

The **NORTH CAROLINA REGISTER**

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

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

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
 (September 1987 - March 1988)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
09/15/87	08/26/87	09/02/87	10/15/87	01/01/88
10/15/87	09/25/87	10/02/87	11/14/87	02/01/88
11/16/87	10/27/87	11/03/87	12/16/87	03/01/88
12/15/87	11/23/87	12/02/87	01/14/88	04/01/88
01/15/88	12/28/87	01/04/88	02/14/88	05/01/88
02/15/88	01/26/88	02/02/88	03/16/88	06/01/88
03/15/88	02/24/88	03/02/88	04/14/88	07/01/88

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

CORRECTION

CORRECTION AS PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 2, ISSUE 4, ON PAGE 261. COASTAL MANAGEMENT REGULATION CITED AS 15 NCAC 7H .1502 SHOULD READ:

.1502 APPROVAL PROCEDURE

(a) The applicant must contact the ~~Office~~ Division of Coastal Management and complete an application form requesting approval for development. Applicants shall provide their name and address, the site location and the dimensions of the project area.

(c) No work shall begin until an onsite meeting is held with the applicant and a ~~Office~~ Division of Coastal management representative to inspect and mark the proposed area of excavation and spoil disposal. Written authorization to proceed with the proposed development can be issued during this site visit. ~~Maintenance~~ All excavation must be completed within 90 days of the date of permit issuance, or the general authorization expires.

Statutory Authority G.S. 113A-107 (a), (b); 113A-113 (b); 113A-118 (1); 113-229 (c1).

GENERAL STATUTES OF NORTH CAROLINA

CHAPTER 150B

ADMINISTRATIVE PROCEDURE ACT

As Amended Effective 9-1-87

Article 1.

General Provisions.

§ 150B-1. Policy and scope. -- (a) The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

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

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

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

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

The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

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

Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue. Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this Chapter do not apply to the Department of Transportation.

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

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

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

Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2.

Articles 3 and 3A of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

§ 150B-2. Definitions. -- As used in this Chapter,

(01) "Administrative law judge" means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

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

(2) "Contested case" means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licens-

- ing or the levy of a monetary penalty. "Contested case" does not include rulemaking, declaratory rulings, or the award or denial of a scholarship or grant.
- (2a) "Effective" means that a valid rule has been filed as required by G.S. 150B-59 and, if applicable, that the time specified in that section has elapsed. A rule that is effective is enforceable to the extent permitted by law.
- (2b) "Hearing officer" means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.
- (3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.
- (4) "Licensing" means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.
- (4a) "Occupational license" means any certificate, permit, or other evidence, by whatever name called, of a right or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.
- (4b) "Occupational licensing agency" means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. "Occupational licensing agency" does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.
- (5) "Party" means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.
- (6) "Person aggrieved" means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.
- (7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (8) "Residence" means domicile or principal place of business.
- (8a) "Rule" means any agency regulation, standard or statement of general applicability that implements or interprets laws enacted by the General Assembly or Congress or regulations promulgated by a federal agency or describes the procedure or practice requirements of any agency not inconsistent with laws enacted by the General Assembly. The term includes the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies, including policies and procedures manuals, if such a statement does not directly or substantially affect the procedural or substantive rights or duties of persons not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.
 - c. Nonbinding interpretive statements within the delegated authority of the agency that merely define, interpret or explain the meaning of a statute or other provision of law or precedent.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute or the instructions for the execution or use of the form.
 - e. Statements of agency policy made in the context of another proceeding, including:
 1. Declaratory rulings under G.S. 150B-17;
 2. Orders establishing or fixing rates or tariffs.
 - f. Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly, communicated to the public by use of signs or symbols, concerning:
 1. The use or creation of public roads or bridges;
 2. The boundaries of public facilities and times when public facilities are open to the public; or
 3. Safety in use of public facilities.

- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases;
- h. Scientific, architectural, or engineering standards, forms, or procedures.
- (8b) "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.
- (9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it becomes effective.

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

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

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

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

Article 2.

Rule Making.

§ 150B-9. Minimum procedural requirements; limitations on rule-making authority; criminal sanctions authorized. -- (a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for temporary rules which are provided for in G.S. 150B-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any State agency. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article.

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

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

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

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

§ 150B-11. Special requirements. -- In addition to other rule-making requirements imposed by law, each agency shall:

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

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

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

(4) Submit a fiscal note in accordance with G.S. 120-30.48 for a proposed rule that affects the expenditures or revenues of a unit of local government. The fiscal note shall be submitted no later than the date when a notice of public hearing on the proposed rule is published in the North Carolina Register. The notice shall state that a fiscal note has been prepared for the proposed rule and may be obtained from the agency. An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

§ 150B-12. Procedure for adoption of rules.

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

(1) A reference to the statutory authority under which the action is proposed;

(2) The time and place of the public hearing and a statement of the manner in which data, opinions, and arguments may be submitted to the agency either at the hearing or at other times by any person; and

(3) The text of the proposed rule, or amendment in the form required by G.S. 150B-63(d2) and the proposed effective date of the rule or amendment.

(b) Repealed.

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

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

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

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

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

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

(1) A relettering or renumbering instruction; or,

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

(h) No rule-making hearing is required to repeal a rule if the repeal of the rule is specifically provided for by the Constitution of the United States, the Constitution of North Carolina, any federal or North Carolina statute, any federal regulation, or a court order. No rule-making hearing is required to amend or repeal a rule to comply with G.S. 143B-30.2 in accordance with G.S. 150B-59(c).

§ 150B-13. Temporary rules. -- (a) Except as provided in subsection (b) of this section, if an agency which is not exempted from the notice and hearing requirements of this Article by G.S. 150B-1 determines in writing that:

- (1) Adherence to the notice and hearing requirements of this Article would be contrary to the public interest; and that
- (2) The immediate adoption, amendment, or repeal of a rule is necessitated by and related to:
 - a. A serious and unforeseeable threat to public health, safety, or welfare;
 - b. The effective date of a recent act of the General Assembly or the United States Congress;
 - c. A recent change in federal or state budgetary policy;
 - d. A federal regulation; or
 - e. A court order,

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

(a1) The written certification of the finding of need for the temporary rule shall be signed by:

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

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

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

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

- (1) The public health, safety, or welfare;
- (2) The effective date of a recent act of the General Assembly or the United States Congress;
- (3) A federal regulation; or
- (4) A court order,

the agency may adopt, amend, or repeal the rule. The agency must accompany its rule filing with the Director of the Office of Administrative Hearings and the Governor with the agency's written certification of the finding of need for the temporary rule signed by the Governor together with the reasons for that finding. In the case of the Department of Correction, in addition to the reasons set forth in subdivisions (1) through (4) of this subsection, the Department may file a temporary rule when necessary for the management and control of persons under the custody or supervision of the Department in extraordinary circumstances as certified by the Secretary. The Department shall file any temporary rule within two working days of its adoption by the Secretary under G.S. 148-11.

(c) Rules filed under subsections (a) and (b) of this section shall be effective for a period of not longer than 180 days and are subject to review as provided in G.S. 143B-30.2(i). An agency adopting a temporary rule shall begin normal rule-making procedures on the permanent rule under this Article at the same time the temporary rule is adopted.

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

- (1) All or any part of a code, standard, or regulation which has been adopted by any other agency of this State or by any agency of the United States or by a generally recognized organization or association;
- (2) Any plan or material which is adopted to meet the requirements of any agency of the United States and approved by that agency;
- (3) Any plan, material, manual, guide or other document establishing job application or employment practices or procedures of any State agency other than the State Personnel Commission. The State Personnel Commission, however, shall incorporate by ref-

erence in its rules job classification standards, including but not limited to those relating to qualifications and salary levels; or

- (4) The hearings division rules promulgated by the Office of Administrative Hearings.

In adopting matter by reference, the agency shall specify in the rule and in the Register whether such adoption is in accordance with the provisions of subsection (b) or (c) of this section. The agency can change this election only by a subsequent rulemaking proceeding.

(b) If an agency adopts matter by reference in accordance with this subsection, such reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule.

(c) If any agency adopts matter by reference in accordance with this subsection, such reference shall automatically include any later amendments and editions of the adopted matter.

(d) An agency may cross-reference its own rules in the North Carolina Administrative Code without violating the provisions of (a)(1) of this section.

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

§ 150B-16. Petition for adoption of rules. -- Any person may petition an agency to promulgate, amend, or repeal a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency shall

either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with G.S. 150B-12 and G.S. 150B-13; provided, however, commissions and boards shall act on a petition at their next regularly scheduled meeting, but in any case no later than 120 days after submission of a petition. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review.

§ 150B-17. Declaratory rulings. -- On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

Article 3.

Administrative Hearings.

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

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention. -- (a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be

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

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

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

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

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

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

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

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may inter-

vene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

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

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

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

(b) Any person whose property or rights are the subject matter of the hearing waives his objection to venue by proceeding in the hearing.

§ 150B-25. Conduct of hearing; answer. --

(a) If a party fails to appear in a contested case after proper service of notice, and if no adjournment or continuance is granted, the administrative law judge may proceed with the hearing in the absence of the party.

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

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

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

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

§ 150B-27. Subpoena. -- After the commencement of a contested case, the administrative law judge may issue subpoenas upon his

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

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

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

§ 150B-29. Rules of evidence. -- (a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Factual information or evidence not made a part of the record shall not be considered in the determination of the case, ex-

cept as permitted under G.S. 150B-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available.

§ 150B-30. Official notice. -- Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument.

§ 150B-31. Stipulations. -- (a) The parties in a contested case may, by a stipulation in writing filed with the administrative law judge, agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

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

§ 150B-32. Designation of administrative law judge. -- (a) The Director of the Office of Administrative Hearings shall assign himself or another administrative law judge to preside over a contested case.

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

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

§ 150B-33. Powers of administrative law judge. -- (a) An administrative law judge shall stay any contested case under this Article on motion of an agency which is a party to the contested case, if the agency shows by supporting affidavits that it is engaged in other litigation or administrative proceedings, by whatever name called, with or before a federal agency, and this other litigation or administrative proceedings will

determine the position, in whole or in part, of the agency in the contested case. At the conclusion of the other litigation or administrative proceedings, the contested case shall proceed and be determined as expeditiously as possible.

(b) An administrative law judge may:

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

§ 150B-34. Recommended decision or order of administrative law judge. -- (a) In a contested case, the administrative law judge shall make a recommended decision or order that contains findings of fact and conclusions of law.

(b) After hearing the contested case and prior to issuing a recommended decision, the administrative law judge shall give each party an opportunity to file proposed findings of fact and to present written arguments to him.

§ 150B-35. No ex parte communication; exceptions. -- Unless required for disposition of an ex parte matter authorized by law, neither the administrative law judge assigned to a contested case nor a member or employee of the agency making a final decision in the case may communicate, directly or indirectly, in connection with any issue of fact, or question of law, with any person or party or his representative, except on notice and opportunity for all parties to participate.

§ 150B-36. Final decision. -- (a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the administrative law judge, and to present written arguments to those in the agency who will make the final decision or order.

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

§ 150B-37. Official record. -- (a) In a contested case, the Office of Administrative Hearings shall prepare an official record of the case that includes:

- (1) Notices, pleadings, motions, and intermediate rulings;
- (2) Questions and offers of proof, objections, and rulings thereon;
- (3) Evidence presented;
- (4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose; and
- (5) The administrative law judge's recommended decision or order.

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

thereof shall be added to the official record as an exhibit.

(c) The Office of Administrative Hearings shall forward a copy of the official record to the agency making the final decision and shall forward a copy of the recommended decision to each party.

Article 3A.

Other Administrative Hearings.

§ 150B-38. Scope; required; notice; venue.

