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The **NORTH CAROLINA REGISTER**

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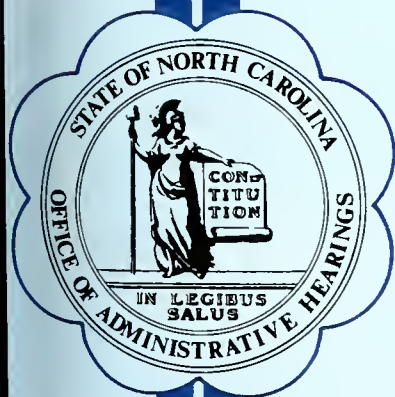
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ISSUE DATE: OCTOBER 15, 1987

Volume 2 • Issue 7 • Pages 418-487



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 Chapter 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down into 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 fifty 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 procedure 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.

EXECUTIVE ORDERS

EXECUTIVE ORDER NUMBER 55

MARTIN LUTHER KING, JR. HOLIDAY COMMISSION

The third Monday of January of each year has been set aside by both the State and Federal governments as a legal holiday to honor the birthday of Martin Luther King, Jr.;

Such holiday should serve as a time for all North Carolinians to reflect on the principles of racial equality and non-violent social change espoused by Martin Luther King, Jr.;

It is appropriate that the State work to plan, promote and assist statewide and local celebrations and observances of this important national holiday.

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

- (a) The Martin Luther King, Jr. Holiday Commission is hereby established under the Department of Administration. The Commission shall be composed of not less than ten (10) members appointed by the Governor to serve at the pleasure of the Governor. Vacancies shall be filled by the Governor. The Governor shall designate one of the members as chairman and at least one member as vice-chairman.
- (b) The Commission shall meet at the call of the Chairman.
- (c) The Commission shall have the following duties:
 - (1) Encourage appropriate ceremonies and activities throughout the State relating to the observance of the legal holiday honoring Martin Luther King, Jr.'s birthday;
 - (2) Provide advice and assistance to local governments and private organizations across the State with respect to the observance of such holiday;
 - (3) Work to promote among the citizens of North Carolina an awareness and appreciation of the life and work of Martin Luther King.
- (d) Administrative support for this Commission shall be provided by the Department of Administration.
- (e) Members of the Commission may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Members who are State

officials or employees shall be reimbursed as authorized by N.C.G.S. 138-6. Funds for reimbursement of such expenses shall be made available from funds authorized by the Department of Administration.

- (f) This order shall be effective immediately.

Done in Raleigh, North Carolina this 30th day of September, 1987.

EXECUTIVE ORDER NUMBER 56

GOVERNOR'S ADVISORY BOARD ON ATHLETES AGAINST CRIME

The safety and proper development of our State's young people is at greater risk now than ever before in history. The growth of the crime rate in increasingly younger populations is a trend that is of major concern nationally as well as here in North Carolina.

The State of North Carolina must consider appropriate measures designed to reverse the crime rate among its youth. With the attention and energy that athletics generates and the appeal that athletics has among our youth, the establishment of an advisory board can be a viable crime prevention tool.

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

SECTION 1. ESTABLISHMENT

There is hereby established the Governor's Advisory Board on Athletes Against Crime, hereinafter referred to as the "Board." The Board shall be comprised of a chairman and at least fifteen members appointed by the Governor to serve at the pleasure of the Governor. The members appointed by the Governor shall include but not be limited to representatives of the following areas:

The Department of Crime Control and Public Safety;
The North Carolina Fellowship of Christian Athletes;
Athletic directors, coaches, and student athletes at junior high, high school, and collegiate levels;
The North Carolina High School Athletic Association and other amateur sports organizations;
Professional athletes;
Law enforcement;

Private citizens or volunteers who have an interest in athletics and/or youth-oriented crime prevention programs in the State.

SECTION 2. MEETINGS

The Board shall meet regularly at the call of the Chairman and shall hold special meetings at the call of the Chairman, the Governor, or the Secretary of Crime Control and Public Safety.

SECTION 3. DUTIES

The Board shall have the following duties:

- (A) Provide a forum for discussing issues concerning youth involvement in crime and effective approaches to preventing crime among young people;
- (B) Coordinate athletic directors, coaches, and student athletes at the junior high, high school, and collegiate levels to implement the crime prevention objectives of the Athletes Against Crime program;
- (C) Review existing and proposed youth-oriented crime prevention programs at the local, state, and national levels which involve athletes;
- (D) Advise the Governor and Secretary of Crime Control and Public Safety on measures and activities to support youth crime prevention programs and promote the Athletes Against Crime program;
- (E) Encourage private sector involvement in fund raising efforts to support and promote the Athletes Against Crime program;
- (F) Coordinate with appropriate state and local agencies such as the Governor's Council on

- Substance Abuse Among Children and Youth to develop a comprehensive approach to preventing crime, delinquency, and substance abuse among young people;
- (G) Other duties as assigned by the Governor.

SECTION 4. ADMINISTRATION

- (A) The Department of Crime Control and Public Safety shall provide administrative support and staff as may be required.
- (B) Members of the Board shall serve without compensation but may receive reimbursement from the Department of Crime Control and Public Safety, contingent on the availability of funds, for travel and subsistence expenses in accordance with state guidelines and procedures.
- (C) The heads of state departments and agencies are hereby directed to the extent permitted by law, to provide the Board information as may be requested by the Board in carrying out the purpose of this order.

SECTION 5. EFFECTIVE DATE AND EXPIRATION DATE

This Executive Order shall become effective immediately, and unless rescinded earlier by act of the Governor, will expire in accordance with North Carolina law two years from date it is signed. It is subject to reissuance at expiration.

Done in Raleigh this 30th day of September, 1987.

JUDICIAL ORDERS

IN THE SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA
EX REL. JAMES G. MARTIN
AS GOVERNOR OF THE STATE
OF NORTH CAROLINA AND AS
A CITIZEN OF THE STATE
OF NORTH CAROLINA

v.

ROBERT ARTHUR MELOTT,
DIRECTOR, OFFICE OF
ADMINISTRATIVE HEARINGS
OF THE STATE OF NORTH
CAROLINA

No. 61PA87 - Wake

Appeal by plaintiff from Preston, Judge, at the 1 December 1986 term of Superior Court, Wake County. A petition pursuant to N.C.G.S. § 7A-31 and Rule 15(a) of the North Carolina Rules of Appellate Procedure to bypass the Court of Appeals prior to its determination of the case was allowed. Heard in the Supreme Court 13 May 1987.

The plaintiff, who is the Governor of North Carolina, brought this declaratory judgment action challenging the constitutionality of N.C.G.S. § 7A-752, which provides that the Chief Justice of the Supreme Court of North Carolina shall appoint the Director of the Office of Administrative Hearings of the State of North Carolina. The plaintiff alleged that this provision violates Article I, Sec. 6 of the Constitution of North Carolina, providing for the separation of powers, Article III, Sec. 1, providing that the executive power shall be vested in the Governor, and Article III, Sec. 5(8), of the Constitution of North Carolina, providing for appointment duties of the Governor. The plaintiff also challenged on the same grounds the constitutionality of N.C.G.S. § 7A-753, which provides the Director shall appoint five additional hearing officers.

The plaintiff joined to the action a claim for a remedy in the nature of quo warranto, Article 41, Chapter 1 of the North Carolina General Statutes. The plaintiff alleged that the defendant, who was appointed Director of the Office of Administrative Hearings of the State of North Carolina by the Honorable Joseph Branch, Chief Justice of the Supreme Court of North Carolina, and was sworn into office on 1 January 1986, holds his office unconstitutionally.

The defendant filed answer and the action was tried without a jury by Judge Preston at the 20 October 1986 Civil Session of Superior Court, Wake County. On 1 December 1986, Judge Preston entered a judgment in which he held that N.C.G.S. §§ 7A-752 and 753 do not violate Article 1, Sec. 6, or Article III, Sec. 1 and Sec. 5(8) of the Constitution of North Carolina. He also held that the General Assembly can constitutionally delegate to the Chief Justice of the Supreme Court of North Carolina the power to fill the office of the Director of the Office of Administrative Hearings and that the defendant lawfully holds the public office of Director of the Office of Administrative Hearings. The relief prayed for by the plaintiff in the nature of quo warranto to oust the defendant from office was denied. The plaintiff appealed.

MOORE AND VAN ALLEN, by ARCH T. ALLEN, III and SARAH WESLEY FOX, for plaintiff appellant.

LACY H. THORNBURG, Attorney General, by ANDREW A. VANORE, JR., Chief Deputy Attorney General and THOMAS F. MOFFITT, for defendant appellee.

This case brings to the Court the question of whether the General Assembly may delegate to the Chief Justice of the Supreme Court of North Carolina the power to appoint the Director of an agency created by the General Assembly. The appellant contends the Constitution of North Carolina places this power of appointment in the Governor. We believe the resolution of this question depends to a large extent on the interpretation of Article III, Sec. 5(8) of the Constitution of North Carolina which provides:

Appointments. The Governor shall nominate and by and with the advice and consent of the majority of the Senators appoint all officers whose appointments are not otherwise provided for.

In interpreting a constitution, as in interpreting a statute, if the meaning is clear from reading the words of the Constitution, we should not search for a meaning elsewhere. *Elliott v. Gardner*, 203 N.C. 749, 166 S.E. 918 (1932) and *Reade v. Durham*, 173 N.C. 668, 92 S.E. 712 (1917).

As we read Article III, Sec. 5(8), it is clear that it means the Governor has the power to appoint an officer of the State with the advice and consent of a majority of the Senators, unless there is some other provision for the appointment. In this case there is another provision. The General Assembly has provided for the appointment of the Director of the Office of Administrative Hearings by the Chief Justice of the Supreme Court of North Carolina. We hold that the plain meaning of Article III, Sec. 5(8) does not give the Governor the appointment power under these circumstances.

The appellant argues that the phrase "whose appointments are not otherwise provided for" has a settled judicial construction which is "whose appointments are not otherwise provided for by the Constitution itself." The power to appoint the Director of the Office of Administrative Hearings is not provided for in the Constitution. The appellant says that for this reason only the Governor may appoint the Director of the Office of Administrative Hearings. The appellant relies on *Salisbury v. Cromm*, 167 N.C. 223, 83 S.E. 354 (1914); *Ewart v. Jones*, 116 N.C. 570, 21 S.E. 787 (1895); and *People of North Carolina ex rel. Cloud v. Wilson*, 72 N.C. 155 (1875), for this proposition. There is language to this effect in these cases, however, the language is not necessary to the holding in any of them. In *Salisbury*, while holding that the plaintiff was not the rightful holder of the office of Director of the State Hospital because his appointment had not been confirmed by the Senate as required by statute, the Court said that under the Constitution of 1868 "the term, 'unless otherwise provided for' meant unless otherwise provided for by the Constitution itself." The Court pointed out that this interpretation was not satisfactory to the people of the state and this provision of the Constitution was amended in 1875. In *Ewart*, the Court used this same language in discussing the Constitution of 1868, but said this provision of the Constitution had been amended in 1875. *Cloud* deals with the appointment by the Governor of a superior court judge under the Constitution of 1868. This Court said "the words 'otherwise provided for' meant otherwise provided for by the Constitution," but the Court was interpreting a provision of the 1868 Constitution which is not a predecessor provision to the provision at issue in this case. We cannot say that the phrase "whose appointments are not otherwise provided for" has such a well settled judicial construction that we must use it in this case.

If we study the development of the present Article III, Sec. 5(8), we believe it strengthens our interpretation of it. Article III, Sec. 10 of the Constitution of 1868 said:

... The Governor shall nominate, and by and with the advice and consent of a majority of the Senators elect, appoint all officers whose offices are established by this Constitution, or which shall be created by law, and whose appointments are not otherwise provided for, and no such officer shall be appointed or elected by the General Assembly.

It is apparent that this section of the 1868 Constitution gave the Governor a broad power to make appointments. The General Assembly was forbidden from making appointments. In 1875 this section was amended radically to strike the clauses "or which shall be created by law" and "and no such officer shall be appointed by the General Assembly" so that the section read as follows:

... The Governor shall nominate, and by and with the advice and consent of a majority of the Senators elect, appoint all officers whose offices are established by this Constitution, and whose appointments are not otherwise provided for.

It is apparent that this amended section greatly diminished the Governor's appointment power. It limited the Governor's appointment power to offices established by the Constitution and even then he could not make such appointments if the appointments were otherwise provided for. In 1970 this section was again amended and became the present Article III, Sec. 5(8) of the Constitution. The amendment deleted the word "elect" and the clause "whose offices are established by this Constitution" so that the section now reads as set forth above. If the revisers of the Constitution had intended to give the Governor the power to appoint all officers whose appointments were not provided for in the Constitution, they could have easily done so. They did not and we believe it is only reasonable to conclude they intended to increase the Governor's power from making appointments of constitutional officers to all officers whose appointments are not otherwise provided for.

The appellant also contends the statute violates Article I, Sec. 6 of the Constitution of North Carolina which says:

The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

The appellant further contends the statute violates Article III, Sec. 1 which says:

The executive power of the State shall be vested in the Governor.

The appellant argues that in our state government we have a separation of powers and relies on the writings of some of our founding fathers and others to say that this is one of the bedrocks of our liberty. He relies on *Wallace v. Bone*, 304 N.C. 591, 286 S.E.2d 79 (1982), which held that the General Assembly cannot constitutionally create an administrative agency of the executive branch and retain some control over it by appointing legislators to the governing body of the agency. He argues that this principle should extend to prevent legislative control over an executive officer by providing for his appointment by one other than the Governor.

Wallace dealt with an appointment of legislators to the Environmental Management Commission. This Court held that it violated the separation of powers provision of the State Constitution for the General Assembly to appoint its own members to an agency of the executive branch. It does not hold that only the Governor may make appointments to the Commission. Wallace is not authority for this case.

We have determined that under Article III, Sec. 5(8) of the Constitution, the General Assembly may provide that someone other than the Governor may appoint the Director of the Office of Administrative Hearings. The question remains as to whether the General Assembly may provide that the Chief Justice of the Supreme Court may make this appointment. The dissent in this case says that the General Assembly may not so provide. This conclusion in the dissent is based on Article I, Sec. 6 of the Constitution, which provides for the separation of powers. The dissent goes to great lengths to prove that the Director of the Office of Administrative Hearings is in the executive branch and concludes that the appointment of the Director may not be made by the Chief Justice. We do not believe it is necessary to resolve this case to determine whether the Director is in the executive branch. Assuming that he is and assuming that Article I, Sec. 6 proscribes the Chief Justice from exercising an executive branch function, the question is whether the appointment of the Director is the exercise of executive power.

We hold that the appointment of a Director of the Office of Administrative Hearings is not an exercise of executive power. The dissent says, "The appointment power is not exclusively legislative in nature and may be delegated." We conclude from this sentence that the dissent does not believe the appointment power is necessarily executive in nature. Article III, Sec. 1 of the Constitution provides that "The executive power shall be vested in the Governor" but it does not define executive power.

We believe it means "the power of executing laws." See Advisory Opinion In re Separation of Powers, 305 N.C. 767, 774, 295 S.E.2d 589, 593 (1982). The appointment of someone to execute the laws does not require the appointing party to execute the laws. Article III, Sec. 5 of the Constitution lists the duties of the Governor. Subsection (4) of this section provides that "The Governor shall take care that the laws be faithfully executed." Subsection (8) provides for the appointment power of the Governor. This indicates that the appointment power is not the same as taking care that the laws are executed. We hold that it is not a violation of the separation of powers provision of our Constitution for the General Assembly to provide that the Chief Justice of the Supreme Court shall appoint the Director of the Office of Administrative Hearings.

