contributing either money, property, labor, or skill, and with all of them expecting to share in the profits and losses of the business. For income tax purposes, the term "partnership" includes, in addition to an ordinary partnership, a syndicate, group, pool, joint venture, common trust fund, investment club, or other similar organizations which may not be classified as a trust, estate, or corporation.

A joint agreement merely to share expenses is not a partnership. Co-owners and tenants in common are not, generally, partners; but they can be partners if they actively carry on a venture together.

History Note: Statutory
Authority G.S. 105-152(a)(3);
105-154(b); 105-142(c)
105-262;
Eff. February 1, 1976;
Amended Eff. December 1, 1986.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EDITION XI, NO. 1

EFFECTIVE: November 1, 1986

AGENCY	ACTION TAKEN
<u>GOVERNOR'S OFFICE</u>	
9 NCAC 2	EXECUTIVE ORDER NO. 27 Eff. September 8, 1986
<u>HUMAN RESOURCES</u>	
10 NCAC 26D .0012	Amended
<u>INSURANCE</u>	
11 NCAC 10 .0304 .0312	Temp. Amended Temp. Adopted
<u>LABOR</u>	
13 NCAC 13 .0402	Amended
<u>NATURAL RESOURCES & COMMUNITY DEVELOPMENT</u>	
15 NCAC 2B .0217	Adopted
.0301	Amended
2D .0501	Amended
.0524	Amended
.1002	Amended
.1004-.1005	Amended
2H .0126	Adopted
.0404	Amended
.0408-.0409	Adopted
3B .0101	Amended
.0401-.0402	Amended
.0404	Amended
.0504	Amended
.0902	Amended
.1111	Amended
.1501	Amended
.1505	Amended
7J .0409	Amended
16D .0201	Temp. Amended
<u>TRANSPORTATION</u>	
19A NCAC 2B .0143	Amended
<u>OFFICE OF ADMINISTRATIVE HEARINGS</u>	
26 NCAC 4 .0001-.0008	Temp. Adopted

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3	Auditor, Department of State
4	Commerce, Department of
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25	Personnel, Department of State
26	Office of Administrative Hearings

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
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