-- (a) The provisions of this Article shall apply to the following agencies:

(1) Occupational licensing agencies;

(2) The State Banking Commission, the Commissioner of Banks, the Savings and Loan Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and

(3) The Department of Insurance and the Commissioner of Insurance.

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

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the facts alleged.

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

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

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

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

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

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

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

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

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

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

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

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

(c) The presiding officer may:

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

occurred in an action pending in superior court.

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

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

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

The administrative law judge assigned to hear a contested case under this Article shall sit in place of the agency and shall have the authority of the presiding officer in a contested case under this Article. The administrative law judge shall make a proposal for decision, which shall contain proposed findings of fact and proposed conclusions of law.

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

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

§ 150B-41. Evidence; stipulations; official notice. -- (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object to evidence at the hearing in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court of judicial review.

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

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

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

§ 150B-42. Final agency decision; official record. -- (a) After compliance with the provisions of G.S. 150B-40(e), if applicable, and review of the official record, as defined in

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

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

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

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

Article 4.

Judicial Review.

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

§ 150B-44. Right to judicial intervention when decision unreasonably delayed. -- Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose

rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. Except for an agency that is a board or commission, an agency's failure to make a final decision within 60 days of the date on which all exceptions and arguments are filed under G.S. 150B-36(a) with the agency constitutes unreasonable delay. A board or commission's failure to make a final decision within the later of the 60 days allowed other agencies or 60 days after the board's or commission's next regularly scheduled meeting constitutes an unreasonable delay.

§ 150B-45. Procedure for seeking review; waiver. -- To obtain judicial review of a final decision under this Article, the party seeking review must file a petition in the Superior Court of Wake County or in the superior court of the county where the person resides.

The person seeking review must file the petition within 30 days after the person is served with a written copy of the decision. A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

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

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

§ 150B-47. Records filed with clerk of superior court; contents of records; costs. -- Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency that made the final decision in the contested case shall transmit to the reviewing court the original or a certified copy of the official record in the contested case under review together with: (i) any exceptions, proposed findings of fact, or written arguments submitted to the agency in accordance with G.S. 150B-36(a); and (ii) the agency's final decision or order. With the permission of the court, the record may be shortened by stipulation of all

parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

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

§ 150B-49. New evidence. -- An aggrieved person who files a petition in the superior court may apply to the court to present additional evidence. If the court is satisfied that the evidence is material to the issues, is not merely cumulative, and could not reasonably have been presented at the administrative hearing, the court may remand the case so that additional evidence can be taken. If an administrative law judge did not make a recommended decision in the case, the court shall remand the case to the agency that conducted the administrative hearing. After hearing the evidence, the agency may affirm or modify its previous findings of fact and final decision. If an administrative law judge made a recommended decision in the case, the court shall remand the case to the administrative law judge. After hearing the evidence, the administrative law judge may affirm or modify his previous findings of fact and recommended decision. The administrative law judge shall forward a copy of his decision to the agency that made the final decision, which in turn may affirm or modify its previous findings of fact and final decision. The additional evidence and any affirmation or modification of a recommended decision or final decision shall be made part of the official record.

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

§ 150B-51. Scope of review. -- (a) Initial Determination in Certain Cases. In reviewing a final decision in a contested case in which an administrative law judge made a recommended decision, the court shall make two initial determinations. First, the court shall determine whether the agency heard new evidence after receiving the recommended decision. If the court determines that the agency heard new evidence, the court shall reverse the decision or remand the case to the agency to enter a decision in accordance with the evidence in the official record.

Second, if the agency did not adopt the recommended decision, the court shall determine whether the agency's decision states the specific reasons why the agency did not adopt the recommended decision. If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

(b) Standard of Review. After making the determinations, if any, required by subsection (a), the court reviewing a final decision may affirm the decision of the agency or remand the case for further proceedings. It may also reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

§ 150B-52. Appeal; stay of court's decision. -- A party to a review proceeding in a superior court may appeal to the appellate division from the final judgment of the superior court as provided in G.S. 7A-27. Pending the outcome of an appeal, an appealing party may apply to the court that issued the judgment under appeal for a stay of that judgment or a stay of the administrative decision that is the subject of the appeal, as appropriate.

Article 5.

Publication of Administrative Rules.

§ 150B-58. Short title. -- This Article may be cited as "The Registration of State Administrative Rules Act".

§ 150B-59. Filing of rules and executive orders. -- (a) Rules adopted by an agency and executive orders of the Governor shall be filed with the Director of the Office of Administrative Hearings no sooner than 90 days before their effective date. No rule, except temporary rules adopted under the provisions of G.S. 150B-13 or rules approved under G.S. 143B-30.2(e) or reviewed and objected to under (f), shall become effective earlier than the first day of the second calendar month after that filing.

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

(c) Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on January 1, 1986, that conflict with or violate the provisions of G.S. 150B-9(c) are repealed. Rules adopted by an agency subject to the provisions of Article 2 of this Chapter in effect on September 1, 1986, that do not conflict with or violate the provisions of G.S. 150B-9(c) shall remain in effect until June 30, 1988. These rules are repealed effective July 1, 1988, unless the Administrative Rules Review Commission determines that a rule complies with G.S. 143B-30.2(a). Review of these rules shall be carried out in the manner prescribed in G.S. 143B-30.2 except that a rule determined to be in compliance shall remain in effect. In the event of rules which the Commission determines do not comply with G.S. 143B-30.2, such rules may be revised or repealed by the agency without a rule-making hearing in accordance with G.S. 150B-12(h). Revised rules shall be returned to the Commission. If the Commission approves the rules, the Commission shall notify the agency and file the rules with the Office of Administrative Hearings. Rules adopted on or after January 1, 1986, shall become effective as provided in this Chapter.

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

- (1) Cite the statute or other authority pursuant to which the rule is adopted;
- (2) Bear a certification by the agency of its adoption;
- (3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements;
- (4) Be in the physical form specified by the Director of the Office of Administrative Hearings; and
- (5) Bear a notation from the Administrative Rules Review Commission that it has reviewed the rule in accordance with G.S. 143B-30.2.

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

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

- (1) Maintain an agency rule-drafting section in the Office of Administrative Hearings to

draft or aid in the drafting of rules or amendments to rules for any agency; and

- (2) Prepare and publish an agency rule-drafting guide which sets out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

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

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

Revision of form by the Director shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule. No later than the close of the fifth working day after the filing of a rule by an agency, the Director shall return to the agency that filed the rule a copy of the rule in any revised form made by the Director, together with his certification of the date of the rule's filing.

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

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

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

§ 150B-62. Public inspection and notification of current and replaced rules. -- (a) Immediately upon notation of a filing as specified in G.S. 150B-59(b), the Director of the Office of Administrative Hearings shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in

compliance with the provisions of G.S. 150B-61(a).

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

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

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

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

§ 150B-63. Publication of executive orders and rules; the North Carolina Register. -- (a) The Director of the Office of Administrative Hearings shall compile, index and publish executive orders of the Governor and all rules filed and effective pursuant to the provisions of this Article.

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

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

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

(d1) The Director shall also publish at periodic intervals, but not less often than once each month, the North Carolina Register which shall contain information relating to agency, executive, legislative or judicial actions that are performed under the authority of, or are required by, or are issued to interpret, or that otherwise affect, this Chapter. The North Carolina Register shall also contain notices under G.S. 120-165(a).

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

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

- (1) One copy to each county of the State, which copy may be maintained for public inspection in the county in a place determined by the county commissioners; one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals; one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals; one copy to the Administrative Office of the Courts; one copy to the office of the Governor; and five copies to the Legislative Services Commission for the use of the General Assembly;
- (2) Upon request, one copy to each State official and department to which copies of the appellate division reports are furnished under G.S. 7A-343.1;
- (3) Five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1; and
- (4) Upon request, one copy of the North Carolina Register to each member of the General Assembly.

(f) The Director shall make available to persons not listed in subsection (c) copies of the compilation, supplements, and recom compilations of the rules and the North Carolina Register, and shall make available to all persons copies of other public documents filed in the Office of Administrative Hearings. The Director shall set a fee to be charged for publications and documents made available under this subsection at an amount that covers publication, copying, and mailing costs. All monies received by the Office of Administrative Hearings pursuant to this subsection shall be deposited in the State treasury in a special funds account to be held in trust for the Office of Administrative Hearings to defray the expense of future recompilation, publication, and distribution of such documents. All monies involved shall be subject to audit by the State Auditor.

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

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

GENERAL STATUTES OF NORTH CAROLINA

CHAPTER 7A, SUBCHAPTER XII, ARTICLE 60

Office of Administrative Hearings.

As Amended Effective 9-1-87

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

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

The Office of Administrative Hearings is designated the official deferral agency under Section 706 of the Civil Rights Act of 1964, as amended, for all charges filed on a timely basis with the Equal Employment Opportunity Commission by any State or local government employee covered under Chapter 126 of the General Statutes. The Office of Administrative Hearings may contract with the Equal Employment Opportunity Commission to become a 706 deferral agency and may conduct necessary investigations and informal hearings or fact-finding proceedings. The Office of Administrative Hearings may prepare investigation reports with the findings, conclusions, and determinations of probable cause that a 706 deferral agency is required to make and may take other actions required for it to function as a 706 deferral agency for State and local employees covered under Chapter 126 of the General Statutes. Proceedings conducted by the Office of Administrative Hearings as a 706 deferral agency are not contested cases as defined in G.S. 150B-2(2).

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

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

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

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

§ 7A-754. Qualifications; standards of conduct; removal. -- Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall be grounds for removal. Each administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An administrative law judge may be removed

from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35.

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

§ 7A-756. Power to administer oaths and issue subpoenas. -- The chief administrative law judge and all administrative law judges in the Office of Administrative Hearings may, in connection with any pending or potential contested case under Chapter 150B:

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

§ 7A-757. Temporary administrative law judges; appointments; powers and standards; fees. -- When regularly appointed administrative law judges are unavailable, the Director of the Office of Administrative Hearings may contract

with qualified individuals to serve as administrative law judges for specific assignments. A temporary administrative law judge shall have the same powers and adhere to the same standards as a regular administrative law judge in the conduct of a hearing. A temporary administrative law judge shall not be considered a State employee by virtue of this assignment, and shall be remunerated for his service at a rate not to exceed three hundred dollars (\$300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 138-6(a). The Director may also designate a full-time State employee to serve as a temporary administrative law judge with the consent of the employee and his supervisor; however, the employee is not entitled to any additional pay for this service.

§ 7A-758. Availability of administrative law judge to exempt agencies. -- The Director of the Office of Administrative Hearings may, upon request of the head of the agency, provide an administrative law judge to preside at hearings of public bodies not otherwise authorized or required by statute to utilize an administrative law judge from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150B, municipal corporations or other subdivisions of the State, and agencies of such subdivisions.

EXECUTIVE ORDER

EXECUTIVE ORDER NUMBER 54

COORDINATED PLANNING FOR EMPLOYMENT AND TRAINING PROGRAMS

As Governor of North Carolina, it has been made to appear to me upon satisfactory information furnished to me as follows:

1. The North Carolina Job Training Coordinating Council, hereafter referred to as "the Council", was established according to the requirements of the Job Training Partnership Act to oversee the State's employment and training programs and to advise the Governor on the State's employment and training policies;

2. The Governor has established, in accordance with requirements outlined in the Job Training Partnership Act, criteria for coordinating programs funded under JTPA with programs and services provided by State and local education and training agencies;

3. The Council's Interagency Coordinating Committee, hereafter referred to as "the Committee", comprised of representatives from State agencies involved in employment and training, has been studying ways to eliminate barriers to effective coordination of all programs related to job training;

4. The Committee has identified varying planning cycles and programs for involved agencies occurring throughout the calendar year and these

disparate planning period constitute a major barrier to effective coordination;

5. The Committee and the Council have recommended that the period of January through March of each calendar year be designated as a uniform planning period for all employment and training activities in the State.