The citizens of this state have the right to distribute the governmental power among the various branches of the government, *Lanier v. Vines*, 274 N.C. 486, 164 S.E.2d 161 (1968), and we do not understand that the appellant contends otherwise. The United States Constitution does not limit this power. See *Hughes v. Superior Court of California*, 339 U.S. 460, 94 L.Ed. 985 (1950) and *Colegrove v. Green*, 328 U.S. 549, 90 L.Ed. 1432 (1946). In this case, we hold that the people have, by the Constitution of North Carolina, authorized the General Assembly to place appointment power in someone other than the Governor. The General Assembly has placed this appointment power in the Chief Justice of the Supreme Court of North Carolina. The Constitution of North Carolina and the Constitution of the United States do not prohibit this.

The judgement of the superior court is **AFFIRMED**.

Chief Justice Exum did not participate in the consideration or decision of this case.

MEYER, J., concurring in result.

As Martin, J., states in his dissent in this case, the dispositive issue here is whether such a legislative delegation of appointment power violates the constitutional principles of separation of powers. The dissent makes a good case for the proposition that this legislative delegation of appointment power to the Chief Justice is unwise. It does not convince me that such delegation is unconstitutional.

The scope of judicial review of challenges to the constitutionality of legislation enacted by the General Assembly is well settled. As this Court stated in *Glenn v. Board of Education*, 210 N.C. 525, 187 S.E. 781 (1936):

It is well settled in this State that the courts have the power, and it is their duty in proper cases, to declare an act of the General Assembly unconstitutional -- but it must be plainly and clearly the case. If there is any reasonable doubt, it will be resolved in favor of the lawful exercise of their powers by the representatives of the people.

Id. at 529-30, 187 S.E. at 784.

I agree with the majority that the legislature can constitutionally delegate to the Chief Justice the power to appoint the Director of the Office of Administrative Hearings. I write separately because of my belief that the analysis employed by the majority in reaching this result is flawed.

The majority reasons that the separation of powers issue turns on the nature of the Chief Justice's appointment of the Director as an exercise of executive power granted to the Governor in our constitution. My reasoning, however, dictates that the determination of the separation of powers issue turns, not on the nature of the appointment power, but on the nature of the powers and duties exercised by the person appointed. If the nature of the powers and duties to be exercised by the appointee are primarily executive in nature, the separation of powers provision of our constitution is violated. If they are primarily judicial in nature, the separation of powers provision is not violated.

In *State ex rel. Wallace v. Bone* and *Barkalow v. Harrington*, 304 N.C. 591, 286 S.E.2d 79 (1982), plaintiff sued two members of the North Carolina House of Representatives, challenging the

constitutionality of their appointment as members of the North Carolina Environmental Management Commission (EMC). In holding their appointment to be an unconstitutional violation of separation of powers, our Court stated: "It is crystal clear to us that the duties of the EMC are administrative or executive in character and have no relation to the function of the legislative branch of government, which is to make laws." *Id.* at 608, 286 S.E.2d at 88.

N.C.G.S. § 7A-752 specifically provides that the Chief Justice of the North Carolina Supreme Court shall appoint the Director of the Office of Administrative Hearings for the State of North Carolina. N.C.G.S. § 7A-752 (1986).

The dissent concedes that the role played by the Director of the Office of Administrative Hearings is "quasi-judicial." In fact, contrary to what is stated in the dissenting opinion, it is predominantly judicial. Of the Director's twelve statutory powers and duties, two comprise the bulk of his activity. First, he is the chief administrative law judge in the State of North Carolina. N.C.G.S. § 7A-751 (1986). Second, as such, he may hear testimony, apply rules of evidence, regulate discovery, issue stays, and make findings of fact and conclusions of law. N.C.G.S. § 150B-33 (Cum. Supp. 1985). These judicial functions are the heart of his job and far outweigh the administrative- or executive-type powers and duties also provided for in the statute. Because I find that the statutory powers and duties of the Director of the Office of Administrative Hearings are primarily judicial in nature, I do not find that the delegation to the Chief Justice of the power to appoint him violates the separation of powers.

The majority's reasoning requires that whenever a question of this nature arises, a labeling of the delegated appointment power as legislative, executive, or judicial be made. This unnecessarily creates a continuing possibility of conflict between sections of our state constitution. This is contrary to our longstanding policy that, in the construction of the North Carolina Constitution, all cognate provisions are to be considered and construed together. *Thomas v. Board of Elections*, 256 N.C. 401, 124 S.E.2d 164 (1962). The reasoning I adopt herein is consistent with this traditional policy in that it allows potentially conflicting constitutional provisions to be construed as valid.

While I agree with the dissent that the delegation here is unwise, it is not the role of this Court to pass judgment on the wisdom and expediency of a statute. As this Court has recognized:

The members of the General Assembly are representatives of the people. The wisdom and expediency of a statute are for the legislative department, when acting entirely within constitutional limits. The courts will not disturb an act of the law-making body unless it runs counter to a constitutional limitation or prohibition.

McIntyre v. Clarkson, 254 N.C. 510, 515, 119 S.E.2d 888, 891-92 (1961).

The presumption is that an act passed by the Legislature is constitutional, and it must be so held by the courts unless it appears to be in conflict with some constitutional provision. The legislative department is the judge, within reasonable limits, of what the public welfare requires, and the wisdom of its enactments is not the concern of the courts. As to whether an act is good or bad law, wise or unwise, is a question for the Legislature and not for the courts -- it is a political question. The mere expediency of legislation is a matter for the Legislature, when it is acting entirely within constitutional limitations, but whether it is so acting is a matter for the courts.

State v. Warren, 252 N.C. 690, 696, 114 S.E.2d 660, 666 (1960) (citations omitted).

I do not mean to say that, under different circumstances, the principles of separation of powers would not render similar legislation unconstitutional. On the contrary, North Carolina, for more than two hundred years, has strictly adhered to these vital principles. Their importance to our system of government is fundamental and unquestioned. As the United States Supreme Court stated in *O'Donoghue v. United States*, 289 U.S. 516, 77 L. Ed. 1356 (1933):

This separation is not merely a matter of convenience or of governmental mechanism. Its object is basic and vital, Springer v. Philippine Islands, 277 U.S. 189, 201, [72 L. Ed. 845, 849 (1928),] namely, to preclude a commingling of these essentially different powers of government in the same hands.

Id. at 530, 77 L. Ed. at 1360. Where the legislature passes a statute which creates such commingling, this Court will not hesitate to hold that the statute violates the separation of powers provision of our state constitution.

In sum, I agree with the majority that the legislature can constitutionally delegate to the Chief Justice of the North Carolina Supreme Court the power to appoint the Director of the Office of Administrative Hearings; however, I do so for reasons different than those relied upon by the majority.

Justice Wichard joins in this concurring opinion.

Justice Martin dissenting.

Believing as I do that the grant by the legislature to the Chief Justice of the power to appoint the Director of the Office of Administrative Hearings violates the constitutional principles of separation of powers, I respectfully dissent.

A few preliminary observations are appropriate:

(1) No federal constitutional issues arise in this appeal. Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 81 L. Ed. 835 (1937).

(2) The Constitution of North Carolina is a limitation of the powers of the General Assembly, not a grant of power to it. Mitchell v. Financing Authority, 273 N.C. 137, 159 S.E.2d 745 (1968). The General Assembly possesses all political power of the state not prohibited it or delegated to another branch of the government by the constitution. The Office of Governor has no such prerogative powers but is confined to the exercise of the powers conferred upon it by the constitution and statutes.

(3) The General Assembly has the authority to appoint the Director of the Office of Administrative Hearings. The Governor's power of appointment is limited to officers whose appointments are not otherwise provided for. N.C. Const. art. III, § 5(8). The appointment of the Director of the Office of Administrative Hearings is otherwise provided for.

(4) The General Assembly has the power to delegate to another the authority to appoint the Director of the Office of Administrative Hearings. Motsinger v. Perryman, 218 N.C. 15, 9 S.E.2d 511 (1940); Cunningham v. Sprinkle, 124 N.C. 638, 33 S.E. 138 (1899); 16 C.J.S. Constitutional Law § 135, at 439.

(5) The General Assembly has the power to delegate to the Attorney General the authority to appoint the Director of the Office of Administrative Hearings. The Attorney General is a member of the executive branch of government. The appointment power is not exclusively legislative in nature and may be delegated. The delegation of appointive powers to officers of the executive branch is generally proper. In re Community Association, 300 N.C. 267, 266 S.E.2d 645 (1980); Adams v. Dept. of N.E.R. and Everett v. Dept. of N.E.R., 295 N.C. 683, 249 S.E.2d 402 (1978); Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971). Upon such delegation, it would be appropriate for the Attorney General to appoint the Director of the Office of Administrative Hearings.

I turn now to the question of whether the legislature can constitutionally delegate to the Chief Justice the power to appoint the Director of the Office of Administrative Hearings. In my view, the Director is an executive officer and constitutional principles of separation of powers proscribe the Chief Justice from making this appointment.

The statute in question purports to empower the Chief Justice of the North Carolina Supreme Court to appoint the Director of the Office of Administrative Hearings.

The Director has the following statutory powers and duties:

- (1) He is the head of the Office of Administrative Hearings. N.C.G.S. § 7A-751 (1986).
- (2) He is the chief administrative law judge. Id.
- (3) He shall appoint additional administrative law judges. N.C.G.S. § 7A-753 (1986).
- (4) He may designate and assign certain administrative law judges to preside over specific types of contested cases. Id.
- (5) He shall take an oath of office. N.C.G.S. § 7A-754 (1986).
- (6) He may remove an administrative law judge for just cause. Id.
- (7) He can administer oaths in any pending or potential contested case. N.C.G.S. 7A-756 (1986).
- (8) He can sign and issue subpoenas to witnesses. Id.
- (9) He can apply to a judge of superior court for orders necessary to enforce powers conferred by Article 60 of Chapter 7A of the General Statutes of North Carolina. Id.
- (10) He may contract with qualified persons to serve as hearing officers for specific assignments. N.C.G.S. § 7A-757 (1986).
- (11) He may, at the request of an agency, provide a hearing officer to preside at hearings of public bodies not otherwise authorized to utilize a hearing officer from the Office of Administrative Hearings. N.C.G.S. § 7A-758 (1986).
- (12) He may hear testimony, apply rules of evidence, regulate discovery, issue stays, and make findings of fact and conclusions of law. N.C.G.S. § 150B-33 (Cumm. Supp. 1985).

While some of the powers and duties of the Director may properly be described in part as being "quasi-judicial," they are not unique to the judiciary. They include administering oaths to witnesses, issuing subpoenas, hearing testimony, applying rules of evidence, regulating discovery, issuing stays, making findings of fact and conclusions of law, and recommending decisions. Various executive officers and members of the legislature can perform each of these functions, with the possible exception of regulating discovery.

Legislators in committee hearings subpoena witnesses and documents and administer oaths, N.C.G.S. §§ 120-14, -15 (1986); hear testimony, apply rules of evidence, N.C.G.S. §§ 120-19.1, .2 (1986); apply to judges of superior court for orders necessary to enforce powers of the legislature, N.C.G.S. § 120-19.4(b) (1986).

Agents in the executive branch likewise can exercise these powers. The Employment Security Commission has statutory authority to so do, N.C.G.S. § 96-4 (1985); likewise, the Industrial Commission, N.C.G.S. §§ 97-79, -80 (1985). Consider the myriad of other state commissions and boards, for example, commissions and boards of architects, barbers, certified public accountants, contractors, dentists, morticians, nurses, opticians, pharmacists, physicians, real estate brokers, and sanitarians, all of which have the authority to exercise these same powers in various ways.

Surely, the majority would not approve the legislature delegating to the Chief Justice the power to appoint the chairman or members of any of these executive agencies.

It is not enough to say that the Director of the Office of Administrative Hearings exercises some quasi-judicial powers and therefore this is a sufficient nexus to the judicial branch of government to

allow the Chief Justice to make this appointment. Most of the duties and powers of the Director set out above are not quasi-judicial in nature but are purely administrative in character. Although the Director utilizes some quasi-judicial methods of dispute resolution, the issues before the Director and the Office of Administrative Hearings are administrative issues. It is only on appeal before the General Court of Justice that the legality of the actions is resolved. The courts are involved with judicial decisions while the Director and the Office of Administrative Hearings are concerned with administrative decisions.

Of course, it is well recognized that the legislature cannot create a court not authorized by the constitution. N.C. Const. art. IV, § 1. Nor does the legislature purport to do so in this instance; the body created is an administrative agency, a part of the executive branch of government, not a part of the judicial branch. The legislature can delegate to the Chief Justice the power to appoint officers of the judicial branch, for example, Director and Assistant Director of the Administrative Office of the Courts, N.C.G.S. §§ 7A-341, -342 (1986); chief district court judges, N.C.G.S. § 7A-141 (1986); appellate defender, N.C.G.S. § 7A-486.2 (1986); the Chief Judge of the Court of Appeals, N.C.G.S. § 7A-16 (1986). The clerk of the Supreme Court is appointed by the Supreme Court, N.C.G.S. § 7A-11 (1986), and the clerk of the Court of Appeals by the Court of Appeals, N.C.G.S. § 7A-20 (1986). Senior resident superior court judges appoint their public defenders, N.C.G.S. § 7A-466 (1986), magistrates, N.C.G.S. § 7A-171 (1986), and court reporters, N.C.G.S. § 7A-95 (1986).

The appointments above noted are to offices that are within the judicial branch of government; the Director of the Office of Administrative Hearings is within the executive branch of government. Our constitution provides: "The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other." N.C. Const. art. I, § 6. This provision must be strictly construed by the Court. *State ex rel. Wallace v. Bone and Barkalow v. Harrington*, 304 N.C. 591, 286 S.E.2d 79 (1982). (This opinion contains an excellent exposition on the doctrine of separation of powers.) One of the primary objectives of the doctrine of separation of powers is to preserve and protect the independence of the judiciary.

The reasoning of the Massachusetts court in *Opinion of the Justices*, 365 Mass. 639, 309 N.E.2d 476 (1974), is compelling. The legislature of Massachusetts created an electronic data commission and provided for appointment of two members of the commission by the Chief Justice of the Supreme Judicial Court of Massachusetts. In an advisory opinion, the Massachusetts court held that the legislation would be unconstitutional as a violation of the doctrine of separation of powers. The court reasoned that although the legislature could delegate the appointive power, it could not confer the power of appointment upon the judicial branch of government with respect to officials not exercising a judicial function or one incidental to the exercise of judicial powers. The people of Massachusetts have removed the judiciary from political influences of every kind. See also *Nelson et al. v. City of Miller*, 83 S.D. 611, 163 N.W.2d 533 (1968).

I view the Massachusetts case as applying equally to the present controversy. Our Chief Justice can appoint officers whose duties are closely connected with the judicial work of the Court, for example, the Director of the Administrative Office of the Courts, but cannot appoint officers such as the Director of the Office of Administrative Hearings, whose work would affect the functioning of the other two branches of government. While the Director's duties may be in some sense incidental to the function of the courts, it is in reality much broader than that. It is plain that the Director does not exercise judicial powers; the constitution prohibits such. N.C. Const. art. IV, § 1. Likewise, the powers of the Director are not incidental to the exercise of judicial powers by the courts. The actions of the Office of Administrative Hearings create additional legal issues properly to be resolved by the judicial branch, but its actions are not otherwise incidental to the exercise of judicial power by the courts.