NOW, THEREFORE, under and by the authority vested in me as Governor of the State of North Carolina, I do hereby order and direct as follows:

Section 1. The period of January through March of each calendar year is hereby designated as the uniform planning period for all employment and training activities in the State.

Section 2. All State and local agencies, including service delivery areas involved in employment and training activities, including those designated in the Coordination Criteria, shall accomplish their planning, both independently and in concert with each other, during this period, except where such is prohibited by statute or regulation.

Section 3. I commend the agencies for their efforts to provide coordinated employment and training related services in the most effective, wide-reaching and cost effective manner to the citizens of North Carolina.

This Order shall be effective immediately.

This the 25th day of August, 1987.

VOTING RIGHTS ACT FINAL DECISION LETTERS

[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
Civil Rights Division
Washington, D.C. 20530

WBR:MAP:KAC:gmh
DJ 166-012-3
R9240
S1390
S2756-2780
S4431

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

August 7, 1987

Jesse L. Warren, Esq.
City Attorney
Drawer W-2
Greensboro, North Carolina 27402

Dear Mr. Warren:

This refers to twenty-eight annexations (Ordinance Nos. 64-47, 65-87, 66-6, 66-29, 66-50, 66-108, 67-9, 67-10, 68-13, 68-18, 68-75, 68-96, 68-117, 69-9, 69-10, 69-11, 69-12, 69-13, 69-14, 69-15, 69-16, 69-17, 69-45, 69-82, 69-83, 69-111, 87-32, and 87-91) to the City of Greensboro in Guilford 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 June 10 and July 13, 1987.

The Attorney General will make no determination with regard to the annexation effected by Ordinance No. 64-47, since this change was made prior to November 1, 1964, and is not subject to the preclearance requirements of Section 5. See Sections 51.4 and 51.35 of the Procedures for the Administration of Section 5 [52 Fed. Reg. 491 and 495 (1987)].

The Attorney General does not interpose any objections to the remaining annexations.* However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also Section 51.41 [52 Fed. Reg. 496 (1987)].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

*See attached.

- * 1. Ordinance 87-32 -- Property located east of Stanley Road (10.397 Acres) Adopted March 16, 1987
- 2. Ordinance 87-91 -- Property at western terminus of Green Meadow Drive (10.92 Acres) Adopted July 6, 1987

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

WBR:MAP:CCS:jmc
DJ 166-012-3
S4314-4315
S4872-4873

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

August 19, 1987

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

Dear Mr. Crowell:

This refers to Chapter 549, S.B. 348 (1987), insofar as it provides for the change in the method of electing town commissioners from at large to two double-member districts and one at-large position, the districting plan, the implementation schedule, and the one time extension of the qualifying period for the 1987 election for the Town of Enfield in Halifax County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on July 21, 1987. In accordance with your request, expedited consideration has been given this submission pursuant to Section 51.34 of the Procedures for the Administration of Section 5 [52 Fed. Reg. 495 (1987)].

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. 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 also Sections 51.41 and 51.43 [52 Fed. Reg. 496 (1987)].

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that The Department of Administration intends to repeal regulations cited as 1 NCAC 6E .0101 - .0107; .0201; .0303 - .0305; .0308; .0401 - .0402; .0501.

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

The public hearing will be conducted at 10:00 a.m. on October 15, 1987 at Williamsburg Conference Room, Administration Building, First Floor, 116 West Jones Street, Raleigh, North Carolina 27603-8003.

Comment Procedures: Any interested person may present his or her views and comments either in writing to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603-8003, (919) 733-7232.

**CHAPTER 6 - STATE PROPERTY AND
CONSTRUCTION**

**SUBCHAPTER 6E - BOARD OF STATE
CONTRACT APPEALS**

**SECTION .0100 - GENERAL
INFORMATION**

- .0101 NAME OF BOARD AND ADDRESS
(REPEALED)**
- .0102 PURPOSE (REPEALED)**
- .0103 DEFINITIONS (REPEALED)**
- .0104 AVAILABILITY OF
ADMINISTRATIVE HEARING
(REPEALED)**
- .0105 SEPARATION OF FUNCTIONS
(REPEALED)**
- .0106 LOCATION OF HEARING
(REPEALED)**
- .0107 LEGAL REPRESENTATION
BEFORE THE BOARD
(REPEALED)**

History Note: Statutory Authority G.S. 143-135.10; 150B-11; 150B-23; 150B-25.

**SECTION .0200 - INITIATION OF
ADMINISTRATIVE HEARING**

**.0201 NOTICE OF APPEAL
PROCEDURE (REPEALED)**

History Note: Statutory Authority G.S. 143-135.10; 150B-11; 150B-23; 150B-25.

**SECTION .0300 - RULES OF CIVIL
PROCEDURE AND EVIDENCE**

- .0303 RULES OF CIVIL PROCEDURE
AND EVIDENCE (REPEALED)**
- .0304 PRE-HEARING ORDER AND
CONFERENCE (REPEALED)**
- .0305 DISCOVERY (REPEALED)**
- .0308 NOTICE OF PROPOSED
HEARING DATE (REPEALED)**

History Note: Statutory Authority G.S. 143-135.10; 150B-11; 150B-23; 150B-25.

**SECTION .0400 - PROCEDURES FOR
CONDUCTING THE HEARING**

- .0401 CONDUCT OF THE HEARING
(REPEALED)**
- .0402 CONTINUANCES: TIME
EXTENSIONS AND FAILURE TO
APPEAR (REPEALED)**

Statutory Authority G.S. 143-135.10; 150B-11; 150B-23; 150B-25.

**SECTION .0500 - POST-HEARING
PROCEDURE**

.0501 FINAL DECISION (REPEALED)

Statutory Authority G.S. 143-135.10; 150B-11; 150B-23; 150B-25.

Notice is hereby given in accordance with G.S. 150B-12 that The Department of Administration intends to repeal regulations cited as 1 NCAC 30B .0001; .0005; .0007.

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

The public hearing will be conducted at 10:00 a.m. on October 20, 1987 at State Construction Office, Room 403, Legislative Office Building.

Comment Procedures: Any interested person may present his or her views and comments in writing prior to or at a hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603-8003, Telephone: 919-733-7232.

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30B - NORTH CAROLINA CAPITAL BUILDING AUTHORITY

.0001 POWERS AND DUTIES (REPEALED)

Statutory Authority G.S. 129-42.2.

.0005 SELECTION OF ARCHITECTS: ENGINEERS AND OTHER CONSULTANTS (REPEALED)

Statutory Authority G.S. 129-42.

.0007 ADVERTISEMENT (REPEALED)

Statutory Authority G.S. 129-42.

Notice is hereby given in accordance with G.S. 150B-12 that The Department of Administration intends to adopt regulations cited as 1 NCAC 30D .0101-.0103; .0201-.0202; and .0301-.0306.

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

The public hearing will be conducted at 10:00 a.m. on October 20, 1987 at State Construction Office, Room 403, Legislative Office Building.

Comment Procedures: Any interested person may present his or her views and comments in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Fran Tomlin, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603-8003, telephone (919) 733-7232.

SUBCHAPTER 30D - STATE BUILDING COMMISSION DESIGNER SELECTION POLICY

SECTION .0100 - GENERAL PROVISIONS

.0101 AUTHORITY

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities Development and Management Program. In the specific area of state capital improvement project design selection, the SBC is empowered to adopt rules establishing standard procedures and criteria to assure that the designer selected for each state capital improvement project has the qualifications and experience necessary for that capital improvement project. The SBC is responsible and accountable for the final selection of the designer. The single exception is that The University of North Carolina shall be responsible and accountable for the final selection of designers for capital projects in which the university is the funded agency.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0102 POLICY

It is the policy of the SBC to select designers for capital improvement projects as defined in G.S. 143-135.27, based on criteria contained herein and to make available to every designer, duly licensed to practice in North Carolina, the opportunity to be considered for providing professional services for those departments and agencies under its jurisdiction. The SBC considers that the selection of competent designers is vital to providing the State of North Carolina with best and most appropriate facilities consistent with authorized funds. These procedures are intended to provide a basis for the fair and uniform selection of designers. These procedures for defined projects are intended to be consistent with Chapter 102, House Bill 277. Projects not covered by this policy shall also be consistent with Chapter 102, House Bill 277.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0103 DEFINITIONS

(a) For purposes of this Subchapter, the following definitions shall apply to the commission:

- (1) "Annual Service Agreement" means an open end agreement for professional services with a designer, subject to the limitations of this policy, for the provision of small miscellaneous and/or urgent design services.
- (2) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these Rules may have other titles within his agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative.
- (3) "Designer" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice architecture, engineering, landscape architecture or surveying in the State of North Carolina.
- (4) "Contact person" means the person named in the public advertisement who shall be the Capital Projects Coordinator or his designee.
- (5) "Funded agency" means the department, agency, authority, or office that is named in the legislation appropriating funds for the design and/or construction project.
- (6) "Major projects" means those capital improvement projects whose authorized funding or estimated cost is greater than five hundred thousand dollars (\$500,000.00) or a planning study activity whose authorized funding is greater than fifty thousand dollars (\$50,000.00).
- (7) "Minor projects" means those capital improvement projects whose authorized funding or estimated cost is five hundred thousand dollars (\$500,000.00) or less or a planning or study activity whose authorized funding is fifty thousand dollars (\$50,000.00) or less. Minor projects may also include a grouping of small non-specified or anticipated projects whose aggregate total falls within the minor project cost limitations.
- (8) "Professional services" means those services within the scope of the practice of architecture, engineering, landscape

architecture or surveying as defined by the public laws of North Carolina.

- (9) "Using agency" means the sub-division of the funded agency for whose use the project is to be provided. If the funded agency is so subdivided for administrative control, the using agency would be a division, geographically self-contained facility, campus, or similar body, as determined by the administrative head of the funded agency.

Statutory Authority G.S. 143-135.25; 143-135.26.

SECTION .0200 - PROJECT INFORMATION

.0201 PROJECT DESCRIPTION

It shall be the responsibility of each Capital Projects Coordinator to provide the State Construction Office a written description of the professional services desired, the program or scope of work, schedule requirements, amount of authorized funds and other appropriate information for each project requiring professional services. This information should be provided to the State Construction Office seven days prior to the publication dates of the first and fifteenth of each month for the North Carolina Purchase Directory. The Capital Projects Coordinator is responsible for prompt initiation of the designer selection process to enable the completion of designer selection within 60 days of the date of the above notification.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0202 PUBLIC ANNOUNCEMENT

Based upon project information furnished by a Capital Projects Coordinator, the State Construction Office shall publish an announcement of the need for professional services, a designated contact person in the State Construction Office and the closing date in the North Carolina Purchase Directory. Public announcement is required prior to designer selection except in the event of emergency. In the event of emergency, the procedure outlined in this policy will be followed.

On projects, the closing date for being considered for professional services shall not be less than ten days for minor projects and 15 days for major projects nor more than 21 days from date of publication in the Purchase Directory.

A letter of interest for each project must be received by the contact person prior to a designer being considered for professional services.

Statutory Authority G.S. 143-135.25; 143-135.26.

SECTION .0300 - SELECTION OF DESIGNERS

.0301 DESIGNER QUALIFICATIONS

All designers desiring to provide professional services shall file with the State Construction Office a Federal Standard Form 254 by January 1 of each year. Qualifications may be submitted any time during the year; but, during January of each year, all submissions older than 12 months may be destroyed.

In response to a specific project announcement, the designer may submit a new or updated Standard Form 254 or other information requested by the State Construction Office. Designer qualifications must be on file or submitted to the State Construction Office prior to being considered by the pre-selection committee.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0302 PRE-SELECTION

A pre-selection committee shall be established for all projects requiring professional service. On minor projects, the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and one representative from the State Construction Office. On major projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and two representatives from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design professional.

(1) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step should normally take place prior to public advertisement in the Purchase Directory, because designers have a significant need to know in advance the program intent of a project in order to demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of interest and other qualification information either directly or from the designated contact person.

After a pre-selection priority list is prepared, the list will remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project will be re-advertised in the Purchase Directory. If fewer than three letters of interest are received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may re-advertised again.

- (2) Special Procedures for Minor Projects: The Capital Projects Coordinator shall again review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures, under major projects, where special circumstances dictate such need. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the established rules for public announcement and pre-selection have been followed or shall state full particulars if exceptions have been taken.
- (3) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission that the established rules for public announcement and pre-selection have been followed or shall state full particulars if exceptions have been taken.
- (4) Special Procedures for Emergency Projects: On occasion, emergency design services may be required for restoration or correction of a facility condition which by its nature poses a significant hazard to

persons or property, or an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described herein. The Capital Projects Coordinator on these rare occasions is authorized to declare an emergency, notify the State Construction Office and then obtain the services of a competent designer for consultation or design of the corrective action. In all cases, such uses of these emergency powers will involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.

- (5) Annual Contract: A Funded Agency or a Using Agency may require the services of designer(s) for small miscellaneous projects on a routine basis. In such cases, designer(s) for annual contracts will be selected in accordance with the above procedures for minor projects. In addition, no annual contract fee will exceed fifty thousand dollars (\$50,000.00) in total volume and no single fee shall exceed ten thousand dollars (\$10,000.00).

Statutory Authority G.S. 143-135.25; 143-135.26.

.0303 SELECTING CRITERIA

In selecting the three firms to be presented to the SBC, the pre-selection committee should take into consideration such factors as:

- (1) Specialized or appropriate expertise in the type of project.
- (2) Past performance on similar projects.
- (3) Adequate staff and proposed design team for the project.
- (4) Current workload and State projects awarded.
- (5) Proposed design approach for the project including design team and consultants.
- (6) Recent experience with project costs and schedules.
- (7) Construction administration capabilities.
- (8) Proximity to and familiarity with the area where project is located.
- (9) Record of successfully completed projects without major legal or technical problems.
- (10) Other factors that may be appropriate for the project.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0304 DESIGNER SELECTION FOR UNC SYSTEM PROJECTS

In selecting designers for its projects, the UNC system shall comply with the preceding policies and pre-selection procedures, except that pre-selection committees need not include a representative of the State Construction Office. The UNC system shall establish its own procedures for final designer selection. These procedures shall correspond in form to those established below for other than UNC system projects and shall be filed with and approved by the SBC.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0305 DESIGNER SELECTION FOR OTHER THAN UNC SYSTEM PROJECTS

Upon receipt of a letter from the Capital Projects Coordinator listing three firms in priority order along with recommendations and pre-selection information, as requested by the SBC, the Secretary of SBC, upon determination that all information has been submitted, will place the request for consideration on the agenda for the next SBC meeting.

The Capital Projects Coordinator shall make a report to the SBC outlining the procedures that were followed and justification for the priority list of three firms. Upon a determination by the SBC that the standard procedures and criteria have been properly followed, the SBC will:

- (1) Select the firms in the priority order recommended by the state or agency; or
- (2) Select the firms in a different priority order from that recommended by the funded agency and give justification for such selection; or
- (3) Request a new priority list and give justification for such request.

Statutory Authority G.S. 143-135.25; 143-135.26.

.0306 CONTRACT NEGOTIATION

After the three have been notified of the selection action by The University of North Carolina or the SBC, a representative from the State Construction Office, the Capital Projects Coordinator, and a representative from the using agency will discuss with the selected designer appropriate information about the

project, the scope of services to be provided and the state design/review/construction process.

The State Construction Office will request in writing a detailed fee proposal from the selected designer. The State Construction Office in coordination with the Capital Projects Coordinator and the using agency will attempt to negotiate a fair and equitable fee consistent with the project program and the professional services required for the specific project. In the event a fee cannot be agreed upon, the State Construction Office shall terminate the negotiations and shall repeat the notification and negotiation process with the next ranked firm on the selection list. In the event a fee cannot be agreed upon with the second-ranked designer, the process will be repeated with the third-ranked designer. If a fee still cannot be agreed to, the SBC shall review the history of negotiations and make appropriate determinations including program adjustments so as to lead to a negotiated contract with one of the original three firms selected, renegotiation with the firms shall be carried out in the original selection order, or calling for the Capital Projects Coordinator to submit another list of three firms in priority order to the SBC or to the UNC system. The negotiation process will continue until a fee has been determined that is agreed to by the State Construction Office, the using agency, and the designer. Annual contracts are subject to special management procedures described herein. Normally, the initial fee negotiation for this type of work will involve mutual agreement in unit costs for time, materials, and overhead; a final lump sum price for each discrete project will be negotiated in advance as each project is ordered.

Following execution of the contract, the State Construction Office will publish in the North Carolina Purchase Directory the list of three firms selected in priority order, the firm to be contracted with, and the fee negotiated.

Statutory Authority G.S. 143-135.25; 143-135.26.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the Structural Pest Control Committee intends to repeal regulations cited as 2 NCAC 34 .0503 and .0505.

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

The public hearing will be conducted at 1:00 p.m. on October 15, 1987 at Board Room, Agriculture Building, 1 W. Edenton Street, Raleigh, NC.

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, Chairman of the Structural Pest Control Committee, P. O. Box 27647, Raleigh, North Carolina 27611.

CHAPTER 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0500 - WOOD-DESTROYING INSECTS

.0503 SUBTERRANEAN TERMITE CONTROL: BUILDINGS AFTER CONSTRUCTED (REPEALED)

Filed as a Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987; G.S. 106-65.29.

.0505 SUBTERRANEAN TERMITE PREVENTION FOR BUILDINGS UNDER CONSTRUCTION (REPEALED)

Filed as a Temporary Repeal Eff. August 24, 1987 for a period of 30 days to expire on September 22, 1987; G.S. 106-65.29.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to adopt regulations cited as 10 NCAC 3J .2301 - .2308.

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

The public hearing will be conducted at 10:00 a.m. on October 15, 1987 at Social Services Commission Meeting, Woodoak Building, 1100 Navaho Drive, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her views and comments either in writing to or at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling Bonnie Allred, 325 N. Salisbury Street, Raleigh, N.C. 27611, 919-733-3055.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION OF LOCAL CONFINEMENT FACILITIES

SECTION .2300 - ENFORCEMENT OF MINIMUM STANDARDS PURSUANT TO G.S. 153A-223

.2301 INSPECTIONS

All local confinement facilities shall be visited and inspected at least semiannually but may be inspected more frequently if determined necessary by the department or required by an agreement of correction entered into between the department and the governing body and other local officials responsible for a facility.

Statutory Authority G.S. 143B-153(3)d.; 153A-222.

.2302 REPORT OF INSPECTION

After each local confinement facility is inspected, the inspector shall complete the Local Confinement Facility Semiannual Inspection Report, DFS-7923, as revised (hereinafter referred to as "Report"). Upon completion of a report in which there are findings of non-compliance with 10 NCAC 3J .1400, .1500, .1600, .1700, .1800, or Subsections thereof, or G.S. 153A-224 or receipt of a report required by G.S. 153A-226 finding that a facility or its kitchen or other place for preparing food is disapproved for public health purposes, the procedures contained in 10 NCAC 3J .2303 - .2307 will control. In all other cases, the procedures contained in G.S. 153A-222 will control.

Statutory Authority G.S. 143B-153(3)d.; 153A-222; 153A-223.

.2303 FINDINGS OF NON-COMPLIANCE PURSUANT TO G.S. 153A-226

If a finding is made, pursuant to G.S. 153A-226, that a facility or its kitchen or other place for preparing food is disapproved for public health purposes, the provisions set out in 10 NCAC 3J .2306 or .2307 will control.

Statutory Authority G.S. 143B-153(3)d.; 153A-223; 153A-226.

.2304 DETERMINATION THAT CONDITIONS JEOPARDIZE THE SAFE CUSTODY, SAFETY, HEALTH OR WELFARE OF PERSONS CONFINED IN THE FACILITY

(a) Upon completion of the report, if there are findings of noncompliance with 10 NCAC 3J .1400, .1500, .1600, .1700, .1800, or Subsections thereof, or G.S. 153A-224, the report shall, within ten days of completion, be forwarded to the secretary, or his designee, together with a written description of the conditions giving rise to the finding(s) of non-compliance and a preliminary determination as to whether the conditions, as reflected in the findings of noncompliance with respect to the Rules and Statutes set forth herein, jeopardize the safe custody, safety, health or welfare of the persons confined in the facility.

(b) Notwithstanding (a) above, the report will be forwarded to the governing body and other local officials responsible for the facility within the time set forth in G.S. 153A-222 with a notation as follows: "The facility has been found in noncompliance with one or more of the Rules enumerated in 10 NCAC 3J .2304 and noted in the attached Local Confinement Facility Semiannual Inspection Report. The enclosed report and other information has been forwarded to (secretary or his designee) on (date), for final determination pursuant to 10 NCAC 3J .2304, as to whether the conditions which exist at your facility jeopardize the safe custody, safety, health or welfare of the persons confined therein. The final determination will be made within 30 days of the above date and same will be sent to you together with any action required pursuant to 10 NCAC 3J .2305 - .2307."

(c) Within 30 days of receipt of the report, the written description and preliminary determination, the secretary, or his designee, shall review same and make the final determination. Without excluding noncompliance with other Rules and Statutes set forth in 10 NCAC 3J .2302, noncompliance with the following provisions shall be deemed to be a condition or conditions which jeopardize the safe custody, safety, health or welfare of the persons confined in the facility:

- (1) Failure to have mattresses which comply with the flame retardant requirements of 10 NCAC 3J .1412(c) and (d);

- (2) Failure to provide or maintain fire extinguishers in compliance with 10 NCAC 3J .1413 - .1417;
- (3) Failure to provide the required number or ways of fire escapes in compliance with 10 NCAC 3J .1418;
- (4) Failure to provide or maintain the required smoke detectors in compliance with 10 NCAC 3J .1419;
- (5) Failure to provide for the separation of juveniles and females in compliance with 10 NCAC 3J .1504 and .1505;
- (6) Failure to have an emergency evacuation plan, or failure to have a posted master fire plan, in compliance with 10 NCAC 3J .1506(a);
- (7) Failure to have jailers trained in the use of fire fighting equipment in compliance with 10 NCAC 3J .1506(b);
- (8) Failure to conduct quarterly fire drills in compliance with 10 NCAC 3J .1506(b);
- (9) Failure to have the local fire department include the facility in its regular fire-prevention inspection program, in compliance with 10 NCAC 3J .1506(c);
- (10) Failure to segregate inmates with contagious or infectious disease from the general prisoner population, in compliance with 10 NCAC 3J .1507; or
- (11) Failure to have a medical plan in compliance with 10 NCAC 3J .1801.

(d) If the final determination is that conditions in the facility do not jeopardize the safe custody, safety, health or welfare of the persons confined in the facility, the report will be submitted to the governing body and other local officials responsible for the facility pursuant to G.S. 153A-222.

Statutory Authority G.S. 143B-153(3)d.; 153A-222; 153A-223.