The article establishing the Office of Administrative Hearings itself states that its purpose is to provide "a source of independent hearing officers . . . [to] thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process." N.C.G.S. § 7A-750 (1986). By conferring the power to appoint the Director upon the Chief Justice, the legislature has defeated the very purpose of its statute by commingling the legislative and judicial functions.

In summary, I find that the Governor has no authority to appoint the Director of the Office of Administrative Hearings unless it is granted to him by the General Assembly. The General Assembly

can delegate the appointment of the Director to another official. In so doing, it must not violate the constitutional principles of separation of powers. Conferring this power of appointment upon the Chief Justice violates the constitutional principles of separation of powers, and that portion of the statute is unconstitutional.

By placing the yoke of this appointive power upon the Chief Justice, the judicial branch has been cast adrift upon uncharted waters amid the rocky shoals of political influence. The genius of the doctrine of separation of powers is to prevent such result.

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to repeal regulation cited as 1 NCAC 1B .0404.

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

The public hearing will be conducted at 10:00 a.m. on November 14, 1987 at Williamsburg Room, First Floor, Administration Building, 116 West Jones Street, Raleigh, NC 27603-8003.

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 1 - DEPARTMENTAL RULES

SUBCHAPTER 1B - DEPARTMENTAL ADMINISTRATIVE PROCEDURES

SECTION .0400 - RULEMAKING HEARINGS: LOCATION: PARTICIPATION

.0404 WHO SHALL HEAR CONTESTED CASES (REPEALED)

Statutory Authority G.S. 150B-32.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Pesticide Board intends to adopt and amend regulations cited as 2 NCAC 9L .1006 and .1111.

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

The public hearing will be conducted at 2:00 p.m. on December 3, 1987 at Board Room, Agriculture Building, One Edenton Street, Raleigh, NC 27611.

Comment Procedures: Interested person may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to John L. Smith, Secretary, North Carolina Pesticide Board, P.O. Box 27647, Raleigh, North Carolina 27611.

CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 9L - PESTICIDE SECTION

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

.1006 EXEMPTIONS

No person or procedure or spraying and spreading system for aerial application of pesticides shall be exempt from any of the provisions of this Section except under these conditions:

- (3) Any state, federal or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation shall may, upon approval by the board, be exempted from 2 NCAC 9L .1005(b) to (e), Restricted Areas, and .1002(i), General Requirements. provided they In order to apply for an exemption, the agency or applicator must present to the board a complete description of the operation in writing 30 days prior to the proposed initiation of the subject operation.

Statutory Authority G.S. 143-458; 143-461(1), (2), (5); 143-463.

SECTION .1100 - PRIVATE PESTICIDE APPLICATOR CERTIFICATION

.1111 CERTIFICATION/RECERTIFICATION FEE

A nonrefundable fee of six dollars (\$6.00) shall be required for private pesticide applicator certification or recertification.

Statutory Authority G.S. 143-440(b).

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Cemetery Commission intends to adopt and amend regulations cited as 4 NCAC 5A .0106 and .0107.

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

The public hearing will be conducted at 10:00 a.m. on December 17, 1987 at Room 2063, Dobbs Building, 430 North Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Written comments may be sent to the Cemetery Commission, Post Office Box 25249, Raleigh, NC 27611. Requests for opportunities to present oral testimony and a summary of the testimony must be received at this address by December 14, 1987.

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

.0106 FEES

In addition to the licensing and penalty fees provided by statute to this commission, the following fees are provided after ~~April 1, 1978;~~ October 1, 1987:

- (1) ~~Seventy five cents (\$0.75)~~ One dollar (\$1.00) per grave space, mausoleum crypt, and niche when deeded;
- (2) ~~Three dollars (\$3.00)~~ Four dollars (\$4.00) per vault when contracted;
- (3) ~~Three dollars (\$3.00)~~ Four dollars (\$4.00) per each crypt in a bank of below ground crypts or lawn crypt garden when contracted before completion or one dollar (\$1.00) per each crypt when contracted after completion. An additional ~~seventy five cents (\$0.75)~~ one dollar (\$1.00) shall be paid for each crypt when deeded as provided in Item 1 of this Rule;
- (4) ~~Three dollars (\$3.00)~~ Four dollars (\$4.00) per pre-need memorial;
- (5) ~~Three dollars (\$3.00)~~ Four dollars (\$4.00) per pre-constructed mausoleum crypt or niche when contracted before completion or one dollar (\$1.00) per crypt or niche when contracted after completion. An additional ~~seventy five cents (\$0.75)~~ one dollar (\$1.00) shall be paid for each crypt or niche when deeded as provided in Item 1 of this Rule;
- (6) All at need merchandise, cash or credit sales, do not require any assessments.

Statutory Authority G.S. 65-49; 65-54; 150B-10.

.0107 CEMETERY LICENSE FEE

The annual cemetery license fee shall be three hundred dollars (\$300.00).

Statutory Authority G.S. 65-49; 65-54.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Seafood Industrial Park Authority intends to adopt regulations cited as 4 NCAC 17 .0101 - .0102; .0201 - .0203.

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

The public hearing will be conducted at 8:00 p.m. on November 16, 1987 at Wanchese Community Building, Old Schoolhouse Road, Wanchese, North Carolina.

Comment Procedures: Comments taken from floor upon recognition of speaker by meeting chairman.

CHAPTER 17 - SEAFOOD INDUSTRIAL PARK AUTHORITY

SECTION .0100 - ORGANIZATION OF SEAFOOD INDUSTRIAL PARK AUTHORITY

.0101 IDENTIFYING INFORMATION

The principal office of Seafood Industrial Park Authority is located at:

Wanchese Seafood Industrial Park
Harbor Road
Wanchese, North Carolina 27981

Statutory Authority G.S. 113-315.29(8).

.0102 FUNCTIONS AND POWERS

The authority is created to develop, construct, equip, maintain and operate the Seafood Industrial Parks within the state and in furtherance of that end to accomplish the purposes set out in G.S. 113-315.28. To accomplish those purposes, the authority has those powers set out in G.S. 113-315.29.

Statutory Authority G.S. 113-315.28; 113-315.29.

SECTION .0200 - REGULATION OF DOCKAGE

.0201 DEFINITIONS

Dockage is the charge assessed against a vessel or other water craft for berthing or making fast to any wharf, mooring device or other facility of the authority or for mooring to a vessel so berthed.

Statutory Authority G.S. 113-315.29(10).

.0202 RATES: FEES AND PENALTIES

(a) Dockage will be computed on the basis of overall length of vessel.

(b) An annual fee of five dollars and fifty cents (\$5.50) per lineal foot or fractional part thereof shall be charged all vessels or other water craft using the Wanchese Seafood Industrial Park docks, tie-up space alongside the concrete dock and for second or third boat abreast mooring.

(c) The fee shall be paid, in advance, on an annual or semiannual basis for docking privileges.

(d) Checks should be made payable to the NC Seafood Industrial Park Authority and mailed to: Administrator, Wanchese Seafood Industrial Park, P.O. Box 549, Wanchese, N.C. 27981, or payment may be delivered to the Office of Administration, Wanchese Seafood Industrial Park, Harbor Road, Wanchese, N.C.

(e) A permit will be issued upon payment of annual or semiannual dockage fees, and a decal will be provided which must be displayed on the vessel so as to be seen from the dock.

(f) Payment of annual or semiannual fees shall entitle a vessel to docking privileges for normal turnaround time between trips, using any available dock space under the jurisdiction of the Park Authority on a first come, first served basis. Normal turnaround time shall mean not more than seven days between trips.

(g) Any extra time beyond seven days must be specifically authorized by Dock Security or the Park Administrator and will be assessed at a per diem rate of fifty cents (\$0.50) per linear foot for sports or pleasure vessels and twenty-five cents (\$0.25) per linear foot for commercial vessels.

(h) A fee in the amount of twenty-five dollars (\$25.00) will be assessed against any vessel leaving refuse on the dock. In addition, a fine of up to fifty dollars (\$50.00) may be assessed against any vessel departing the premises and leaving behind trash, debris, equipment, or other material requiring cleanup by the Park Administrator.

(i) A service fee of twenty-five dollars (\$25.00) will be charged any vessel taking on water by means of a metered fire hydrant along with charges for actual water usage according to the water rate schedule established by the authority for all users within the Seafood Park.

(j) A fine of up to fifty dollars (\$50.00) shall be assessed against any vessel whose crew is found to have thrown trash, debris, or fish into the harbor while berthed at the authority dock.

(k) Dockage fees shall not include payment for water, electricity or other ancillary services.

(a) As necessary, United States Coast Guard and Army Corp of Engineers vessels, whether government owned or under private contract, will be given priority for dockage.

(b) Except as set forth in Subsection (a) above, docks are available to active commercial fishing vessels on a first come, first served basis for short-term dockage. No vessel shall remain for a continuous period of more than seven days without special authorization from Dock Security or the Park Administrator.

(c) All fishing gear must be stowed inside rails of vessels to prevent chafing or damage to the dock structures or to other vessels.

(d) The storage of fishing gear, equipment, materials or supplies will not be allowed on any wharf or property under the jurisdiction of the Park Authority without prior approval of the Park Administrator.

(e) Yachts, tugs, barges or any other vessel not classified as a commercial fishing vessel, except as otherwise authorized, shall not be issued docking permits and cannot dock at wharves under the jurisdiction of the Park Authority without prior approval of the Park Administrator or his designated representative.

(f) Sandblasting or spray painting of any vessel berthed at the authority's docks is prohibited.

(g) There shall be no offloading of seafood onto any vessel, vehicle or receptacle from the docks within the park except as such offloading relates to persons doing business with seafood dealers who are tenants of the Seafood Industrial Park.

(h) Receptacles and containers for trash are provided for vessel debris only. Vessel owners shall be responsible for the removal of large items of discarded equipment or other large or heavy items.

(i) There shall be no hauling or marking of trawl wires utilizing the base of light fixtures or other authority structures or done in any manner which may cause damage to any property within the jurisdiction of the Park Authority.

(j) All vehicular traffic must approach the dock front from access roadways provided.

(k) Vehicles shall not be parked on the concrete dock front, unless loading or offloading supplies or equipment or servicing vessels.

(l) Any unattended vehicle or equipment which is impeding traffic or preventing the conduct of business alongside the wharves, or which is left on the premises for 15 days or more without authorization may be towed away or removed at the owner's expense.

(m) All fuel trucks, ice trucks or other service vehicles shall conduct their business so as not to interfere with other users of the facilities and shall

Statutory Authority G.S. 113-315.29 (8), (9), (10); 113-315.34.

**.0203 GENERAL REGULATIONS FOR USE
OF DOCK FACILITIES**

insure that oil and gasoline is prevented from escaping into the ground, water or on the docks.

(n) Vessels will be assessed for any damages caused by them or their crews to the bulkheads or dock structures or any other property of the Park Authority.

(o) The Seafood Industrial Park Authority shall not be responsible or liable for any theft, fire or other damage to persons, vessels or property while using the authority facilities, it being the responsibility of vessel owners to secure and safeguard their vessels and property to their own satisfaction.

(p) Vessels and their owners refusing to comply with the rules and regulations set forth herein may be denied docking privileges at the authority facilities.

Statutory Authority G.S. 113-315.29; 113-315.34; 113-315.37.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that The Division of Health Services intends to adopt, amend, and repeal regulations cited as 10 NCAC 8G .0701 - .0723; 10A .0443; .0446; .0448; 10F .0029; .0032 - .0035; .0039; .0042; 10G .0101; .0103 - .0105; .0107 - .0108; .0201 - .0203; .0502 - .0505; .0510; .0704; and 12 .0239.

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

The public hearing will be conducted at 1:30 p.m. on November 16, 1987 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

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

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 8G - PERINATAL CARE

SECTION .0700 - HIGH RISK MATERNITY CLINIC FUNDS

- .0701 GENERAL (REPEALED)**
- .0702 APPLICATION FOR FUNDS (REPEALED)**
- .0703 BUDGETING OF FUNDS (REPEALED)**
- .0704 CLIENT AND THIRD PARTY FEES (REPEALED)**
- .0705 CLIENT ELIGIBILITY (REPEALED)**
- .0706 AUTHORIZATION AND REIMBURSEMENT (REPEALED)**
- .0707 SCOPE OF SERVICES (REPEALED)**
- .0708 USUAL STAFFING (REPEALED)**
- .0709 WRITTEN POLICIES AND PROCEDURES (REPEALED)**
- .0710 FACILITY AND EQUIPMENT (REPEALED)**
- .0711 MONITORING AND EVALUATION (REPEALED)**
- .0712 PROVIDER ELIGIBILITY (REPEALED)**

Statutory Authority G.S. 130A-127.

.0713 GENERAL

(a) High risk maternity clinics provide prenatal services to eligible clients.

(b) The Maternal and Child Health Branch provides funds to support staffing and operating costs of contracted high risk maternity clinics. High risk maternity clinic funds may also be used to purchase outpatient diagnostic, medical consultative services, prescribed medications not available in the high risk maternity clinics, and patient transportation. The use of high risk maternity clinic funds for such services shall be pursuant to Rule .0718 of this Section.

(c) The initiation and annual renewal of contracts for high risk maternity clinics are subject to the availability of funds and assessment of performance as specified in these Rules.

(d) Information concerning the identity and location of high risk maternity clinics may be obtained from the Maternal and Child Health Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602.

Statutory Authority G.S. 130A-127.

.0714 APPLICATION FOR FUNDS

(a) Application for funds allocated under this Section shall be sent to the Maternal and Child Health Branch. A copy of the application shall be sent to the respective Regional Perinatal Committee. The application shall include the following components:

- (1) an assessment of the need for high risk maternity services, including the area to be served by the clinic;
- (2) a description of any problems identified and strategies for addressing them;

- (3) measurable program objectives to include, but not to be limited to the following:
 - (A) estimates of the annual number of patients to be served from each county of the service area;
 - (B) estimates of the annual number of patient visits to the clinic; and
 - (C) if funds are being requested for outpatient diagnostic, medical consultative services prescribed medications, and patient transportation, an estimate of the numbers of patients to receive this assistance and how the funds are to be utilized.
 - (4) a description of the medical eligibility requirements for clinic admission to include a list of medical conditions which list has been negotiated with referring clinics;
 - (5) a description of financial eligibility requirements, if any, for admission;
 - (6) a plan to implement and maintain multidisciplinary team care, as described in Section .0708 of these Rules;
 - (7) a description of how high risk maternity clinic services will be coordinated with existing medical and community resources;
 - (8) identification of the local hospital where high risk clinic deliveries will be performed and the specialties of physicians who will perform the deliveries of the high risk maternity clinic patients;
 - (9) a description of the applicant's local quality assurance program, which must include the following:
 - (A) provisions for an internal, periodic high risk maternity program assessment to be conducted at least once a year, which shall include:
 - (i) an audit of clinical records;
 - (ii) a review of delivery funds or high risk maternity clinic reimbursement records;
 - (iii) a review of state or local reports and statistics to monitor progress in meeting stated objectives;
 - (iv) documentation of review findings;
 - (v) development of updated objectives and a timetable for corrective action toward making necessary improvements;
 - (B) involvement in the quality assurance program of each discipline providing high risk maternity clinic services; and
 - (C) provisions for staff development and training opportunities.
 - (10) a proposed budget; and
 - (11) letters from the following providers which state their commitment to participate in the delivery of services supported through these grants:
 - (A) the hospital at which it is anticipated that most high risk maternity clinic deliveries will be performed;
 - (B) those local obstetricians and pediatricians who will participate in the delivery of services supported through these grants;
 - (C) the local health departments of all counties to be included in the service area; and
 - (D) other human service organizations and agencies that will provide support services for high risk maternity clinic patients.
- (b) Technical assistance in preparing an application or updating a plan is available from the central and regional Maternal and Child Health staff.
 - (c) The Regional Perinatal Committee shall review the proposal and make recommendations to the Maternal and Child Health Branch within 45 days of the committee's receipt of the application. These recommendations may include proposed conditions of acceptance.
 - (d) The Maternal and Child Health Branch shall review the application along with the recommendation of the Regional Perinatal Committee. The Maternal and Child Health Branch shall approve or deny an application for grant funds or request additional information within 60 days after receipt of an application. If additional information is requested, the local provider shall have 45 days to submit the information. Failure by the local provider to submit the additional information requested within 45 days shall be grounds for denying the grant proposal. Upon receipt of the additional information, the Maternal and Child Health Branch shall approve or deny a grant proposal within 45 days.
 - (e) Once approved and funded by the division, the application becomes the clinic plan. The plan shall be updated at least every three years and shall incorporate all changes occurring in staffing, facility and operating policies and procedures. Updated plans shall be reviewed and approved by the Maternal and Child Health Branch.

Statutory Authority G.S. 130A-127.

.0715 BUDGETING OF FUNDS

Upon receipt of an application for funds, a budget shall be negotiated between the grantee and the Maternal and Child Health Branch. A contract between the division and the applicant cannot be executed until a budget is agreed upon and approved.

Statutory Authority G.S. 130A-127.

.0716 CLIENT AND THIRD PARTY FEES

(a) A perinatal program high risk maternity clinic may establish a sliding fee scale for charging clients for services provided by the clinic. The sliding fee scale shall reflect income, resources, and family size of clients. Charges will not be imposed with respect to services provided to families whose income is below the nonfarm income official poverty line defined by the Federal Office of Management and Budget and revised annually in accordance with Section 624 of the Economic Opportunity Act of 1964.

(b) If client fees are charged, providers must make reasonable efforts to collect from third party payors.

(c) All fees collected from clients and third party payors shall be used, upon approval of the program, to expand high risk maternity clinic services or to reduce contract payments under the perinatal program high risk maternity clinic funds.

Statutory Authority G.S. 130A-127.

.0717 CLIENT ELIGIBILITY

(a) To be eligible for services provided by a high risk maternity clinic, clients must meet the following:

(1) financial eligibility requirements, if any, established by the clinic; these requirements shall not be more restrictive than the official Federal Poverty Guidelines; and

(2) medical eligibility requirements established by the clinic. Any changes in medical eligibility criteria must be approved by the Maternal and Child Health Branch.

(b) A high risk maternity clinic shall provide in writing its financial and negotiated medical eligibility criteria with all referring prenatal providers in the area served. These providers shall also be informed in writing of any changes in clinic financial and medical eligibility criteria.

Statutory Authority G.S. 130A-127.

.0718 REIMBURSEMENT

(a) Reimbursement for the provision of outpatient diagnostic, medical consultative services and prescribed medications shall not exceed the Medicaid rate in effect at the time the claim is received by the high risk maternity clinic.

(b) Reimbursement for patient transportation shall not:

(1) exceed the state's maximum travel allowance per vehicle mile for expenses of a

privately-owned motor vehicle as established in G.S. 138-6 or the customary charges of a public conveyance; or

(2) be made to a patient.

(c) Reimbursement shall not be made for services which are covered by a third party payor. Providers must take reasonable measures to determine and subsequently collect the legal liability of third party payors to pay for services provided. If, after the high risk maternity clinic makes payment for particular services, the provider, the patient, or a person responsible for the patient receives partial or total payment for the services from a third party payor, the person receiving the payment must reimburse the high risk maternity clinic to the extent of the amount received by the person without exceeding the amount of the high risk maternity clinic's prior payment to the provider.

(d) Payment for services at the Medicaid rate is considered payment in full and the provider shall not bill the patient.

(e) A claim for payment must be submitted to the high risk maternity clinic within 180 days after completion of the service. The high risk maternity clinic shall make payment to the provider within 45 days after receipt of a valid claim for payment.

Statutory Authority G.S. 130A-127.

.0719 SCOPE OF SERVICES

(a) A high risk maternity clinic shall conduct, at a minimum, a weekly multidisciplinary prenatal clinic as defined in this Section and the annual contract.

(b) A high risk maternity clinic shall serve the area specified in the approved application for funds.

(c) Providers may not utilize high risk maternity clinic funds for the following:

(1) purchase of inpatient care;

(2) cash payments to direct recipients of health services;

(3) purchase or improvement of land;

(4) purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(5) purchase of major medical equipment;

(6) abortion; or

(7) sterilization.

(d) Within the service limitations of this Section and commensurate with funds available to pay for those services as specified in the approved contract budget, the number and scope of services offered will be negotiated annually with each high risk maternity clinic, approved by the

Maternal and Child Health Branch, and detailed in the addendum of the contract.

Statutory Authority G.S. 130A-127.

.0720 STAFFING

Each high risk maternity clinic shall be staffed as follows:

- (1) a board certified obstetrician or a physician who has satisfactorily completed an approved residency in obstetrics and gynecology;
- (2) a registered nurse coordinator with a masters or a baccalaureate degree in nursing or a health-related field with at least one year of experience in maternity nursing or an associate degree or diploma in nursing with education in maternity nursing beyond the basic preparation and a minimum of three years of experience in maternity nursing;
- (3) a nutritionist with a masters degree in nutrition and experience in managing clinical nutrition problems of pregnant women or a registered dietitian with experience in managing clinical nutrition problems of pregnant women; and
- (4) a social worker with a masters degree in social work and one year of experience in assessment and counseling of pregnant women and their families or a bachelors degree in social work and three years of experience in assessment and counseling of pregnant women and their families.

Statutory Authority G.S. 130A-127.

.0721 FACILITY AND EQUIPMENT

Each high risk maternity clinic shall provide at least the following facilities:

- (1) a waiting room;
- (2) an intake interview room;
- (3) offices for patient assessments and consultations that provide for privacy and are available for each professional discipline;
- (4) an area for taking weights, blood pressures, and blood specimens;
- (5) a toilet facility;
- (6) a laboratory area;
- (7) a minimum of two equipped examining rooms for each examining clinician; and
- (8) an area for conducting patient education classes during clinic hours.

Statutory Authority G.S. 130A-127.

.0722 MONITORING AND EVALUATION

(a) Each high risk maternity clinic shall report client and service data through the Health Ser-

vices Information System (HISIS). Data may be submitted on hard copy forms provided by the division, diskette, or magnetic tape. Data must be submitted on no less than a monthly basis.

(b) Annual program reviews will be conducted to assess compliance with the requirements of this Section and to provide technical assistance. At least once every three years, the Maternal and Child Health Branch shall conduct a program review of each high risk maternity clinic which will include a multidisciplinary site visit.

(c) Any high risk maternity clinic that consistently fails to meet acceptable levels of performance as determined through site reviews or data from the Health Services Information System and has been offered state consultation and technical assistance, may have high risk maternity clinic funding reduced or discontinued. Recommendations to reduce or discontinue funding provided to a high risk maternity clinic must be reviewed and approved by the Maternal and Child Care Section Chief and the State Health Director.

Statutory Authority G.S. 130A-127.

.0723 PROVIDER ELIGIBILITY

(a) A county or district health department or other public or private nonprofit health care agency may be a local provider and receive funds pursuant to these Rules.

(b) Notwithstanding 10 NCAC 8G .0504, a for-profit provider may be considered a local provider for the purposes of this Rule if the division determines through a process of request for application that a nonprofit health care provider is not available within the perinatal region. Funding for training and research may not be granted to for-profit agencies.

Statutory Authority G.S. 130A-127.

**CHAPTER 10 - HEALTH SERVICES:
ENVIRONMENTAL HEALTH**

SUBCHAPTER 10A - SANITATION

**SECTION .0400 - SANITATION OF
RESTAURANTS AND OTHER
FOODHANDLING ESTABLISHMENTS**

.0443 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

(22) "Temporary restaurant" means a restaurant, as defined in ~~(47)~~ (16) of this Rule, that operates for a period of two weeks or less, as in connection with a fair, carnival, circus, public exhibition, or other similar gathering.

Statutory Authority G.S. 130A-248.

.0446 REINSPECTIONS

(b) In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the sanitarian shall make an unannounced inspection after the lapse of a reasonable period of time, not to exceed ~~30~~ 15 days, from the date of the request.

Statutory Authority G.S. 130A-248.

.0448 GRADING

(c) Food sampling inspection results shall not alter the posted numerical grade.

Statutory Authority G.S. 130A-248.

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0029 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(e) The "Lists of Hazardous Wastes" and the accompanying appendices (I through X) contained in 45 Fed. Reg. 33,122 to 33,137 (1980) [to be codified in 40 CFR 261.30 to 261.33 (Subpart D)] have been adopted by reference as amended by 45 Fed. Reg. 72,032 to 72,034, 74,890, 74,892, and 74,894 (1980); 46 Fed. Reg. 78,529, 78,537 to 78,544, 4,614 to 4,620 (1981); 49 Fed. Reg. 5,312, 19,923 (1984); and 50 Fed. Reg. 662, 665, 2,000, and 28,744 (1985). Supplemental material contained in 45 Fed. Reg. 47,833 and 47,834 (1980); 46 Fed. Reg. 35,247 to 35,249 (1981); and 48 Fed. Reg. 14,294 and 15,256 to 15,258 (1983) have also been adopted by reference as amended by 50 Fed. Reg. 1999, 2001, 2002, and 2003, 14,219, 42,942, and 42,943, and 53,319 (1985); and 51 Fed. Reg. 2,702, 6,541, 6,542, 5,330, 10,175, 19,322, 28,297 to 28,309, 28,310, 28,682, and 33,612 (1986); and 52 Fed. Reg. 21,306 (1987).

Statutory Authority G.S. 130A-294(c).

.0032 STANDARDS FOR OWNERS/ OPERATORS OF HWMF'S - PART 264

(b) The general provisions contained in 45 Fed. Reg. 33,221 and 33,222 (1980) [to be codified in 40 CFR 264.1 to 264.4 (Subpart A)] have been adopted by reference as amended by 45 Fed. Reg. 76,075, 76,081, and 76,630 (1980); 47 Fed. Reg. 8,306 and 32,384 (1982); 48 Fed. Reg. 2,511 and 14,294 (1983); 50 Fed. Reg. 665 and 28,746 (1985); and 52 Fed. Reg. 21,016 (1987).

(c) "General Facility Standards" contained in 45 Fed. Reg. 33,222 to 33,224 (1980) [to be codified in 40 CFR 264.10 to 264.18 (Subpart B)] have been adopted by reference as amended by 46 Fed. Reg. 2,848, 2,849, 2,874, and 7,678 (1981); 47 Fed. Reg. 32,349 and 32,350 (1982); 48 Fed. Reg. 14,294 (1983); 50 Fed. Reg. 18,374 and 28,746 (1985); and 51 Fed. Reg. 25,472 and 40,637 (1986); and 52 Fed. Reg. 21,016 (1987).

(f) The provisions for "Manifest System, Recordkeeping, and Reporting" and accompanying appendices contained in 45 Fed. Reg. 33,226 to 33,232 (1980) [to be codified in 40 CFR 264.70 to 264.78 (Subpart E)] have been adopted by reference as amended by 45 Fed. Reg. 86,970 and 86,974 (1980); 46 Fed. Reg. 2,849 and 7,678 (1981); 47 Fed. Reg. 32,350 (1982); 48 Fed. Reg. 3,982 (1983); and 50 Fed. Reg. 18,374 and 28,746 (1985); and 51 Fed. Reg. 25,472 and 40,637 (1986); and 52 Fed. Reg. 21,016 (1987).

Statutory Authority G.S. 130A-294(c).

.0033 INTERIM STATUS STANDARDS FOR HWMF'S - PART 265

(a) The general provisions contained in 45 Fed. Reg. 33,233 and 33,234 (1980) [to be codified in 40 CFR 265.1 to 265.4 (Subpart A)] have been adopted by reference as amended by 45 Fed. Reg. 76,075, 76,630, and 76,081 (1980); 47 Fed. Reg. 8,306 (1982); 48 Fed. Reg. 2,511, 14,295, and 52,720 (1983); 49 Fed. Reg. 46,095 (1984); and 50 Fed. Reg. 666, 2005, and 28,749, 49,203, and 49,204 (1985); and 52 Fed. Reg. 21,016 (1987).

Statutory Authority G.S. 130A-294(c).

.0034 INTERIM STATUS STANDARDS FOR PERMITTING - PART 270

(b) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,233 to 14,241 and 30,114 (1983) [to be codified in 40 CFR 270 (Subpart B, Permit Application)] have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); 50 Fed. Reg. 2006, 28,751 and 28,752 (1985); and 51 Fed. Reg. 10,176, 16,458, 25,486, 29,431, and 40,653 (1986); and 52 Fed. Reg. 23,450 (1987).

Statutory Authority G.S. 130A-294(c); 130A-295(a) (1) and (2).

.0035 PERMITTING PROCEDURES - PART 124

The following decision-making requirements for permits contained in 45 Fed. Reg. 33,485 to 33,493 (1980) [to be codified in 40 CFR 124 (Subpart A)] have been adopted by reference as amended by 46 Fed. Reg. 36,706 (1981); 48 Fed.

Reg. 30,115 and 39,620 (1983); and 49 Fed. Reg. 17,718 and 17,719 (1984).

(6) 40 CFR 124.7, Statement of Basis;

~~(4)(7)~~ 40 CFR 124.8, Fact Sheet;

(8) 40 CFR 124.9, Administrative Record for Draft Permits When EPA is the Permitting Authority;

~~(7)(9)~~ 40 CFR 124.10, Public Notice Of Permit Actions and Public Comment Period;

~~(8)(10)~~ 40 CFR 124.11, Public Comments And Requests For Public Hearings;

~~(9)(11)~~ 40 CFR 124.12, Public Hearings;

~~(10)(12)~~ 40 CFR 124.13, obligation to raise issues and provide information during the public comment period;

~~(11)(13)~~ 40 CFR 124.14, reopening of the public comment period;

~~(12)(14)~~ 40 CFR 124.15, issuance and effective date of permit;

~~(13)(15)~~ 40 CFR 124.16, stay of contested permit conditions;

~~(14)(16)~~ 40 CFR 124.17, response to comments;

(17) 40 CFR 124.18, Administrative Record for Final Permit When EPA is the Permitting Authority;

(18) 40 CFR 124.19, Appeal of RCRA, UIC and PSD Permits; and

~~(15)(19)~~ 40 CFR 124.20 Computation of Time.

Statutory Authority G.S. 130A-294(c).