.2305 FINDINGS THAT CONDITIONS JEOPARDIZE THE SAFE CUSTODY: SAFETY: HEALTH OR WELFARE

If there is a final determination that the conditions in the facility jeopardize the safe custody, safety, health or welfare of the persons confined in the facility, the secretary, or his designee, shall, within 15 days of the final determination herein, either:

- (a) give notice of intent to order corrective action;
- (b) give notice of intent to order facility closed;
- (c) order corrective action; or
- (d) order the facility closed.

Statutory Authority G.S. 143B-153(3)d.; 153A-223.

.2306 NOTICE OF INTENT TO ORDER CORRECTIVE ACTION AND NOTICE OF INTENT TO ORDER FACILITY CLOSED

(a) The secretary, or his designee, may, prior to ordering corrective action or closure of the facility, give notice of intent to order corrective action or notice of intent to order the facility closed. The notice of intent shall state the department's specific intent and direct the governing body to enter into an agreement of correction with the department within 30 days after receipt of the notice.

(b) The agreement of correction will among other matters, set forth the areas of noncompliance, the manner in which the areas of noncompliance will be cured, the governing body's intention to correct the areas of noncompliance, a specific period of days within which the facility will be brought into compliance, said period of days shall be reasonable in number based on the amount of work required to make corrections, and a schedule of inspections to monitor the facility's progress. Should the time period expire prior to the complete compliance, and the facility is making good faith efforts to affect compliance, the agreement of correction may be extended once for a period not to exceed 60 days. If the facility is not brought into compliance within the time periods set forth above, the secretary, or his designee, shall order corrective action or order the facility closed.

Statutory Authority G.S. 143B-153(3)d.; 153A-223.

.2307 ORDER OF CORRECTIVE ACTION AND ORDER OF CLOSURE

If the secretary, or his designee, determines that notice of intent to order corrective action or notice of intent to order the facility closed is not appropriate with respect to the facility, the secretary, or his designee, shall issue an order of corrective action or order the facility closed. Notice of the order of corrective action or notice of order to close the facility shall be given as provided for in G.S. 153A-223(1).

Statutory Authority G.S. 143B-153(3)d.; 153A-223.

.2308 DESIGNATION BY SECRETARY

The secretary may designate a person to act for him with respect to this Section in whole

or in part. The secretary's designation shall be in writing and shall be on file at the Jail and Detention Branch, Licensure Section, Division of Facility Services, Department of Human Resources, 701 Barbour Drive, Raleigh, North Carolina 27603.

Statutory Authority G.S. 143B-10(a); 143B-153(3)d.; 150B-22.

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 3R.1003.

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

The public hearing will be conducted at 10:00 a.m. on October 16, 1987 at Division of Facility Services, Hearing Room, Room 201, 701 Barbour Drive, Raleigh, NC 27603.

Comment Procedures: Address written comments to: Glenn B. Lassiter, Esq., Assistant to Director, 701 Barbour Drive, Raleigh, NC 27603. Comments accepted from September 15 - October 15.

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .1000 - SPECIAL CRITERIA AND STANDARDS: IN GENERAL

.1003 STATE MEDICAL FACILITIES PLAN

(a) The ~~1987~~ 1988 North Carolina State Medical Facilities Plan contains the following information:

- (1) inventory of certain categories of inpatient and outpatient health care facilities, including number of beds and utilization of such;
- (2) type of services provided by each category of health care facility;
- (3) projections of need for acute care hospital (including rehabilitation services), long-term care facilities (including nursing homes, home health agencies, and hospice inpatient facilities), mental health facilities and end stage renal dialysis services for various geographical areas of the state;
- (4) statement of policies related to acute care facilities, rehabilitation services,

long-term care, psychiatric facilities, chemical dependency facilities, and facilities for intermediate care for the mentally retarded, which are used with other criteria contained in this Subchapter and in G.S. 131E-183 and need projections to determine whether applications proposing additional beds and services of these types may be approved under the certificate of need program.

(b) This plan can be obtained from the Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina, at a cost of forty dollars (\$40.00) per copy. This plan is also available for inspection at the Division of Facility Services.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26H .0102; and .0104.

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

The public hearing will be conducted at 1:30 p.m. on October 15, 1987 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by October 15, 1987 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT FOR SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES

.0102 RATE SETTING METHODS

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

- (2) To compute each facility's direct rate, the direct base year cost per day is increased by adjustment factors for price changes

as set forth in Rule .0102(c). A facility's direct rate cannot exceed the maximum rates set for a SNF or ICF. However, the Division of Medical Assistance may negotiate direct rates that exceed the maximum rate for ventilator dependent patients. Payment of such special direct rates shall be made only after specific prior approval of the Division of Medical Assistance.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1985, c.479, s.86; 42 C.F.R. 447 Subpart C.

.0104 COST REPORTING: AUDITING AND SETTLEMENTS

(d) The specific cost reporting guidelines related to this plan are set forth in the following paragraphs. The state will publish guidelines, consistent with the provisions of this plan, concerning the proper accounting treatment for items described in this Rule as related operating expenses. These guidelines will be issued prior to April 1, 1985. The guidelines may be subsequently modified prior to the beginning of each cost reporting period. In no case, however, shall any modifications be applied retroactively. A provider should request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item.

(1) Nursing Cost Center includes the cost of nursing staff, medical supplies, and related operating expenses needed to provide nursing care to patients, including the Medical Director and the Pharmacy Consultant, medical records, utilization review, the Medical Director and the Pharmacy Consultant. Also, the cost (rental or purchase) of special equipment that is medically required to sustain life may be charged to this cost center. Such equipment shall include oxygen concentrators, respirators and ventilators.

(11) Property Ownership and Use:

(A) This cost center includes all allowable costs related to the acquisition and/or use of the physical assets including building, fixed equipment and movable equipment, that are required to deliver patient care, except the special equipment, as specified in .0104(d)(1) above that may be charged to the nursing cost center. Specifically it includes the following items:

- (i) all equipment expense regardless of equipment nature,
- (ii) lease expense for any physical assets,
- (iii) depreciation of assets,
- (iv) interest expense of asset related liabilities, e.g., mortgage expense.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to adopt, amend, and repeal regulations cited as 10 NCAC 46E .0106; .0107; .0228 - .0243; .0301 - .0303; 10 NCAC 46F .0101 - .0103; .0108 - .0111; 10 NCAC 46G .0101 - .0106; .0108; .0201; 10 NCAC 49E .0001 - .0003.

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

The public hearing will be conducted at 10:00 a.m. on October 15, 1987 at Woodoak Building, 1100 Navaho Drive, Raleigh, N.C. 27609.

Comment Procedures: Any interested person may present his/her views and comments either in writing to or at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling Bonnie Allred, 325 N. Salisbury Street, Raleigh, N.C. 27611, 919-733-3055.

CHAPTER 46 - DAY CARE RULES

SUBCHAPTER 46E - DAY CARE CENTER CERTIFICATION

SECTION .0100 - GENERAL

- .0106 KINDS OF APPROVAL (REPEALED)**
- .0107 MAINTAINING STANDARDS (REPEALED)**

Statutory Authority G.S. 143B-153 (2a).

SECTION .0200 - CERTIFICATION STANDARDS FOR DAY CARE CENTERS

- .0228 ADMINISTRATION: OPERATIONAL POLICIES (REPEALED)**
- .0229 ADMINISTRATION: PERSONNEL**

- POLICIES (REPEALED)
- .0230 ADMINISTRATION: RECORD KEEPING (REPEALED)
- .0231 ADMINISTRATION: FISCAL MANAGEMENT (REPEALED)
- .0232 HEALTH (REPEALED)
- .0233 PHYSICAL ENVIRONMENT: SPACE (REPEALED)
- .0234 PHYSICAL ENVIRONMENT: EQUIPMENT (REPEALED)
- .0235 NUTRITION (REPEALED)
- .0236 GROUP SIZE AND STAFFING RATIOS (REPEALED)
- .0237 STAFF QUALIFICATIONS (REPEALED)
- .0238 STAFF TRAINING (REPEALED)
- .0239 CAREGIVING ACTIVITIES (REPEALED)
- .0240 ACTIVITY AREAS AND EQUIPMENT (REPEALED)
- .0241 BEHAVIOR MANAGEMENT (REPEALED)
- .0242 TRANSPORTATION (REPEALED)
- .0243 TRANSPORTATION POLICIES (REPEALED)

Statutory Authority G.S. 143-153 (2a).

SECTION .0300 - FORMS

- .0301 CHILD'S APPLICATION (REPEALED)
- .0302 CHILD'S MEDICAL REPORT (REPEALED)
- .0303 APPLICATION FOR APPROVAL (REPEALED)

Statutory Authority G.S. 143B-153 (2a); 143B-153 (6).

SUBCHAPTER 46F - FAMILY DAY CARE HOME CERTIFICATION

SECTION .0100 - FAMILY DAY CARE: APPROVAL PROCEDURES

- .0101 RESPONSIBILITY FOR APPROVAL (REPEALED)
- .0102 ADDRESS FOR INFORMATION (REPEALED)
- .0103 CONSULTANTS: MEETING REQUIREMENTS (REPEALED)

Statutory Authority G.S. 143B-153 (2a).

.0108 PURCHASE OF CARE

(a) Any home which wishes to participate in the state purchase of care program as defined in 10 NCAC 46A .0005 must comply with the

standards for child day care homes as codified in 10 NCAC 3U .1700 and all other applicable state child day care home requirements in 10 NCAC 3U and Article 7 of Chapter 110 of the N.C. General Statute.

(b) The operator of any home in the purchase of care program must assure that the home complies with all applicable provisions of the Civil Rights Act of 1964 and all requirements imposed thereunder. The operator shall sign a statement of assurance on a form provided by the section. Copies of the statement shall be on file in the section and in the home.

(c) Any home that wishes to participate in the purchase of care program must be issued an approval notice for participation and payment from the section.

Statutory Authority G.S. 143B-153 (2a); S.L. 1985, c. 479, s. 97.

.0109 IMPLEMENTATION

(a) Any home entering the purchase of care program on or after January 1, 1987, must comply with the requirements set forth in Rule .0108 of this Section.

(b) Homes participating in the purchase of care program on December 31, 1986, shall continue to be eligible for participation provided they remain in compliance with the standards and procedures codified in this Subchapter until a representative of the section has documented that the home is in compliance with the requirements set forth in Rule .0108.

(c) Each child day care home shall be evaluated annually by the section for compliance with the requirements for participation in the purchase of care program.

Statutory Authority G.S. 143B-153(2a); S.L. 1985, c. 479, s. 97.

.0110 CONTINUED PARTICIPATION

(a) Any home approved for participation in the purchase of care program will continue to be eligible for as long as the home maintains compliance with all of the requirements set forth in this Subchapter.

(b) When a home is found to be out of compliance with any requirement for participation, the section may set a time limit for compliance. If the home fails to comply within the set time limit, approval will be terminated.

Statutory Authority G.S. 143B-153 (2a).

.0111 APPEALS

Any appeal for denial or termination of approval shall be made according to the appeals procedures used by the division as codified in 10 NCAC 3B and 3U.

Statutory Authority G.S. 143B-153 (2a); 150B-23.

SUBCHAPTER 46G - INDIVIDUAL CHILD CARE ARRANGEMENT APPROVAL

SECTION .0100 - GENERAL

.0101 DIVISION RESPONSIBILITY

(a) ~~The Office of Day Care Services Child Day Care Section in the Division of Facility Services~~ is responsible for the overall management of the standards and procedures for approving individual child care arrangements in which day care funds administered by the Department of Human Resources are used to pay the day care costs for children of families eligible for assistance with day care costs. Each of the 100 county departments of social services is responsible for enforcing standards and procedures for Individual Child Care Arrangements in accordance with rules in 10 NCAC 46G.