.0039 RECYCLABLE MATERIALS - PART 266

(a) The following provisions for recyclable materials used in a manner constituting disposal contained in 50 Fed. Reg. 666 (1985) [to be codified in 40 CFR 266.20 to 266.23 (Subpart C)] have been adopted by reference as amended by 50 Fed. Reg. 28,750 (1985); and 52 Fed. Reg. 21,307 (1987).

Statutory Authority G.S. 130A-294(c).

.0042 LAND DISPOSAL RESTRICTIONS - PART 268

(a) The "General" provisions contained in 51 Fed. Reg. 40,638 to 40,641 (1986) [to be codified in 40 CFR 268.1 to 268.7 (Subpart A)] have been adopted by reference as amended by 52 Fed. Reg. 20,016 and 20,017 (1987).

(b) The "Prohibitions on Land Disposal" provisions contained in 51 Fed. Reg. 40,641 to 40,642 (1986) [to be codified in 40 CFR 268.30 to 268.31 (Subpart C)] have been adopted by reference as amended by 52 Fed. Reg. 20,017 (1987).

(c) The "Treatment Standards" provisions contained in 51 Fed. Reg. 40,642 (1986) [to be codi-

fied in 40 CFR 268.40 to 268.44 (Subpart D)] have been adopted by reference as amended by 52 Fed. Reg. 20,017 (1987).

(d) The "Prohibitions on Storage" provisions contained in 51 Fed. Reg. 40,642 and 40,643 (1986) [to be codified in 40 CFR 268.50 (Subpart E)] have been adopted by reference as amended by 52 Fed. Reg. 20,017 and 20,018 (1987).

(e) Appendices I and II contained in 51 Fed. Reg. 40,643 to 40,653 (1986) have been adopted by reference as amended by 52 Fed. Reg. 20,018 (1987).

Statutory Authority G.S. 130A-294(c).

SUBCHAPTER 10G - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

(37) "Solid waste collector" means any person who collects or transports solid waste by whatever means, including but not limited to, highway, rail, and navigable waterway.

Statutory Authority G.S. 130A-294.

.0103 GENERAL CONDITIONS

(d) Solid waste shall be disposed of at a solid waste disposal site in accordance with the Solid Waste Management Act and the Federal Act. Hazardous waste, liquid waste, infectious waste, and any other wastes that may pose a threat to the environment or the public health, as determined by the division, are prohibited from disposal at a solid waste disposal site. ~~except:~~

- (1) ~~Hazardous waste which is authorized pursuant to Rule .0505(17) of this Subchapter, otherwise all other hazardous waste shall be disposed of at a hazardous waste facility which is permitted to receive the specific hazardous waste; and~~
- (2) ~~Liquid waste which is authorized pursuant to Rule .0505(17) of this Subchapter.~~
- (3) ~~Infectious waste that has been treated and rendered non-infectious in accordance with Rule .0107 of this Subchapter.~~
- (4) ~~Other waste which is authorized pursuant to .0505.~~

When the division determines a waste may pose a threat to the environment or public health, it will notify the solid waste disposal site operator and the person disposing of the waste to terminate the activity. The division may require removal of the waste for treatment and or disposal in an approved manner.

(c) The division has developed a "Procedure and Criteria for Waste Determination" which is used to determine whether a waste is:

- (1) hazardous as defined by 10 N.C.A.C. 10F, and
- (2) suitable for disposal at a solid waste management facility.

Information required for evaluation includes the identity of the generator, identity of the waste and how it was generated, and laboratory results indicating the chemical constituency of the waste. Copies of "Procedure and Criteria for Waste Determination" may be obtained from and inspected at the Solid and Hazardous Waste Management Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602. The waste determination procedure shall be used for:

- (A) Waste which is generated outside the population and geographic area which the solid waste management facility is permitted to serve under .0504(1)(g).
- (B) Waste from a transfer facility other than a facility permitted under these Rules.
- (C) Waste generated by a new generator inside the population and geographic area which the Solid Waste Management Facility is permitted to serve if the components of the waste cannot be readily determined otherwise.
- (D) Waste generated through a change in industrial process by an existing generator, provided the components of the waste cannot be readily determined otherwise.
- (E) A load of waste which a sanitary landfill operator suspects may contain materials which the facility is not permitted to receive.
- (F) Requests by a generator interested in transporting waste to an identified solid waste management facility for treatment and processing, transfer or disposal.
- (G) All sludges except sludge from water treatment plants.
- (H) Other wastes deemed appropriate by the division for testing before transporting to a solid waste management facility.

Statutory Authority G.S. 130A-294.

.0104 SOLID WASTE STORAGE

(f) All solid waste shall be stored in such a manner as to prevent the creation of a nuisance, insanitary conditions, or a potential public health hazard.

Statutory Authority G.S. 130A-294.

.0105 COLLECTION AND TRANSPORTATION

OF SOLID WASTE

(c) Vehicles or containers used for the collection and transportation by whatever means, including but not limited to, highway, rail, and navigable waterway, of garbage, or refuse containing garbage, shall be covered, leakproof, durable, and of easily cleanable construction. These shall be cleaned as often as necessary to prevent a nuisance or insect breeding and shall be maintained in good repair.

(d) Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak, or spill and shall be covered when necessary to keep contents dry and to prevent blowing of material. If spillage should occur, the material shall be picked up immediately by the solid waste collector and returned to the vehicle or container and the area shall be properly cleaned.

Statutory Authority G.S. 130A-294.

.0107 TREATMENT OF INFECTIOUS WASTES PRIOR TO DISPOSAL IN SANITARY LANDFILLS

(a) The following are approved methods of treatment of infectious wastes prior to disposal in a sanitary landfill:

- (1) ~~Sharps - mutilation or incineration.~~

Statutory Authority G.S. 130A-294.

.0108 OUT-OF-STATE WASTE IN SANITARY LANDFILLS

(a) No permit shall be granted for the disposal of nonradioactive solid waste generated outside the boundaries of North Carolina unless the following conditions are met:

- (1) The source (i.e., all generators) of the waste is disclosed, as required by .0504(g)(ii).
- (2) Each load of waste has been inspected by the Solid Waste Regulatory Agency of the nation, state or territory where the waste was generated, and the agency has provided:

- (A) a detailed listing of characteristics of all of the waste in the load, and
- (B) certification that the waste is noninjurious to human health and safety.

(b) Existing permitted landfills will require a new permit, in accordance with .0504(g)(i) and (ii), before acceptance of waste generated outside the boundaries of North Carolina.

Statutory Authority G.S. 130A-294.

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

.0201 PERMIT REQUIRED

(c) All solid waste management facilities shall be operated in conformity with these Rules and in such a manner as to prevent the creation of a nuisance, insanitary conditions, or potential public health hazard. A new permit or an amendment to an existing permit, shall be issued for a period not to exceed five years from the date of issuance. A permit may be issued for a shorter period based on consideration of changing technology and compliance with Rules in effect at the time of review. A permit issued prior to the effective date of this Rule shall be reviewed every five years and modified, where necessary, in accordance with Rules in effect at the time of review.

(d) All solid waste management facilities shall be operated in conformity with these Rules and in such a manner as to prevent the creation of a nuisance, insanitary conditions, or potential public health hazard.

Statutory Authority G.S. 130A-294.

.0202 PERMIT APPLICATION

(a) Application for permits required by Rule .0201 of this Subchapter should be forwarded to the Solid and Hazardous Waste Branch, Division of Health Services, P. O. Box 2091, Raleigh, N. C. 27602. Permit applications shall contain the following information:

- (3) Detailed plans and specifications for solid waste management facilities (except demolition landfills) shall be prepared by a professional engineer. The plans shall bear an imprint of the registration seal of the engineer; and the geological study shall bear the seal of a licensed professional geologist, in accordance with N.C.G.S. Chapter 89E.

Statutory Authority G.S. 130A-294.

.0203 PERMIT APPROVAL OR DENIAL

(f) Appeals of permit decisions shall be in accordance with Article 3 of N.C.G.S., Chapter 150B, and the Rules adopted thereunder. A petition appealing a permit decision must be filed within 30 days of issuance of the decision.

Statutory Authority G.S. 130A-294.

SECTION .0500 - DISPOSAL SITES

.0502 NON-CONFORMING SITES/OPEN

DUMPS

A person operating or having operated an open dump for disposal of solid waste or a person who owns land on which such an open dump is or has been operating shall immediately ~~convert to a sanitary landfill~~ or close the site in accordance with the following requirements:

- (1) Implement effective ~~rat~~ vector control, including baiting for at least two weeks after closing, to prevent ~~rat~~ vector migration to adjacent properties;
- (2) If the site is deemed suitable by the division, compact and cover existing solid waste in place with two feet or more of suitable compacted earth; a condition of closing the site by compacting and covering the waste in place shall be recordation of the waste disposal location by the property owner with the Register of Deeds in the county where the land lies. Copies of the recordation procedure may be obtained from and inspected at the Solid and Hazardous Waste Management Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602.
- (3) If the site is deemed unsuitable by the division, remove and place solid waste in an approved disposal site or facility;
- (4) Implement erosion control measures by grading and seeding; and
- (5) Prevent unauthorized entry to the site by means of gates, chains, beams, fences, and other security measures, approved by the division and post signs indicating closure.

Statutory Authority G.S. 130A-294.

.0503 SITING AND DESIGN REQUIREMENTS FOR DISPOSAL SITES

- (2) A site shall meet the following design requirements:
 - (d) A site shall meet the following ground water requirements:
 - (i) A site shall not contravene groundwater standards as established under 15 NCAC 2L. as amended through January 1, 1985. 15 NCAC 2L is adopted by reference in accordance with Subsection "c" of N.C.G.S. 150B-14. Copies of 15 NCAC 2L may be obtained from and inspected at the Solid & Hazardous Waste Management Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C., 27602.

Statutory Authority G.S. 130A-294.

.0504 APPLICATION REQUIREMENTS FOR SANITARY LANDFILLS

This Rule contains the information required for a permit application for each sanitary landfill. It is recommended that the site application be submitted and acted upon prior to submitting the application for the construction plan. A minimum of four sets of plans will be required in each application. Note that a permit for a sanitary landfill is based upon a particular stream of identified waste, as set forth in .0504(g)(i) and (ii), below. Any substantial change in the population or area to be served, or in the type, quantity or source of waste will require a new permit and operation plan, including waste determination procedures where appropriate.

(1) The following information is required for reviewing a site plan application for a proposed sanitary landfill:

(c) An approval letter from the unit of local government having zoning authority over the area where the site is to be located. Local government approvals:

(i) If the site is located within an incorporated city or town, or within the extra-territorial jurisdiction of an incorporated city or town, the approval of the governing board of the city or town shall be required. Otherwise, the approval of the Board of Commissioners of the county in which the site is located shall be required. Approval may be in the form of either a resolution or a vote on a motion. A copy of the resolution, or the minutes of the meeting where the vote was taken, shall be forwarded to Division of Health Services.

(ii) A letter from the unit of local government having zoning jurisdiction over the site which states that the proposal meets all of the requirements of the local zoning ordinance.

Statutory Authority G.S. 130A-294.

.0505 OPERATIONAL REQUIREMENTS FOR SANITARY LANDFILLS

Any person who maintains or operates a sanitary landfill site shall maintain and operate the site in conformance with the following practices, unless otherwise specified in the permit:

(6) Vegetation Requirements

(a) Within six months after final termination of disposal operations at the site ~~on~~ or a major part thereof or upon revocation of a permit, the area shall be stabilized with native grasses. Once the vegetation is established, it shall not be disturbed.

(11) Waste Acceptance and Disposal Requirements

(a) A site shall only accept those solid wastes which it is permitted to receive. The landfill operator shall notify the division of attempted disposal of any waste the landfill is not permitted to receive, including waste from outside the population and area the landfill is permitted to serve.

(b) No hazardous, liquid, or infectious waste shall be accepted or disposed of in a sanitary landfill. except as may be approved by the division.

(c) All sharps, whether broken or unbroken, shall be placed in a sealed, puncture-proof container prior to disposal, unless they have first been incinerated.

(f) Wastewater treatment sludges shall be used as a soil conditioner and incorporated into the final two feet of cover. Sludges shall be examined for acceptance by Waste Determination procedures in Rule .0103(e).

Statutory Authority G.S. 130A-294.

.0510 CLOSURE CONDITIONS

(c) When a solid waste disposal site has been closed in accordance with the requirements of the division, future necessary maintenance and water quality monitoring shall be the responsibility of the owner and/or the operator and will be specified in the closure letter.

Statutory Authority G.S. 130A-294.

SECTION .0700 - ADMINISTRATIVE PENALTY PROCEDURES

.0704 PAYMENTS: HEARING

(a) Within ~~30~~ 60 days after receipt of notification of a penalty assessment, the respondent must tender payment, submit in writing a payment must be tendered unless a written request for an administrative hearing has been filed pursuant to G.S. 130A-22. All appeals written requests shall be made in accordance with G.S. 150B and 10 NCAC 1B.

Statutory Authority G.S. 130A-22(f); 130A-24; 130A-294(a) and (c).

CHAPTER 12 - HEALTH: OFFICE OF LOCAL SERVICES

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENTS

.0239 FOOD: LODGING: AND INSTITUTIONAL SANITATION

(a) A local health department shall provide food, lodging, and institutional sanitation services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

- (1) The frequency of inspections of food, lodging, and institutional facilities with the following being the minimum:

Type of Establishment	Frequency
Bed and breakfast homes	1/year
Child day-care facilities	1/year
Education food service	3/year
Institutions	2/year
Local confinement facilities	1/year
Lodging	2/year
Mass gatherings	2/gathering
Meat markets	4/year
Migrant housing	2 year
Mobile food units	4 year
Private boarding schools and colleges	2 1/2 year
Pushcarts	4/year
Residential care facilities	1 year
Restaurants	4 year
Restaurants, meat markets or summer camps which are closed for a period of 60 days or more	1/3 months of operation (or part thereof)
School lunchrooms	3 year
Schools	1 year
Summer camps	1/year
Temporary restaurants, food stands, or drink stands	1/two weeks
Vending machine locations	Representative number of locations/year

For the purpose of restaurant inspections, a food sampling inspection shall fulfill the requirement of an inspection provided a minimum of three distinct samples are taken from the restaurant. A maximum of one food sampling inspection per restaurant, per year, may be used to meet the quarterly inspection requirement for restaurants.

Statutory Authority G.S. 130A-9.

Notice is hereby given in accordance with G.S. 150B-12 that The Commission of Anatomy intends to adopt and amend regulations cited as 10 NCAC 81 .0016 and .0017.

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

The public hearing will be conducted at 1:00 p.m. on November 19, 1987 at Cooper Memorial Health Building, Sixth Floor Board Room, 225 N. McDowell Street, Raleigh, North Carolina.

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

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 81 - COMMISSION OF ANATOMY

.0016 FORMS

(b) Forms currently used by the commission are as follows:

- (6) DHS Form 3468 -- Bequeathal of Skeleton or Skeletal Remains for Studies in Forensic Anthropology. This form is a testamentary device whereby a person leaves his or her body after death for use in an osteological collection for the study of forensic anthropology.
- (7) DHS Form 3469 -- Donation of Skeleton or Skeletal Remains for Studies in Forensic Anthropology. This form is executed by the relative or person with authority to dispose of the deceased's body and donates the body for use in an osteological collection for the study of forensic anthropology.

Statutory Authority G.S. 130A-405; 130A-415; 130A-416; 143B-204.

.0017 FORENSIC ANTHROPOLOGY STUDIES

(a) For the purposes of this Subchapter, "Forensic Anthropology Program" means a uni-

versity program in a field of study using anthropological techniques of osteological (bone) analysis to assist in the identification of a crime victim, a victim of a mass disaster, or a body that is unidentifiable by standard methods of identification.

(b) The Commission of Anatomy may distribute a body to a forensic anthropology program if the conditions in Paragraphs (c) and (d) have been met and the body falls under one of the following categories:

- (1) the body is an unclaimed body that has been offered to and rejected by the four medical schools in the state; or
- (2) the body has been bequeathed or donated to the Commission of Anatomy for forensic anthropology studies.

(c) The chairman of the Commission of Anatomy, or his or her delegate, shall do the following before distributing a body to a forensic anthropology program:

- (1) determine that a body is suitable for forensic anthropology studies;
- (2) direct the person, institution or agency having control of the body to hold the body until it can be established that a forensic anthropology program will accept the body and pay all expenses for the removal, storage, transportation and preparation of the body;
- (3) notify the person, institution or agency having control of the body that the commission has accepted the body for a forensic anthropology program and that the forensic anthropology program will contact them concerning removal of the body;
- (4) Assign an identifying number to the body that shall be inscribed on the skeletonized remains kept by the forensic anthropology program;
- (5) notify the forensic anthropology program that a body has been accepted for distribution to that program;
- (6) for unclaimed bodies, notify the county director of social services that the body has been accepted by the commission for a forensic anthropology program; and
- (7) keep a record of all transactions, including the name, sex, age, and date of death of the deceased, who has custody of the body, where the body is being stored, and when custody of the body will be transferred to the forensic anthropology program.

(d) After the director of a forensic anthropology program, or his or her delegate, agrees to accept a body that has been approved

by the commission for distribution to that program, the director shall do the following:

- (1) for unclaimed bodies, assume custody of the body after the ten-day waiting period required by G.S. 130A-415;
- (2) arrange transportation for the body to the forensic anthropology program in a leakproof, airtight container at least equivalent to a Ziegler case;
- (3) attach a document to the body container that clearly states where the body is being transported to, that the body is being transported to a forensic anthropology program, that during transportation the body is under the jurisdiction of the Commission of Anatomy, and that the Chairman of the Commission of Anatomy, or his or her delegate, should be contacted at (919) 966-1134 or 966-4131 if any problems arise during transportation;
- (4) keep records of the dates of transportation of the body and the names of the transporters;
- (5) obtain all necessary documents, to be maintained in a permanent record, including but not limited to the notification of death, the death certificate, the burial transit permit, and copies of the bequeathal or donation forms;
- (6) provide a quarterly report to the Chairman of the Commission of Anatomy containing the name, sex, age, and date of death of the deceased and the identifying number assigned to the skeletal remains by the commission for all bodies received by the program; and
- (7) follow all other applicable Rules in this Subchapter.

(e) Forensic Anthropology programs shall pay any costs incurred for storage of a body for a forensic anthropology program that the program later refuses to accept.

(f) Skeletal remains of bodies obtained from the commission may not be sold. If skeletal remains reach a point where they are no longer useful, they will be cremated and buried. Skeletal or cremated remains of bodies obtained from the commission may not be reclaimed by or returned to relatives or other interested parties.

Statutory Authority G.S. 130A-405; 130A-415; 130A-416; 143B-204.

Notice is hereby given in accordance with G.S. 150B-12 that The Division of Mental Health, Mental Retardation and Substance Abuse Services

intends to amend regulations cited as 10 NCAC 14C .1117; 181 .0120.

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

The public hearing will be conducted at 11:00 a.m. on December 3, 1987 at Black Mountain Center, (Mental Retardation Center), Old Highway 70, Black Mountain, NC 28711.

Comment Procedures: Any interested person may present his/her views and comments by oral presentation at the hearing or by submitting a written statement. Persons wishing to make oral presentations should contact: Jan Warren, A.P.A. Coordinator, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 North Salisbury St., Raleigh, North Carolina 27611, (919) 733-7971 by November 15, 1987. The hearing record will remain open for written comments for 30 days from October 15, 1987 through November 15, 1987. Written comments must be sent to the A.P.A. Coordinator at the address specified above by November 15, 1987 and must state the proposed rule or rules to which the comments are addressed. Fiscal information is also available upon request from the same address.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14C - GENERAL RULES

SECTION .1100 - STATE AND FEDERAL FUNDS ADMINISTERED

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

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

- (1) substantially mentally retarded or severely physically disabled persons as defined in 10 NCAC 181 .0120 ~~(95)~~ and ~~(89)~~ except that clients with a primary diagnosis of other than substantial mental retardation or severe physical disability may be eligible for funding provided:

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

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18I - GENERAL REQUIREMENTS

SECTION .0100 - PURPOSE: SCOPE: APPLICABILITY AND DEFINITIONS

.0120 DEFINITIONS

(94) "Substantially Mentally Retarded Person" means for the purpose of ADAP a person who is mentally retarded to the degree of seriously limiting his functional capabilities, whose habilitation or rehabilitation can be expected to extend over a period of time, and including:

- (a) moderately mentally retarded persons;
- (b) severely mentally retarded persons;
- (c) profoundly mentally retarded persons; or
- (d) mentally retarded persons ~~who are found by the Division of Vocational Rehabilitation Services to be ineligible for that agency's services due to with a~~ handicapping condition so severe as to lack the potential for ~~gainful occupation~~ employment at this time, either in a sheltered or competitive setting. In addition, such individuals must have a deficit in self-help, communication, socialization or occupational skills and be recommended by the vocational rehabilitation counselor for consideration of placement in an ADAP.

Statutory Authority G.S. 143B-147.

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; .0105; .0302; .0303.

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

The public hearing will be conducted at 1:30 p.m. on November 16, 1987 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by November 16, 1987 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on each of these proposed rules is available upon written request from the same address.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26H - REIMBURSEMENT PLANS

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

.0102 RATE SETTING METHODS

(e) Each out-of-state provider is reimbursed at the lower of the appropriate North Carolina maximum rate or the provider's payment rate as established by the state in which the provider is located. For patients with special needs who must be placed in specialized out-of-state facilities, a payment rate that exceeds the North Carolina maximum rate may be negotiated.

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

.0105 RETURN ON EQUITY

(b) The rate of return shall be 11.875 percent, equal the lower of 11.875 percent or the interest rate for the return on equity paid to Skilled Nursing Facilities by the Medicare Program for the appropriate cost reporting period.

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

SECTION .0300 - ICF-MR PROSPECTIVE RATE
PLAN

.0302 ALLOWABLE COST FINDING:
REPORTING AND VERIFICATION

(c) Providers, with the prior approval of the Division of Medical Assistance, may file joint or combined cost reports for multiple facilities if those facilities are under common ownership or control, operate as a reasonably coherent unit (e.g., share staff or other resources), share a common management and accounting structure (e.g., single home office), and are in reasonably close geographic proximity. The Division of Medical Assistance shall assign a single common per diem rate to all the facilities in each group that files a single combined cost report.

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

.0303 METHODS AND STANDARDS
FOR DETERMINING RATES

(c) The base year per diem rate for each provider will be inflated from the base year to the year in which the rate will apply using inflation factors for each intervening year computed as follows:

(2) Inflation rates for each category will be established using official estimates of inflation provided by the North Carolina

Office of Budget and Management for the year in which the rate shall apply.

(C) Capital cost shall not be inflated. The annual capital cost or lease expense shall be limited to the sum of (c) (2) (D) (i) and (ii) as follows:

(i) The annual depreciation on plant and equipment that would be computed on assets equal to twenty-five thousand dollars (\$25,000) per bed during the fiscal year 1982-83 adjusted for changes in the Dodge Building Cost Index of North Carolina cities for each year since 1982-83. This amount is computed using the straight-line method of depreciation and the useful life standards established by the American Hospital Association.

(ii) An interest allowance equal to 10 percent of the maximum allowed historical cost used to compute the annual depreciation in (c) (2) (D) (i) of this Rule.

(iii) This capital/lease limit does not apply to leases in effect prior to August 3, 1983.

(iv) The State may waive this capital/lease limit for group homes established pursuant to the provisions of Chapter 858 of the 1983 Session laws provided that the per diem rate of any such group home does not exceed the per diem of the institution from which certified beds are transferred.

(f) New providers are those that have not filed a cost report in the base year covering at least one full year of normal operations. These providers shall have a rate established by the Division of Medical Assistance using budgeted data. This rate for a new facility shall not exceed the median rate for all existing facilities. A new provider shall have a negotiated rate based upon the provider's proposed budget. This rate for a new facility shall not exceed the maximum rate being allowed to existing facilities or any other limit established in state law. The rate shall be rebased to the actual cost incurred in the first full year of normal operations in the first year after audited data for that first year of normal operations is completed.

(h) Start-up costs are cost incurred by an ICF-MR provider while preparing to provide services. It includes the cost incurred by providers to provide services at the level necessary to obtain certification less any revenue or grants related to start-up. The North Carolina Medicaid Program will reimburse these start-up costs up to a maximum equal to the facility's rate times

its beds times 90 days. This reimbursement will be made in addition to the facility's per diem rate. The amount shall be payable upon receipt of a special start-up cost report. This report should be filed within 15 months of the certification date. No advance of start-up funds shall be made prior to the desk audit of the start-up cost report.

(i) The annual capital cost or lease expense shall be limited to the sum of (1) and (2) as follows:

- (1) The annual depreciation on plant and fixed equipment that would be computed on assets equal to thirty thousand dollars (\$30,000) per bed during the fiscal year 1982-83 adjusted for changes in the Dodge Building Cost Index of North Carolina cities for each year since 1982-83. This amount is computed using the straight-line method of depreciation and the useful life standards established by the American Hospital Association.
- (2) An interest allowance equal to ten percent of the maximum allowed historical cost used to compute the annual depreciation on plant and fixed equipment.
- (3) This capital lease limit does not apply to leases in effect prior to August 3, 1983.
- (4) The limitation on capital costs shall not be applied to facilities with fewer than 21 certified beds.

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

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend regulation cited as 15 NCAC 7H .0506.

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

The public hearing will be conducted at 7:30 p.m. on December 3, 1987 at Cape Hatteras School, Buxton, 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 state-

ment 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

.0506 COASTAL COMPLEX NATURAL AREA

(d) Designation. The Coastal Resources Commission hereby designates Buxton Woods as a coastal complex natural area of environmental concern. Buxton Woods is one of the largest remaining examples of a true maritime forest in the southeastern United States and the largest in North Carolina. The area is located on Hatteras Island, 45 miles south of Manteo, between the villages of Buxton and Frisco, and includes approximately 2,500 acres of dense maritime forest and relict dune-swale system. These topographical features, combined with historical land use patterns and geographic isolation have resulted in a unique island habitat containing unusual biotic diversity. Buxton Woods hosts a number of significantly rare plant and animal species, as well as outstanding ecological, geological, and cultural resources of state and national significance. Buxton Woods also serves as a recharge area for the only major source of freshwater on Hatteras Island, and the only aquifer capable of supplying the freshwater needs of the area.

Development in the Buxton Woods AEC shall be consistent with the use standards set out in Paragraph (e) of this Rule:

(e) Use Standards. Buxton Woods.

- (1) Permanent structures shall be permitted as follows: On lots platted on or before June 4, 1987, no more than one commercial or residential unit shall be permitted per platted subdivision lot; development and associated clearing on such lots shall not exceed 35 percent of the total lot area. On lots subdivided or created and platted after June 4, 1987, no more than one commercial or residential unit shall be permitted per 80,000 square feet of land area; development and associated clearing on such lots shall not exceed 35 percent of the total lot area. Tracts of land that exceed 160,000 square feet in land area may be developed at a density of one unit

- per 40,000 square feet of land area so long as the development is clustered in such a way that the maximum amount of contiguous land area remains undisturbed and development and associated clearing does not exceed 20 percent of the total land area.
- (2) The clearing of land to provide access to building sites shall be minimized, including the clearing of the forest understory. Private access streets shall have a maximum width of 40 feet including land cleared for shoulders and right-of-ways. All streets shall follow the natural contours of the land insofar as possible and shall not be constructed at angles perpendicular to the predominant northeast-southwest storm wind direction. Curbs and gutters shall not be installed.
 - (3) Trees shall not be removed except as necessary for the safe construction of the structure, parking area, accessway, and septic system. To the extent possible, remaining trees should be tied back to protect them during construction. Native shrubs, plants, leaf litter, mulch, topsoil, and similar understory materials should remain undisturbed. Pedestrian walkways needed to gain access to buildings are allowed within the undisturbed area if designed so as to leave the overhead canopy unbroken.
 - (4) No structure, paved area, or any part of a ground absorption sewage disposal system shall be located within 50 feet of any marsh, stream, pond, or wetland swale.
 - (5) Roof lines shall not extend more than 35 feet above construction grade in order to protect the shape and profile of the forest canopy.
 - (6) The filling or dredging of marshes, streams, ponds, or wetland swales is prohibited. Minor road crossing fills for property access are allowed only as authorized under the Corps of Engineers nationwide permit [33 CFR 330.5(a)(14)].
 - (7) The artificial lowering of the water table for purposes not associated with domestic or commercial uses of freshwater is prohibited.
 - (8) Natural contours shall be maintained to the extent possible and shall be disturbed only as necessary for the structure, parking area, accessway, and septic system. Building on pilings is recommended if the levelling of natural contours would otherwise be necessary for standard foundations.

- (9) Parking areas should be located under the structure where possible.
- (10) Septic systems and other utilities should be located, when possible, at the edges of areas cleared for access and building purposes. Alternative septic systems are available which can be effectively located within forested areas without excessive clearing, and are recommended.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to repeal regulations cited as 15 NCAC 10A .0201; .0204; .0209; .0301; .0302; 10B .0110; .0112; .0407; .0408; 10C .0101 - .0105; .0202; .0204; .0207; .0210; .0303; .0403; 10D .0001; 10F .0101; .0108; 10G .0101; .0104; .0105; .0201; .0204; .0205; .0301; .0304; .0305; .0306; 10H .0107; .0401; .0402; .0408; .0702; .0709; .0902; .1001.

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

The public hearing will be conducted at 10:00 a.m. on November 18, 1987 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The record of hearing will be open for receipt of written comments from October 16, 1987, to 5:00 p.m. on November 16, 1987. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10A - WILDLIFE RESOURCES COMMISSION

SECTION .0200 - ORGANIZATION AND PROCEDURE

.0201 ACTION BY COMMISSION (REPEALED)

Statutory Authority G.S. 143-243.

.0204 COMMITTEES (REPEALED)

Statutory Authority G.S. 75A-3; 143-243.

.0209 ENFORCEMENT JURISDICTION OF SPECIAL OFFICERS (REPEALED)

Statutory Authority G.S. 113-129; 113-132; 113-134.

Statutory Authority G.S. 113-134; 113-138; 113-305.

SECTION .0300 - ANNUAL REGULATIONS PROCEDURE

.0103 COASTAL FISHING WATERS (REPEALED)

Statutory Authority G.S. 113-129; 113-132; 113-134; 113-292.

.0301 NECESSITY FOR ANNUAL REGULATIONS (REPEALED)

.0104 JOINT FISHING WATERS (REPEALED)

Statutory Authority G.S. 113-291.2; 113-291.7; 113-301.1; 113-307; 143-239.

Statutory Authority G.S. 113-132; 113-134; 113-292.