(b) A county department of social services may contract with another public or private non-profit agency which is not a provider of child day care services to perform ~~its~~ the enforcement and management functions described in Paragraph (a) of this Rule and specified in Sections .0100 and .0200 of 10 NCAC 46G.

Statutory Authority G.S. 143B-153 (2a).

.0102 ADDRESS FOR INFORMATION AND ASSISTANCE

Information concerning the approval standards and procedures for individual child care arrangements is available from the 100 county departments of social services or the Office of Day Care Services Child Day Care Section during normal business hours.

Statutory Authority G.S. 143B-153 (2a).

.0103 DEFINITIONS

"Individual child care arrangement" (ICCA) means a plan whereby day care is provided to one child or the children of one family ~~may be cared for in the child's home or~~ in the home of the caregiver during a portion of the day or night when the parent/responsible adult is not in the home or is otherwise unable to provide

care. ~~The caregiver may be a relative, friend, neighbor, or someone referred to the mother by the county department of social services.~~ It is permissible to use a caregiver who has children of her own in the home even though her children and the children for whom she is providing day care are unrelated. Any individual child care arrangement (ICCA) for which a vendor payment will be made must be approved in accordance with rules in this Subchapter and must meet other applicable rules in 10 NCAC 46.

- (1) For the purpose of vendor payment, care in the child's home by a member of the household will be restricted to household members other than the child's parents or responsible adult.
- (2) In some instances it is a matter of judgment as to whether children are to be considered a part of one family for the purpose of making a payment for an ICCA. ~~The following guidelines assist in making this determination.~~ Children will always be considered as part of one family when one of the following relationships exist:
 - (A) children who are full or half siblings;
 - (B) children who are first cousins;
 - (C) children who are aunts or uncles/nieces or nephews of other children in care;
 - (D) related or unrelated children who reside in the same household.

Statutory Authority G.S. 143B-153 (2a).

.0104 COUNTY DEPARTMENT RESPONSIBILITY

(a) The county department shall work with the parent/responsible adult in understanding and utilizing an individual child care arrangement to the child's benefit when an individual child care arrangement is used.

(b) The county department shall involve the parent/responsible adult in the identification of an individual child care arrangement caregiver.

(c) County department staff shall carefully assess the use of an approved ICCA to assure that the needs of the child and his family may be met.

(d) The county department shall be responsible for the approval and monitoring of all individual child care arrangements from which care is purchased with funds administered by the Department of Human Resources according to standards established by the Social Services Commission.

(e) The county department shall provide a copy of the individual child care arrangement standards ~~or a summary of the standards, or copy of the ICCA approval checklist, and checklist,~~ along with a copy of the vendor purchase agreement to the caregiver. The county department staff shall review standards and the agreement with the caregiver for the purpose of assuring the caregiver's knowledge of the program and fiscal standards applicable to the arrangement.

(f) The county department shall be responsible for documenting and recording information to show that the individual child care arrangement meets required ~~program~~ standards. Forms to document approval and to record frequency and content of monitoring will be provided to county departments by the ~~Office of Day Care Services~~ section.

(g) The county department shall enter a vendor purchase agreement with the provider and parent responsible adult on a standard form furnished by the ~~Office of Day Care Services~~ section.

(h) The county department may provide, to the extent funds and staff are available, technical assistance and training to the provider to assure the adequacy of the approved arrangement.

Statutory Authority G.S. 143B-153 (2a).

.0105 CONSULTANTS

The ~~Office of Day Care Services~~ section provides ~~day care~~ consultants to help county departments in the development, approval and monitoring of individual child care arrangements. County departments are advised to contact the ~~day care consultant or other state day care staff as~~ section when assistance is needed.

Statutory Authority G.S. 143B-153 (2a).

.0106 NEED TO MEET REQUIREMENTS

(a) ~~Provisional approval may be issued for limited time period to new providers meeting appropriate requirements for provisional approval.~~

(b) ~~All standards must be met for full approval to be issued.~~

(c) (a) Each ICCA must be evaluated for compliance ~~every six months, annually.~~

(b) When an arrangement is found to be out of compliance with any requirement for participation, the county department may set a time limit for compliance. If the arrangement fails to comply within the set time limit, approval will be terminated.

Statutory Authority G.S. 143B-153 (2a).

.0108 APPEALS

Any ICCA desiring to appeal a decision by the county department of social services shall follow the appeals procedures for grant-in-aid programs pursuant to G.S. 108A-79. The director of the county department shall provide the ICCA provider or applicant with appropriate information about the procedures for such an appeal.

Statutory Authority G.S. 108A-71; 108A-73; 108A-79; 143B-153 (2a).

SECTION .0200 - STANDARDS FOR INDIVIDUAL CHILD CARE ARRANGEMENTS

.0201 APPROVAL AND REGISTRATION

(a) To obtain full approval status, an individual child care arrangement (ICCA) caregiver must comply with all standards ~~set forth in this Section.~~ for registration of child day care homes. These standards and the specific measures by which compliance with these standards is documented are published in the ~~ICCA Standards Manual called Standards for Registration of Child Day Care Homes and the Self-Check List which is~~ available from the ~~Office of Day Care Services Child Day Care Section, Division of Facility Services at 325 North Salisbury Street, at the address given in 10 NCAC 46A .0001.~~

(b) Each individual child care arrangement must also meet applicable state requirements for registration of ~~day care plans child day care homes as specified in 1 NCAC 46; 10 NCAC 3U .1700, with applicable regulations in 10 NCAC 3U and Article 7 of Chapter 110, and with any other state and local regulations for the operation of day care as specified by state and local authorities.~~

Statutory Authority G.S. 143B-153(2a); S.L. 1985; c. 479, s. 97.

CHAPTER 49 - AFDC

SUBCHAPTER 49E - UNEMPLOYED PARENT PROGRAM

.0001 GENERAL PROCEDURES

(a) Requirements pertaining to operation of the Unemployed Parent Program are found in 45 CFR 233.100.

(b) All requirements found in 10 NCAC 49A and B, except 10 NCAC 49B .0306, shall apply for the Unemployed Parent Program.

Authority G.S. 108A-28; 143B-153; Chapter 738, Section 79, 1986 Session Laws (1987 Regular Session); 45 CFR 233.100.

.0002 COVERAGE AND PARTICIPATION

(a) For purposes of the Unemployed Parent Program, a dependent child is a needy child who is living with his mother and father who are legally married to each other, as required by G.S. 108A-28, in a place of residence maintained by them as their own home; and who is under age 18 or under age 19 and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age 19, he may reasonably be expected to complete the program of such secondary school (or such training).

(b) Assistance shall not be continued for a temporary period when the principal earner returns to work.

Authority G.S. 108A-28; 143B-153; Chapter 738, Section 79, 1986 Session Laws (1987 Regular Session); 45 CFR 233.100.

.0003 ELIGIBILITY VERIFICATIONS

(a) The applicant shall be responsible for pursuing and providing the verifications as outlined in (b) below.

(b) The following shall be verified as indicated.

(1) Determination of the principal wage earner shall be made by use of the following:

- (A) Employment Security Commission records; or,
- (B) Income tax returns; or,
- (C) Wage stubs; or,
- (D) Written statement from previous employers; or,
- (E) Written statement from the applicant if the applicant has pursued the verifications in (A) through (D) and can provide documentation these verifications are unavailable.

(2) If previous wages and hours worked of both parents are equal, the parents shall designate in writing which is the principal wage earner.

(3) Verification of the 30 days of unemployment shall be made by use of the following:

(A) Written statement from previous employer and a written statement from the applicant; or,

(B) Employment Security Commission records and a written statement from the applicant; or,

(C) If the applicant has pursued the verifications in (A) and (B) and can provide documentation these verifications are unavailable, the county shall accept only the applicant's written statement.

(4) Verification of the appropriate quarters of employment shall be made by use of the following:

(A) Employment Security Commission records; or,

(B) Written statement from previous employers; or,

(C) Income tax returns; or,

(D) Wage stubs; or,

(E) County department of social services records on CWEP or WIN; or,

(F) A written statement from the applicant if the applicant has pursued the verifications in (A) through (E) and can provide documentation these verifications are unavailable.

(5) Verification of the parents' marriage shall be done by use of the following:

(A) Marriage certificate; or,

(B) Church records; or,

(C) Family Bible; or,

(D) Government records.

Authority G.S. 108A-28; 143B-153; Chapter 738, Section 79, 1986 Session Laws (1987 Regular Session); 45 CFR 233.100.

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that Coastal Management intends to adopt and amend regulations cited as 15 NCAC 711 .0507; 7K .0211.

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

The public hearing will be conducted at 7:30 p.m. on October 22, 1987 at Nags Head Municipal Building, Nags Head, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any persons desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

.0507 UNIQUE COASTAL GEOLOGIC FORMATIONS

(d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted on a map approved by the Coastal Resources Commission on July 24, 1987, and on file with the Division of Coastal Management. This area includes the entire rights of way of NC 158 Bypass, SR 1221 (Sound Side Road), Villa Dunes Drive, and Hollowell Street where these roads bound this area. Jockey's Ridge is the tallest active sand dune along the Atlantic Coast of the United States. Located within the Town of Nags Head in Dare County, between NC 158 and Roanoke Sound, the Ridge represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia. Jockey's Ridge is an excellent example of a medano, a large isolated hill of sand, asymmetrical in shape and lacking vegetation. Jockey's Ridge is the largest medano in North Carolina and has been designated a National Natural Landmark by the U.S. Department of the Interior.

(e) Use Standards. Jockey's Ridge. Development within the Jockey's Ridge AEC shall be consistent with the following minimum use standards:

- (1) Development which requires the movement of greater than ten cubic yards of

- sand per year from the area within the AEC boundary shall require a permit;
- (2) All sand which is collected from the area within the AEC boundary shall be re-deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the Division of Parks and Recreation.
- (3) Development activities shall not significantly alter or retard the free movement of sand except when necessary for the purpose of:
 - (A) maintaining a road, residential commercial structure, accessway, or parking area;
 - (B) maintaining or establishing a primary or frontal dune in accordance with 15 NCAC 7H .0308(b).

Statutory Authority G.S. 113A-107(a), (b); 113A-113(b)(4) g.

SUBCHAPTER 7K - ACTIVITIES IN AREAS OF ENVIRONMENTAL CONCERN WHICH DO NOT REQUIRE A COASTAL AREA MANAGEMENT ACT PERMIT

SECTION .0200 - CLASSES OF MINOR MAINTENANCE AND IMPROVEMENTS WHICH SHALL BE EXEMPTED FROM THE CAMA MAJOR DEVELOPMENT PERMIT REQUIREMENT

.0211 JOCKEY'S RIDGE AEC

All development in the Jockey's Ridge area of environmental concern designated pursuant to 15 NCAC 7H .0507 that is not within any other designated area of environmental concern shall be exempt from CAMA major and minor permit requirements provided it does not involve movement of more than ten cubic yards of sand per year from the area within the AEC boundary.

Statutory Authority G.S. 113A-103(5)(c).

Notice is hereby given in accordance with G.S. 150B-12 that Coastal Management intends to amend regulations cited as 15 NCAC 7J .0701; .0702.

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

The public hearing will be conducted at 10:00 a.m. on October 20, 1987 at Marine Fisheries Building, 3411 Arendell Street, Morehead City, NC.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

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

**SECTION .0700 - EXPEDITED
PROCEDURES FOR CONSIDERING
VARIANCE PETITIONS**

.0701 VARIANCE PETITIONS

(c) Petitions shall be ~~submitted to any Office of Coastal Management field office or may be~~ mailed directly to the Director of the ~~Office~~ Division of Coastal Management, P.O. Box 27687, Raleigh, N.C. 27611.