.0302 POLICY CONSIDERATIONS (REPEALED)

.0105 POSTING DIVIDING LINES (REPEALED)

Statutory Authority G.S. 113-131; 113-132; 113-273; 113-291.2; 113-301.1.

Statutory Authority G.S. 113-132; 113-134.

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0200 - GENERAL REGULATIONS

SECTION .0100 - GENERAL REGULATIONS

.0202 FISHING LICENSE REQUIREMENTS (REPEALED)

.0110 IDENTIFICATION AND ATTENDANCE OF TRAPS (REPEALED)

Statutory Authority G.S. 113-132; 113-134.

Statutory Authority G.S. 113-134; 113-291.6.

.0204 DRAINING IMPOUNDED PUBLIC WATERS (REPEALED)

.0112 BEAVER (REPEALED)

Statutory Authority G.S. 113-134; 113-274.

Statutory Authority G.S. 113-134; 113-291.1.

.0207 GRABBLING FOR FISH (REPEALED)

SECTION .0400 - TAGGING FURS

Statutory Authority G.S. 113-134; 113-292.

.0407 REVOCATION AND NONRENEWAL OF LICENSES (REPEALED)

.0210 FISH TAKEN ILLEGALLY OR FOR MANAGEMENT PURPOSES (REPEALED)

Statutory Authority G.S. 113-134; 113-276.2; 113-276.3; 113-277.

Statutory Authority G.S. 113-134; 113-137.

.0408 FOX DEALER PERMIT (REPEALED)

SECTION .0300 - GAME FISH

Statutory Authority G.S. 113-134; 113-274; 113-291.3; 113-291.4.

.0303 PURCHASE AND SALE OF INLAND GAME FISH (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-292; 113-302.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0400 - NONGAME FISH

SECTION .0100 - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

.0403 TAKING NONGAME FISH BY SPECIAL DEVICES (REPEALED)

.0101 SCOPE AND PURPOSE (REPEALED)

Statutory Authority G.S. 113-132; 113-134; 113-136.

Statutory Authority G.S. 113-134; 113-272.3; 113-276; 113-292.

.0102 INLAND FISHING WATERS (REPEALED)

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0001 DESIGNATION OF GAME LANDS

(REPEALED)

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-305; 113-306.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0100 - MOTORBOAT REGISTRATION

.0101 MOTORBOAT IDENTIFICATION (REPEALED)

Statutory Authority G.S. 75A-3.

.0108 RECIPROCITY (REPEALED)

Statutory Authority G.S. 75A-3; 75A-5.

SUBCHAPTER 10G - DISTRIBUTION AND SALE OF HUNTING, FISHING, AND TRAPPING LICENSE

SECTION .0100 - LICENSE AGENTS

.0101 APPOINTMENT OF LICENSE AGENTS (REPEALED)

Statutory Authority G.S. 113-134; 113-270.1.

.0104 LICENSE HANDLING PROCEDURE (REPEALED)

Statutory Authority G.S. 113-134; 113-270.1; 113-270.3; 113-275; 113-305.

.0105 CREDIT FOR LICENSE LOSSES (REPEALED)

Statutory Authority G.S. 113-134; 113-270.1.

SECTION .0200 - BOAT REGISTRATION AGENTS

.0201 APPOINTMENT OF AGENTS (REPEALED)

Statutory Authority G.S. 75A-3; 75A-5.

.0204 BOAT REGISTRATION PROCEDURE (REPEALED)

.0205 CREDIT FOR VALIDATION DECALS LOST (REPEALED)

Statutory Authority G.S. 75A-3; 75A-5.

SECTION .0300 - FUR TAG AGENTS

.0301 APPOINTMENT OF AGENTS (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-276.1; 113-291.3; 113-305.

.0304 FUR TAG DISTRIBUTION PROCEDURE (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-276.1.

.0305 CREDIT FOR FUR TAG LOSSES (REPEALED)

.0306 TERMINATION OF AGENCY (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-276.1; 113-291.3.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0100 - CONTROLLED SHOOTING PRESERVES

.0107 REVOCATION OF LICENSE TO OPERATE (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-276.2.

SECTION .0400 - COMMERCIAL TROUT PONDS

.0401 LICENSE REQUIRED (REPEALED)

.0402 APPLICATION FOR LICENSE: TERM (REPEALED)

Statutory Authority G.S. 113-134; 113-273.

.0408 REVOCATION OF LICENSE (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-276.2.

SECTION .0700 - FISH PROPAGATION

.0702 APPLICATION FOR AND TERM OF LICENSE (REPEALED)

Statutory Authority G.S. 113-134; 113-173.

.0709 REVOCATION AND NONRENEWAL OF LICENSE (REPEALED)

Statutory Authority G.S. 113-134; 113-273; 113-276.2.

SECTION .0900 - GAME BIRD PROPAGATORS

.0902 APPLICATION FOR AND TERM OF LICENSE (REPEALED)

Statutory Authority G.S. 113-134; 113-273.

SECTION .1000 - TAXIDERMY

.1001 TAXIDERMY LICENSE (REPEALED)

Statutory Authority G.S. 113-134; 113-273.

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulations cited as 15 NCAC 10B .0106; .0202; .0203; .0403; 10C .0205; 10D .0002; .0003; 10F .0102; .0103; .0104; 10H .0101; .0301; .0302; .0706; .0809; .0901.

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

The public hearing will be conducted at 10:00 a.m. on November 18, 1987 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. The record of hearing will be open for receipt of written comments from the 16th of October to 5:00 p.m. on November 16, 1987. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27611.

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0106 WILDLIFE KILLED FOR DEPREDATIONS OR ACCIDENTALLY

(e) Reporting Requirements. The killing and method of disposition of every game animal and game bird, every furbearing animal, and every nongame animal or nongame bird for which there is no open season, when killed for committing depredations to property, either with or without a permit, shall be reported to the Wildlife Resources Commission within five working days following the date of such killing, except that when the carcass or pelt of a fox, killed under a depredation permit, or of a furbearing animal, killed with or without a permit, is lawfully sold to a licensed fur dealer in this State the fur dealer is required to report the source of acquisition and no report is required of the seller. ~~When wildlife is killed accidentally by motor vehicle or otherwise, no report is required except for bear, deer, fox and wild turkey, the killing of which shall be reported to the Commission within five working~~

~~days. There are no reporting requirements for nongame animals or nongame birds for which there is an open season when killed either accidentally or for control of depredations to property.~~

Statutory Authority G.S. 113-134; 113-273; 113-274; 113-291.4; 113-291.6; 113-300.1; 113-300.2.

SECTION .0200 - HUNTING

.0202 BEAR

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke and Caldwell Counties--Daniel Boone bear sanctuary
Beaufort, Bertie and Washington Counties--Bachelor Bay bear sanctuary
Beaufort and Craven Counties--Big Pocosin bear sanctuary
~~Beaufort and Martin Counties--J and W bear sanctuary~~
Beaufort and Pamlico Counties--Gum Swamp bear sanctuary
Bladen County--Suggs Mill Pond bear sanctuary
Brunswick County--Green Swamp bear sanctuary
Buncombe, Haywood, Henderson and Transylvania Counties--Pisgah bear sanctuary
~~Carteret County--Lukens Island bear sanctuary~~
Carteret, Craven and Jones Counties--Croatan bear sanctuary
Clay County--Fires Creek bear sanctuary
Currituck County--North River bear sanctuary
Dare County--Bombing Range bear sanctuary
Haywood County--Harmon Den bear sanctuary
Haywood County--Sherwood bear sanctuary
Hyde County--Gull Rock bear sanctuary
Hyde County--Pungo River bear sanctuary
~~Hyde County--Scranton bear sanctuary~~
Jones and Onslow Counties--Hofmann bear sanctuary
Macon County--Standing Indian bear sanctuary
Macon County--Wayah bear sanctuary
Madison County--Rich Mountain bear sanctuary
McDowell and Yancey Counties--Mt. Mitchell bear sanctuary
Mitchell and Yancey Counties--Flat Top bear sanctuary

Pasquotank and Perquimans Counties--Dis-
mal Swamp bear sanctuary
Tyrrell and Hyde Counties--Hollow Ground
Swamp bear sanctuary
Washington County--Bull Bay bear sanctuary
Wilkes County--Thurmond Chatham bear
sanctuary

*Statutory Authority G.S. 113-134; 113-291.2;
113-291.7; 113-305.*

.0203 DEER (WHITE-TAILED)

(c) Bag Limits

- (1) Male Deer With Visible Antlers. Daily, two; possession, two; season, four.
- (2) Antlerless Deer. Where antlerless deer may be lawfully taken, a maximum of two antlerless deer may be substituted for an equal number of antlered deer in the limits contained in Subparagraph (1) of this Paragraph, and one additional antlerless deer is permitted without substitution when taken during ~~an~~ a gun either-sex season in a county or part of county included in Part (A) of Subparagraph (b)(1) of this Rule. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin.
- (3) Managed Game Land Hunts. Excluded from the possession and season limits set forth in Subparagraphs (1) and (2) of this Paragraph are deer of either sex taken by permittees engaged in managed hunts conducted on game lands in accordance with 15 NCAC 10D .0003(d)(4) and (5), such deer being in addition to the specific possession and season limits set out in this Paragraph.

*Statutory Authority G.S. 113-134; 113-270.3;
113-276.1; 113-291.1; 113-291.2.*

SECTION .0400 - TAGGING FURS

.0403 APPLICATION FOR TAGS

(c) The list of furbearing animals contained in Paragraph (c) of this Rule, and the fees charged for the tags for each are subject to revision from time to time, as may be deemed appropriate and equitable, by the Wildlife Resources Commission. Prior to making any such change, the Commission will collect and analyze data obtained from the records and reports of licensed fur dealers and other available sources to determine the number of each species taken and the prices received by hunters and trappers for raw furs, consider the market price and demand for

pelts in terms of potential adverse affect on the status of each species, and propose the changes at the annual public hearings conducted in promulgation of the hunting and trapping regulations for the succeeding season.

*Statutory Authority G.S. 113-134; 113-273;
113-276.1; 113-291.4.*

**SUBCHAPTER 10C - INLAND FISHING
REGULATIONS**

SECTION .0200 - GENERAL REGULATIONS

.0205 PUBLIC MOUNTAIN TROUT WATERS

(b) Revocation of Designation. In any case where designated public mountain trout waters are located on or adjacent to private land and the owner or person in charge thereof subsequently restricts or prohibits public access thereto, or where any body of water or portion thereof previously so designated becomes totally unsuitable as such by reason of changed conditions, the designation of such waters as public mountain trout waters shall be automatically revoked and a notice of such revocation shall be filed with the clerk of the superior court in the county wherein such waters are located. The Executive Director shall thereupon cause the posters indicating such designation to be removed.

(c) (b) Fishing in Trout Waters

- (1) General Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed season for trout fishing. The seasons, size limits, and creel and possession limits on trout apply in all waters whether designated or not as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line.
- (2) Native Trout Waters. Fishing in native trout waters designated in Subparagraph (2) of Paragraph (a) of this Rule is subject to the same restrictions as are applied to native trout waters located on game lands by 15 NCAC 10D .0004(b)(1) as to fishing hours and 15 NCAC 10D .0004(b)(4) as to seasons, creel and size limits, and manner of taking.

*Statutory Authority G.S. 113-134; 113-272;
113-292.*

**SUBCHAPTER 10D - GAME LANDS
REGULATIONS**

.0002 GENERAL REGULATIONS REGARDING USE

(f) Trapping. Subject to the restrictions contained in 15 NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land; ~~and the area adjoining the field trial course on the north which is bounded on the east by SR 1003, on the north by Naked Creek and on the west by A-6 Lane;~~
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the ~~Butner Game Land~~ Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on a road or trail posted against vehicular traffic or ~~except on U.S. Forest Service lands~~ other than on roads maintained for vehicular use on any game land; provided that this provision shall not apply to participants in scheduled bird dog field trials held on the Sandhills Game Land.

Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

.0003 HUNTING ON GAME LANDS

(c) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates. On ~~Butner, Falls of Neuse, Butner-Falls of Neuse, New Hope and Shearon Harris Game Lands~~ waterfowl hunting is limited to the period from one-half hour before sunrise to 1:00 p.m.

on the open hunting days. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods. No person shall use an electronic calling device for the purpose of attracting wild birds or wild animals.

No live wild animals or wild birds shall be removed from any game land.

(d) Hunting Dates

- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Years Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land
Beaufort and Craven Counties--Big Pocosin Game Land (Dogs may not be trained or used in hunting from March 2 to August 31. Trapping is controlled by the landowner.)

Bertie County--Bertie County Game Lands
Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breece Tract and the Singletary Tract deer and bear may be taken only by still hunting.)

Cabarrus County--River View Acres Game Land

Caswell County--Caswell Game Land (That part designated and posted as a "safety zone" is closed to all hunting and trapping, and entry upon such area for any purpose, except by authorized personnel in the performance of their duties, is prohibited. On areas posted as "restricted zones" hunting is limited to bow and arrow.)

Catawba, Lincoln, Gaston and Iredell
Counties--Catawba Game Land

Lenoir County--H.M. Bizzell, Sr., Game Land

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Robeson County--Keith Farm Game Land (No deer may be taken.)

Stokes County--Sauratown Plantation Game Land

Yadkin County--Huntsville Community Farms Game Land

(3) Any game may be taken on the following game lands during the open season, except that:

(A) Bears may not be taken on lands designated and posted as bear sanctuaries;

(B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons and the regular gun season on male deer on bear sanctuaries located in and west of the counties of Madison, Buncombe, Henderson and Polk;

(C) On game lands located in or west of the Counties of Rockingham, Guilford, Randolph, Montgomery and Anson, dogs may not be used for any hunting (day or night) during the regular season for hunting deer with guns; except that small game may be hunted with dogs in season on all game lands, other than bear sanctuaries, in the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk and Swain;

(D) On Croatan, Goose Creek, New Hope and Shearon Harris Game Lands waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Years Days; and on the opening and closing days of the applicable waterfowl seasons; except that outside the posted waterfowl impoundments on Goose Creek Game Land hunting any waterfowl in season is permitted any week day during the last 10 days of the regular duck season as established by the U.S. Fish and Wildlife Service;

(E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Years Days; and the opening and closing days of the applicable waterfowl seasons;

(F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and October 11;

(G) Additional restrictions apply as indicated in parentheses following specific designations; and

(H) On ~~Butner, Falls~~ Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Years Days, and on the opening and closing days of the applicable waterfowl seasons.