(f) A variance request will be considered by the commission at a regularly scheduled meeting. Petitions will be scheduled no later than the second regularly scheduled meeting following the date of receipt of the petition by the ~~commission~~ Division of Coastal Management, except when a later meeting is agreed upon by the petitioner and the ~~Office~~ Division of Coastal Management. A complete variance petition, as described in paragraph (c) of this Rule, must be received by the Division of Coastal Management a minimum of four weeks in advance of a regularly scheduled commission meeting to be considered by the commission at that meeting.

Statutory Authority G.S. 113A-120(c); 113A-124(c)(5).

**.0702 STAFF REVIEW OF VARIANCE
PETITIONS**

(c) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the commission shall include only those facts and statement that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, then the petition will be considered by means of an administrative hearing. Copies of the agreed-upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.

Statutory Authority G.S. 113A-120(c); 113A-124(c)(5).

**TITLE 21 - DEPARTMENT OF
LICENSING**

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of North Carolina intends to adopt and amend regulations cited as 21 NCAC 32B .0109; .0607.

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

The public hearing will be conducted at 11:00 a.m. on October 19, 1987 at Senate Room, Holiday Inn State Capital, 320 Hillsborough Street, Raleigh, N.C.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before October 5, 1987, to the following address: Administrative Procedures, N.C. Board of Medical Examiners, P.O. Box 26808, Raleigh, N.C. 27611-6808.

**CHAPTER 32 - BOARD OF MEDICAL
EXAMINERS**

SUBCHAPTER 32B - LICENSE TO
PRACTICE MEDICINE

SECTION .0100 - LICENSE BY WRITTEN
EXAMINATION

.0109 FEE

Fee for both components taken together, or for each component taken separately, shall be one hundred and fifty dollars (\$150.00), plus the cost of test materials, to be paid at time of application.

In the event applicant fails to make a passing score on the examination, there will be no refund of fee. In the event applicant does not appear for the regularly scheduled examination or application is withdrawn, no portion of the fee will be refunded.

Statutory Authority G.S. 90-15.

SECTION .0600 - CERTIFICATE OF
REGISTRATION FOR VISITING
PROFESSORS

.0607 CERTIFIED PHOTOGRAPH

Applicant must furnish recent photograph (at least 2 inches by 2 inches), certified as his true likeness by the dean of his medical school with the dean's signature and the seal of the school affixed thereon.

Statutory Authority G.S. 90-12.

Notice is hereby given in accordance with G.S. 150B-12 that The North Carolina State Board of Mortuary Science intends to amend regulation cited as 21 NCAC 34 .0123.

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

The public hearing will be conducted at 10:00 a.m. on October 15, 1987 at Office of State Board of Mortuary Science, 412 North Wilmington Street, Raleigh, NC 27601.

Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to Ms. Corrine Culbreth, Executive Secretary, State Board of Mortuary Science, 412 North Wilmington Street, Raleigh, NC 27601.

CHAPTER 34 - MORTUARY SCIENCE

SECTION .0100 - GENERAL
PROVISIONS

.0123 FEES

Fees shall be as follows:

Establishment permit		
Application	\$ 50.00	\$150.00
Annual renewal	\$ 50.00	\$100.00
Late renewal penalty	\$ 35.00	\$ 75.00
Courtesy card		
Application	\$ 25.00	
Annual renewal		
Embalmer	\$ 15.00	
Funeral director	\$ 15.00	
Funeral service	\$ 30.00	
Out-of-state licensee		
Application	\$ 50.00	\$150.00
Embalmer, funeral director, funeral service		
Application	\$ 50.00	
Application, North Carolina resident		\$100.00
Application, non-resident		\$100.00
Annual renewal		
Embalmer	\$ 20.00	\$ 25.00
Funeral director	\$ 20.00	\$ 25.00
Funeral service	\$ 40.00	\$ 50.00
Reinstatement fee		
Embalmer	\$ 20.00	\$ 25.00
Funeral director	\$ 20.00	\$ 25.00
Funeral service	\$ 40.00	\$ 50.00
Resident trainee permit		
Application	\$ 35.00	
Annual renewal	\$ 10.00	
Late renewal penalty	\$ 5.00	
Duplicate license certificate	\$ 15.00	
Chapel registration		
Application		\$150.00
Annual Renewal		\$ 75.00

Statutory Authority G.S. 90-210.23(a); 90-210.28; 150A-11.

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Opticians intends to adopt and amend regulations cited as 21 NCAC 40 .0104; .0108; .0111; .0206; .0208; .0212; .0303; .0312; .0320.

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

The public hearing will be conducted at 2:00 p.m. on October 15, 1987 at Conference Room at the Board Office, 412 North Wilmington Street, Raleigh, N.C. 27601.

Comment Procedures: Any interested person may present oral or written comments at the Hearing. Written statements not presented at the Hearing should be directed to the N.C. State Board of Opticians, 412 N. Wilmington Street, Raleigh, N.C. 27601. Requests to be heard or written statements to be presented at the Hearing should be directed by October 10, 1987 to same address above.

CHAPTER 40 - OPTICIANS

SECTION .0100 - LOCATION

.0104 INFORMATION AND APPLICATION

All persons making inquiries regarding licensure will be sent an information letter and an application form which must be completed in order to sit for the licensure examination. The application requires information as to age, references for good moral character, qualifications, educational training, photograph, and letters of recommendation. A certification that the applicant has not violated the licensing law must also be supplied.

Any person desiring to become a North Carolina licensed optician, upon request, will be provided appropriate information on the requirements for licensure, including an application form prepared by the board, which must be completed in order to sit for the licensure examination. The application shall require information including, but not limited to, the applicant's age, qualifications, a current photograph, letters of recommendation and good moral character, and a statement whether the applicant has violated the opticianry laws or rules of this State. Each application must be signed under oath.

Statutory Authority G.S. 90-234 through 90-255; 93B-3.

.0108 FEES

(2) each initial or duplicate license 10.00

Statutory Authority G.S. 90-246.

.0111 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) The Model Administrative Procedures for Rule-Making and Hearings, codified as Title 22, Subchapters 2B and 2C of the North Carolina Administrative Code, effective September 29, 1980, are hereby adopted by reference to apply to actions of the State Board of Opticians.

(b) The definitions contained in 22 NCAC 2A .0005 are adopted by reference and shall apply to the Board of Opticians with the following modifications:

(1) The Agency address is set forth in Rule .0101 of this Section.

(2) "Agency head" means the State Board of Opticians.

(c) Copies of 22 NCAC, Subchapters 2B and 2C, and 22 NCAC 2A .0005 may be inspected in the Administrative Procedures Section of the Attorney General's Office, 107 Fayetteville Street, Raleigh, North Carolina. Copies may be obtained from the Administrative Procedures Section for a charge of four dollars (\$4.00).

(a) The following hearing division rules promulgated by the Office of Administrative Hearings, codified as Title 26, Subchapter 3 of the North Carolina Administrative Code, effective September 1, 1986, are hereby adopted by reference to apply to contested cases of the State Board of Opticians:

- (1) 26 NCAC 3.0001
- (2) 26 NCAC 3.0002
- (3) 26 NCAC 3.0004
- (4) 26 NCAC 3.0005
- (5) 26 NCAC 3.0006
- (6) 26 NCAC 3.0007
- (7) 26 NCAC 3.0008
- (8) 26 NCAC 3.0010
- (9) 26 NCAC 3.0011
- (10) 26 NCAC 3.0012
- (11) 26 NCAC 3.0013
- (12) 26 NCAC 3.0014
- (13) 26 NCAC 3.0015
- (14) 26 NCAC 3.0016
- (15) 26 NCAC 3.0017
- (16) 26 NCAC 3.0018
- (17) 26 NCAC 3.0019
- (18) 26 NCAC 3.0020
- (19) 26 NCAC 3.0021
- (20) 26 NCAC 3.0022
- (21) 26 NCAC 3.0023
- (22) 26 NCAC 3.0024
- (23) 26 NCAC 3.0025
- (24) 26 NCAC 3.0026
- (25) 26 NCAC 3.0027

(26) 26 NCAC 3.0028

(27) 26 NCAC 3.0029

(b) The above-referenced hearing division rules are adopted in accordance with G.S. 150B-14(b).

Statutory Authority G.S. 90-249.

SECTION .0200 - CONDUCT OF REGISTRANTS

.0206 CONTINUING EDUCATION

The optician shall keep the visual welfare of the patient uppermost at all times, promote the best care of the visual needs of mankind, strive continuously to develop educational and technical proficiency and inform himself as to new developments within his profession. In keeping with this pronouncement, all licensed opticians shall:

- (1) maintain adequate equipment and instruments in his or her office at all times to assure proper and complete service to the public;
- (2) assist his or her client in whatever manner possible in obtaining further care when, in his or her opinion, additional care is needed;
- (3) maintain adequate and available records;
- (4) treat all information concerning his clients as "privileged" and not to be communicated to others except when so authorized by the patient;
- (5) take annual courses of study in subjects related and essential to the practice of opticianry for the purposes of enhancing his or her scientific knowledge and professional skills, gaining the benefits of new techniques, and acquiring increased knowledge of North Carolina laws governing the practice of opticianry, including rules and regulations promulgated thereunder. Each optician who is certified as a contact lens fitter shall take a total of not less than twelve hours of courses of study each calendar year as follows:
 - (a) five hours of study shall be essential to the practice of contact lens fitting;
 - (b) five hours of study shall be essential to eyeglass fitting and dispensing;
 - (c) one hour of study shall be on the North Carolina opticianry laws and rules and regulations promulgated thereunder; and
 - (d) one hour of study may be on matters related to contact lens or business management and consumer protection.

An optician who is not certified as a contact lens fitter shall take five hours of study essential to eyeglass fitting and dispensing and one hour of study on the North Carolina opticianry laws and rules and regulations promulgated thereunder each calendar year. The courses of study must be previously approved and designated by the North Carolina State Board of Opticians. Licensees may attend one or more of said approved courses, so long as the aggregate attendance meets the requirements of the board for each such year. Additionally, attendance at any course or courses for the requisite period must be certified to said board, and shall be submitted by each registered optician at the time he makes application to the board for his renewal of license and payment of his renewal fee. Such certification shall show the title of the course or courses taken, as well as when and where they were taken. As to non-certified contact lens fitters, the requirements prescribed herein shall only be waived in cases of certified illness, military assignment making it impossible to comply, or persons over 65 years of age. With respect to certified contact lens fitters, no exceptions or waivers of the requirements pertaining to contact lens fitting shall apply. In order for a course to be accredited, the course must be open to all licensees. Course content and speaker qualifications must also be reviewed and the course may be viewed by a committee of the board.

(a) The optician shall keep the visual welfare of the patient uppermost at all times, promote the best care of the visual needs of mankind, strive continuously to develop educational and technical proficiency and inform himself as to new developments within his profession. In keeping with this pronouncement, all licensed opticians shall:

- (1) maintain adequate equipment and instruments in his her office at all times to assure proper and complete service to the public;
- (2) assist his or her client in whatever manner possible in obtaining further care when, in his or her opinion, additional care is needed;
- (3) maintain adequate and available records;
- (4) treat all information concerning his clients as "privileged" and not to be communicated to others except when so authorized by the patient;

(5) take annual courses of study in subjects related and essential to the practice of opticianry for the purposes of enhancing his or her scientific knowledge and professional skills, gaining the benefits of new techniques, and acquiring increased knowledge of North Carolina laws governing the practice of opticianry, including rules and regulations promulgated thereunder.

(b) Each optician who is certified as a contact lens fitter shall take a total of not less than ten hours of courses of study each calendar year as follows:

(1) five hours of study shall be essential to the practice of contact lens fitting;

(2) four hours of study shall be essential to eyeglass fitting and dispensing or, in lieu thereof, three hours of study shall be essential to eyeglass fitting and dispensing and one hour of study shall be on business management and consumer protection; and

(3) one hour of study shall be on the North Carolina opticianry laws and rules and regulations promulgated thereunder.

(c) An optician who is not certified as a contact lens fitter shall take a total of not less than five hours of continuing education each year as follows:

(1) four hours of study shall be essential to eyeglass fitting and dispensing or, in lieu thereof, three hours of study shall be essential to eyeglass fitting and dispensing and one hour of study shall be on business management and consumer protection; and

(2) one hour of study shall be on the North Carolina opticianry laws and rules and regulations promulgated thereunder.

(d) Courses of study must be previously approved and designated by the North Carolina State Board of Opticians. Licensees may attend one or more of said approved courses, so long as the aggregate attendance meets the requirements of the board for each year. Additionally, attendance at any course or courses for the requisite period must be certified to said board, and shall be submitted by each registered optician at the time he makes application to the board for his renewal of license and payment of his renewal fee. Such certification shall show the title of the course or courses taken, as well as when and where they were taken. In order for a course to be accredited, the course must be open to all North Carolina licensees. Course content and speaker qualifications may be viewed by the board.

(e) As to non-certified contact lens fitters, the requirements prescribed herein shall only be waived in case of certified illness, military assignment making it impossible to comply, or persons over 65 years of age. With respect to certified contact lens fitters, no exceptions or waiver of the requirements pertaining to contact lens fitting shall apply.

(f) Any North Carolina licensed optician who is not certified to fit contact lenses and who is not practicing opticianry in North Carolina shall annually obtain no less than five hours of study essential to eyeglass fitting and dispensing which have been approved by the American Board of Opticianry. Any North Carolina certified contact lens fitter who is not practicing opticianry in North Carolina shall annually take no less than ten hours of study as follows:

(1) five hours of study, as approved by the American Board of Opticianry, shall be essential to eyeglass fitting and dispensing; and

(2) five hours of study, approved by the National Contact Lens Examiners, shall be essential to contact lens fitting.

Statutory Authority G.S. 90-249; 93B-3.

.0208 LICENSE REVOCATION AND REINSTATEMENT

(c) The procedures for revocation and suspension of a license or refusal to grant license or permission to sit for the examination shall be in accordance with the provisions of Chapter 150A, 150B of the General Statutes and Rule .0111 of the board.

Statutory Authority G.S. 90-249.

.0212 DUTY TO PROVIDE DIRECT SUPERVISION

The failure of a licensed optician, under whose name an optical place of business or branch thereof is registered, to provide direct supervision of an unlicensed person working at such business or branch and performing other than minor adjustments or repairs to eyeglass shall constitute a violation of this Rule.

Statutory Authority G.S. 90-239; 90-253.

SECTION .0300 - QUALIFICATIONS: APPLICATIONS: AND LICENSING

.0303 ELIGIBILITY FOR EXAMINATION AND RE-EXAMINATION

(d) The exam shall consist of an eyeglass a written part and a practical part. No license will be issued until a passing score has been achieved on both parts within three years. If the two parts are taken at different exam sessions, an examination fee must be paid for each session. An optician may obtain license without contact lens certification after passage of the exam described in this Section or by renewal of a license in force prior to adoption of this Rule.

Statutory Authority G.S. 90-240.

.0312 RECOGNIZED SCHOOLS OF OPTICIANRY

A school of opticianry shall be considered recognized by the N.C. State Board of Opticians if it is accredited by the Commission on Opticianry Accreditation, Post Office Box 19391, Washington, D.C. 20036, and confers an associate in applied science degree, ophthalmic dispensing programs.

A school of opticianry shall be considered recognized by the North Carolina State Board of Opticians if it is accredited by the Commission of Opticianry Accreditation, and confers a degree of associate in applied science through an ophthalmic dispensing program.

Statutory Authority G.S. 90-249.

.0320 LICENSE RENEWAL INFORMATION

(c) Any licensee 70 years old or older ~~who is not a certified contact lens fitter~~ may be issued a lifetime honorary opticians license. A recipient of a lifetime honorary opticians license shall be exempt from the renewal fee requirements.

Statutory Authority G.S. 90-244(b); 90-246(3).

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that The Office of State Personnel intends to repeal regulations cited as 25 NCAC 1E .0701-.0703.

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

The public hearing will be conducted at 9:00 a.m. on December 14, 1987 at 101 West Peace Street, Raleigh, NC.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27611.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0700 - WORKER'S COMPENSATION LEAVE

- .0701 USE OF LEAVE (REPEALED)**
- .0702 RESPONSIBILITY OF EMPLOYER AND EMPLOYEE (REPEALED)**
- .0703 CONTINUATION OF BENEFITS (REPEALED)**

Statutory Authority G.S. 126-4; 97-22.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-12 that The Office of Administrative Hearings intends to amend and repeal regulations cited as 26 NCAC 3 .0025 and .0026.

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

The public hearing will be conducted at 10:00 a.m. on October 15, 1987 at Hearing Room 1, Lee House, 422 N. Blount St., Raleigh, NC.

Comment Procedures: Comments may be submitted in person or in writing at the public hearing or in writing prior to October 15, 1987, to Sabra Faires, Executive Legal Specialist, P. O. Drawer 11666, Raleigh, NC 27604.

CHAPTER 3 - HEARINGS DIVISION

- .0025 HEARING OFFICER'S PROPOSAL FOR DECISION: EXCEPTIONS (REPEALED)**

Statutory Authority G.S. 150B-34.

.0026 ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION

(a) The hearing officer shall, within 30 days after the expiration of the period for filing exceptions to the hearing officer's proposed decision, prepare and serve upon all parties his recommended decision, opinion, order, or report which shall become a part of the official record in the case and which shall contain:

- (1) All of the items specified in Subparagraphs .0025 (c)(1) through (8) of this Chapter; and
 - (2) A statement identifying the agency that will make the final decision in the case.
- (b) The hearing officer shall promptly forward a copy of the official record in the case to the agency.

(c) Extensions of time limits.

- (1) Upon good cause shown, the Chief Administrative Law Judge may extend the time limits for submission of the proposed decision, filing of exceptions, and for issuing the recommended decision of the hearing officer.
- (2) Requests for extensions must be submitted prior to the expiration of the period established by these Rules.
- (3) Extensions shall not be granted if inattention or procrastination cause delay, but shall be granted if the delay is attributable to honest mistake, accident, or any cause compatible with proper diligence.

(a) An administrative law judge shall issue a recommended decision or order in a contested case within 45 days after the conclusion of the contested case hearing. The administrative law judge shall serve a copy of the decision on each party. When an administrative law judge issues a recommended decision, the Office of Administrative Hearings shall promptly forward the official record in the case to the agency making the final decision.

(b) A recommended decision shall be based exclusively on:

- (1) competent evidence and arguments presented during the hearing and made a part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed; and
- (4) other items in the official record that are not excluded by G.S. 150B-29(b).

(c) A recommended decision shall fully dispose of all issue required to resolve the case and shall contain:

- (1) an appropriate caption;
- (2) the appearances of the parties;
- (3) a statement of the issues;
- (4) references to specific statutes or rules at issue;
- (5) findings of fact, with specific reasons given for findings on disputed facts;
- (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or federal regulations;
- (7) in the discretion of the administrative law judge, a memorandum giving legal reasons for the conclusions of law;
- (8) a statement identifying the agency that will make the final decision; and
- (9) a statement that each party has the right to file exceptions to the recommended decision with the agency making the final decision and has the right to present written arguments on the decision to the agency making the final decision.

(d) For good cause shown, the chief administrative law judge may extend the 45-day time limit for issuing a recommended decision. An administrative law judge who needs an extension must submit a request for extension to the chief administrative law judge before the 45-day period has expired.

Filed as a Temporary Amendment Eff. August 26, 1987 for a Period of 120 Days to Expire on December 24, 1987; Statutory Authority G. S. 150B-34.

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 19A - DEPARTMENT OF TRANSPORTATION

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0600 - TECHNICAL SERVICES

.0608 LENGTH

(a) Lengths are generally limited to 85'-0" including towing vehicle. If the route to be traveled does not include corners, consideration may be given to longer loads. When length, including towing vehicle exceeds 85', and route to be traveled requires negotiating corners, a steering trailer and escort vehicle may be required. Certain loads such as poles, girders, trusses over 55' in overall length which do not exceed legal weight or width may be moved without permit during the daytime if they are one integral unit.

(b) Extended period permits for lengths exceeding 65' will not be issued except for mobile home delivery units. These may be issued to 91'-0" when a 15' towing unit is employed. Extended period permits are issued by the central permit office only. "Single trip permits may be issued for the movement of mobile homes on designated routes with a 15' towing unit not to exceed 95'-0" combination length."

(c) Front overhang shall not exceed the statutory limit of 3' beyond front bumper unless shown to be impractical to load otherwise and not create a safety hazard.

History Note: Statutory Authority G.S.

20-116; 20-119; 136-18(5);

Board of Transportation Minutes for

February 16, 1977 and November 10, 1978;

Eff. July 1, 1978;

Amended Eff. October 1, 1987; April 1, 1984;

February 1, 1983; April 11, 1980.

LIST OF RULES AFFECTED

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EDITION XII, NO. 6

EFFECTIVE: September 1, 1987

AGENCY

ACTION TAKEN

Department of Agriculture

2	NCAC	9L	.0501	Repealed
			.0517	Amended
		26A	.0001-.0002	Repealed
		26B	.0001-.0003	Repealed
		26C	.0001-.0002	Repealed
		26D	.0001-.0002	Repealed
		27A	.0001-.0003	Repealed
		27B	.0001-.0002	Repealed
		27C	.0001-.0002	Repealed
		28A	.0001-.0003	Repealed
		28B	.0001-.0002	Repealed
		28C	.0001-.0002	Repealed
		34	.0201-.0202	Repealed
			.0311	Repealed
			.0315	Repealed
			.0602	Amended
		42	.0202	Amended

Governor's Office

9	NCAC	2	Executive Order Number 51 Eff. July 14, 1987
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Department of Human Resources

10	NCAC	42B	.1201	Amended
			.1203	Amended
		42C	.2001	Amended
			.2212	Amended
			.2302-.2303	Amended
		49C	.0101	Amended
			.0301-.0302	Amended
		50B	.0313	Temp. Amended Expires 10-31-87

Department of Insurance

11	NCAC	8	.0203	Amended
			.0204-.0210	Repealed

Department of Justice

12	NCAC	9B	.0606	Amended
			.0608	Amended

Department of Labor

LIST OF RULES AFFECTED

13 NCAC 7C .0104 Adopted

Department of Natural Resources and Community Development

15	NCAC	3B	.0102	Amended
			.0105	Amended
			.0304-.0306	Amended
			.0308	Amended
			.0404	Amended
			.0501	Amended
			.0503-.0504	Amended
			.0701	Amended
			.0801	Amended
			.0901	Amended
			.0905	Amended
			.1002	Amended
			.1101	Amended
			.1109	Amended
			.1111	Amended
			.1404-.1405	Amended
			.1601-.1605	Adopted
		13N	.0101-.0104	Adopted
			.0201-.0202	Amended
			.0301-.0303	Amended
			.0401-.0402	Amended
			.0501-.0505	Amended
			.0601-.0604	Amended

Board of Medical Examiners

21	NCAC	32B	.0110	Amended
		37	.0519	Temp. Amended
				Expires 12-31-87

Office of State Personnel

25	NCAC	1B	.0412	Repealed
			.0414-.0415	Adopted
			.0421-.0424	Adopted
			.0427-.0434	Adopted
		11I	.0608	Repealed
			.0610-.0613	Adopted

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50	Plumbing and Heating Contractors, Board of
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