Alexander and Caldwell Counties--Brushy Mountains Game Lands

Anson County--Anson Game Land

Ashe County--Bluff Mountain Game Lands

Ashe County--Cherokee Game Lands

Ashe and Watauga Counties--Elk Knob Game Land

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are

- closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to October 11 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)
- Beaufort, Bertie and Washington Counties--Bachelor Bay Game Lands
- Beaufort and Pamlico Counties--Goose Creek Game Land
- Brunswick County--Green Swamp Game Land
- Burke County--South Mountains Game Lands
- Burke, McDowell and Rutherford Counties--Dysartsville Game Lands
- Caldwell County--Yadkin Game Land
- ~~Carteret County--Lukens Island Game Land~~
- Carteret, Craven and Jones Counties--Croatian Game Lands
- Chatham County--Chatham Game Land
- Chatham and Wake Counties--New Hope Game Lands
- Chatham and Wake Counties--Shearon Harris Game Land
- Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands (Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to October 11. It is unlawful to train dogs or allow dogs to run unleashed on Fires Creek Bear Sanctuary at any time, except that dogs may be used when hunting raccoon or opossum and for hunting grouse and rabbits during the open seasons. It is unlawful to train dogs or allow dogs to run unleashed on any game land in Graham County between March 1 and October 11.)
- Chowan County--Chowan Game Land
- Cleveland County--Gardner-Webb Game Land
- Craven County--Neuse River Game Land
- Craven County--Tuscarora Game Land
- Currituck County--North River Game Land
- Currituck County--Northwest River Marsh Game Land
- Dare County--Dare Game Land (No hunting on posted parts of bombing range.)
- Davidson, Davie and Rowan Counties--Alcoa Game Land
- Davidson County--Linwood Game Land
- Davidson, Montgomery, Randolph and Stanly Counties--Uwharrie Game Land
- Duplin and Pender Counties--Angola Bay Game Land
- Durham, ~~and~~ Granville and Wake Counties--~~Butner Game Land~~ Butner-Falls of Neuse Game Lands (On that portion posted as the National Guard Rifle Range hunting and trapping is prohibited except during the following period: The second Monday before Thanksgiving to January 1. On portions of the ~~Butner Game Land~~ Butner-Falls of Neuse Game Lands designated and posted as "safety zones" and on that part marked as the Penny Bend Rabbit Research Area no hunting is permitted. On portions posted as "restricted zones" hunting is limited to bow and arrow during the bow and arrow season and the regular gun season for deer.)
- ~~Durham, Granville and Wake Counties--Falls of Neuse Game Lands~~
- Franklin County--Franklin Game Lands
- Gates County--Chowan Swamp Game Land
- Granville County--Granville Game Lands
- Halifax County--Halifax Game Land
- Harnett County--Harnett Game Land
- Henderson, Polk and Rutherford Counties--Green River Game Lands
- Hyde County--Gull Rock Game Land
- Hyde County--Pungo River Game Land
- Hyde and Tyrrell Counties--New Lake Game Land
- ~~Johnston County--Johnston Game Land~~
- Jones and Onslow Counties--Hofmann Forest Game Land
- Lee County--Lee Game Land
- McDowell County--Hickory Nut Mountain Game Land
- Moore County--Moore Game Land
- New Hanover County--Catfish Lake Game Land
- Northampton County--Northampton Game Land
- Orange County--Orange Game Land
- Person County--Person Game Land
- Richmond County--Richmond Game Land
- Transylvania County--Toxaway Game Land
- ~~Tyrrell County--Alligator Creek Game Land~~
- Vance County--Vance Game Land
- ~~Wake County--Wake Game Land~~
- Warren County--Warren Game Lands
- ~~Washington County--Scuppernong Game Land~~

Wilkes County--Thurmond Chatham Game Land

Authority G.S. 75A-3; 75A-5; 75A-7; 75A-19; 33 C.F.R. 174.17.

Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0100 - MOTORBOAT REGISTRATION

.0102 APPLICATION FOR CERTIFICATE OF NUMBER

(b) Individual Owners.

(1) ~~An application for a certificate of number, accompanied by a fee of five dollars and fifty cents (\$5.50) for a one-year period or, at the option of the applicant, thirteen dollars (\$13.00) for a three-year period, shall be sent to the address in Subparagraph (a)(5) of this Rule. Applications not containing all of the required information will be returned to the applicant for completion and no certificate of number will be issued until all of the information is supplied.~~

(2) The application shall contain the following information:

- ~~(A)~~ (1) name of owner;
- ~~(B)~~ (2) address of owner, including zip code;
- ~~(C)~~ (3) date of birth of owner;
- ~~(D)~~ (4) citizenship of owner;
- ~~(E)~~ (5) state of principal use of vessel;
- ~~(F)~~ (6) present or previous boat number (if any);
- ~~(G)~~ (7) desired period of registration (one or three years);
- ~~(H)~~ (8) use of vessel (pleasure, livery, demonstration, commercial passenger, commercial fishing, other);
- ~~(I)~~ (9) make of vessel (if known);
- ~~(J)~~ (10) year of manufacture or model year (if known);
- ~~(K)~~ (11) manufacturer's hull identification number (if any);
- ~~(L)~~ (12) overall length of vessel;
- ~~(M)~~ (13) type of vessel (open, cabin, house, other);
- ~~(N)~~ (14) hull material (wood, steel, aluminum, fiberglass, plastic, other);
- ~~(O)~~ (15) type of propulsion (inboard, outboard, inboard-outdrive, sail, and engine make if available);
- ~~(P)~~ (16) type of fuel (gasoline, diesel, other);
- ~~(Q)~~ (17) certification of ownership;
- ~~(R)~~ (18) signature of owner.

.0103 TRANSFER OF OWNERSHIP

(a) Transfer Direct from One Individual Owner to Another Individual Owner

(1) If the ownership of a registered motorboat is changed during the registration period, the owner shall complete the statement of transfer on the reverse side of the certificate of number, date as of the day of the transaction, sign, and deliver to the new owner.

(2) The new owner shall apply for a new certificate of number on an official application form. ~~If the prior registration of the motorboat is still in force, the application, accompanied by a fee of two dollars (\$2.00) in check or money order, shall be sent to the address given above. Upon receipt of a properly completed application and fee, the Wildlife Resources Commission will issue a new certificate of number in the new owner's name valid for the remainder of the current registration period. If the prior registration of the motorboat has expired, this application must be accompanied by a fee of five dollars and fifty cents (\$5.50) or thirteen dollars (\$13.00) depending on the registration period desired. The original number must be retained when a vessel numbered is again registered as a motorboat.~~

(b) Transfer of a Previously-Registered Motorboat Through a Dealer

(1) The owner transferring his motorboat to a dealer during the registration period shall give the certificate of number to the dealer after dating and signing the statement of transfer on the reverse side of the certificate on the day of the transaction.

(2) When the motorboat is sold by the dealer, he shall date and sign the certificate of number on the reverse side on the day of the transaction and deliver it to the new owner.

~~(3) The new owner shall apply for a new certificate of number and enclose a fee of two dollars (\$2.00), five dollars and fifty cents (\$5.50), or thirteen dollars (\$13.00) as appropriate in accordance with the provisions of Subparagraph (2) of Paragraph (a) of this Rule.~~

~~(4) (3) For a period of 30 days following the transfer of ownership of a registered motorboat from or through a dealer to a new owner, the new owner may use the certifi-~~

icate of the prior individual owner as a temporary certificate of number pending receipt of his own certificate; provided:

(A) The certificate is endorsed in accordance with Subparagraphs (1) and (2) of this Paragraph.

(B) The original owner endorsed the certificate to the boat dealer while it was still in force, and

(C) The boat dealer's sale and endorsement occurs while the registration certificate is still in force.

(5) (4) Except as permitted above, a certificate of number may not be used after the expiration of the registration period.

(c) Demonstration and Use of Vessels Held by Dealers

(1) Demonstration of registered motorboats held by dealers for sale may be with the use of the certificate of number endorsed by the original owner so long as the registration is in force. Any dealer or any permittee of a dealer demonstrating a motorboat must utilize a set of dealer's numbers and the corresponding dealer's certificate of number on such vessel after the original certificate of number has expired. The dealer's numbers and certificate of number may, however, be used during demonstrations before the end of the registration period at the option of the dealer. In any event, where a set of dealer's numbers is used upon a previously-numbered vessel, the original numbers must be covered in accordance with Rule .0106(c) of this Section.

(2) Dealers who have bought or otherwise possess motorboats for resale and who wish to operate or lend out such motorboats for more general uses than for demonstration only must have the individual motorboat registrations transferred to their names. This is to be done by making application for transfer of the certificate of number and enclosure of a fee of two dollars (\$2.00), five dollars and fifty cents (\$5.50), or thirteen dollars (\$13.00) as appropriate in accordance with the provisions of Subparagraph (2) of Paragraph (a) of this Rule.

Authority G.S. 75A-3; 75A-5; 75A-19; 33 C.F.R. 174.21.

.0104 CERTIFICATE OF NUMBER

(a) General

(1) Upon receipt of a properly completed application, together with fee, the Wildlife Re-

sources Commission shall issue to the applicant a certificate of number which shall include the following information:

(A) (1) name of owner;

(B) (2) address of owner, including zip code;

(C) (3) state of principal use of vessel;

(D) (4) number awarded to vessel;

(E) (5) expiration date of certificate;

(F) (6) use of vessel (pleasure, livery, demonstration, commercial passenger, commercial fishing, other);

(G) (7) make of vessel (if known);

(H) (8) year of manufacture or model year (if known);

(I) (9) manufacturer's hull identification number (if any);

(J) (10) overall length of vessel;

(K) (11) type of vessel (open, cabin, house, other);

(L) (12) hull material (wood, steel, aluminum, fiberglass, plastic, other);

(M) (13) type of propulsion (inboard, outboard, inboard-outdrive, sail);

(N) (14) type of fuel (gasoline, diesel, other);

(O) (15) notice to owner that he shall report within 15 days changes of address or ownership, and destruction or abandonment of vessel;

(P) (16) notice to the owner that the operator shall:

(i) (A) always carry this certificate on vessel when in use;

(ii) (B) report every accident involving injury or death to persons, or property damage over one hundred dollars (\$100.00);

(iii) (C) stop and render assistance if involved in boating accident.

(2) The certificate of number shall be pocket size (approximately two and one-half inches by three and one-half inches) and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(3) Each certificate of number shall continue in full force and effect to and including the last day of the same month during which the same was awarded after the lapse of one year in the case of a one-year certificate or three years in the case of a three-year certificate. Application for renewal may be made on a form provided by the Wildlife Resources Commission and accompanied by a fee of five dollars and fifty cents (\$5.50) for a one-year period or thirteen dollars (\$13.00) for a three-year period.

- (4) A certificate of number lost or destroyed will be duplicated and replaced by the Wildlife Resources Commission upon submission by the owner of a signed statement indicating the circumstances of such loss or destruction, together with a fee of two dollars (\$2.00). A lost or destroyed validation decal may be replaced in the same manner without charge.
- (5) Certificates of number for motorboats owned by the United States, a state, or a subdivision thereof, may be issued by the Wildlife Resources Commission without payment of a fee upon application in the manner prescribed in these Regulations. The certificate of number issued for any such motorboat shall bear no expiration date, but shall be stamped with the word "permanent" and shall not be renewable so long as the vessel remains the property of the governmental entity. If the ownership of any such motorboat is transferred from one governmental entity to another, a new "permanent" certificate may be issued without charge to the successor governmental entity. When any such motorboat is sold to a private owner or is otherwise transferred to private ownership, the applicable certificate of number shall be deemed to have expired immediately prior to such transfer, and the number affixed on each side of the boat shall be either removed or permanently obscured by paint or in some other effective manner by the transferring agency. Prior to further use on the waters of this State, the new owner shall obtain either a temporary certificate of number or a regular certificate bearing a new number as provided by Rules .0102 or .0103 of this Section, as in the case of original registration. Within 15 days after any transfer of a motorboat numbered under this Subparagraph, the transferring agency shall provide the Motorboat Registration Section of the Wildlife Resources Commission with written notice of the date of transfer and the name and address of the transferee.

Authority G.S. 75A-3; 75A-5; 75A-7; 75A-19; 33 C.F.R. 174.19.

SUBCHAPTER 10H - REGULATED ACTIVITIES

SECTION .0100 - CONTROLLED SHOOTING PRESERVES

.0101 LICENSE TO OPERATE

It is unlawful for any individual, firm, association, or corporation to operate a controlled shooting preserve without first obtaining from the North Carolina Wildlife Resources Commission a license for this purpose. "Controlled shooting preserve" means an area on which only domestically-raised game birds are taken. A controlled shooting preserve license shall entitle the holder or holders thereof, and their guests, to kill or take, during an extended season, starting October 1 and ending March 31, on such preserves by shooting only, and without regard to sex or bag limits, domestically-raised pheasants, chukar partridges, Hungarian partridges, domestic ducks (as defined by the United States Bureau of Sport Fisheries and Wildlife), or other game birds, except wild turkey. Application for controlled shooting preserve licenses shall be made on standard forms obtainable from the commission. Applicants must be prepared to show satisfactory proof of ownership of the land contained in the proposed shooting preserve or that they have this land under proper lease for the duration of the license period. Upon receipt of an application accompanied by a fee of fifty dollars (\$50.00), the commission shall issue a license, provided it is determined that the location and operation of such a shooting preserve is consistent with the wildlife conservation program and in the public interest; and further provided, that all regulations herein regarding establishment of such areas have been complied with. Controlled shooting preserve licenses shall not be transferable, either as to operator or as to site of operation.

Statutory Authority G.S. 113-134; 113-273.

SECTION .0300 - HOLDING WILDLIFE IN CAPTIVITY

.0301 GENERAL REQUIREMENTS

(a) Captivity Permit

- (1) Requirement. The possession of any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a captivity permit or a captivity license as required by this Rule.
- (2) Injured or Crippled Wildlife. Notwithstanding the preceding Subparagraph (1), a crippled or injured wild animal or wild bird may be taken and kept in possession

for no longer than five days, provided that during such five-day period the individual in possession thereof shall apply to the Wildlife Resources Commission, or a wildlife enforcement officer of the Commission, for a captivity permit.

- (3) **Application and Term.** A captivity permit will be issued without charge and may be issued upon informal request by mail, telephone, or other means of communication; but such permit shall authorize possession of the animal or bird only for such period of time as may be required to obtain a captivity license as provided by Paragraph (b) of this Rule, if such a license is desired and is issued, or to make a proper disposition of the animal or bird, as determined by the Executive Director, if such license is not desired or for any reason is denied, or when an existing captivity license is not renewed or is terminated.
- (4) **Conditions of Captivity.** A holder of a captivity permit issued under this Paragraph is not required to meet the minimum standards required by Rule .0302 of this Section of holders of a captivity license issued under Paragraph (b) of this Rule, but the captivity permit must specify appropriate conditions to provide sanitary and humane treatment of the animal or bird.
- (5) **Fish.** Notwithstanding the limitations contained in Subparagraph (3) of this Paragraph, permits may be issued to hold native species of fish in captivity indefinitely or, in the discretion of the Executive Director, such permits may be renewable periodically, at least once in each three years, to provide review of the conditions under which such fish are kept.
- (b) **Captivity License**
 - (1) **Requirement.** Except as provided in Paragraph (a) of this Rule, no person shall keep any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being either native or migratory, without first having obtained from the Wildlife Resources Commission a license to hold the particular species of animal or bird in captivity. Each species of animal or bird shall be the subject of a separate license authorizing the holding of one or more of the species at a location specified in the license.

- (2) **Required Facilities.** No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity which shall comply with the minimum standards set forth in Rule .0302 of this Section, and the adequacy of such facility has been verified on inspection by a representative of the Commission.

- (3) **Application for License.** ~~Application for a captivity license shall be made on a form obtainable from the Wildlife Resources Commission, shall contain the information required by the form, and shall be accompanied by a license fee in the amount of five dollars (\$5.00); provided that the license may be issued without charge to publicly financed zoos, scientific and biological research facilities, and institutions of higher education.~~

- (4) **Issue or Denial of License.** If the Executive Director determines that the application was made in good faith, that the applicant has not been subject to a denial, suspension, or revocation of a license or permit of a type described in G.S. 113-276.2(a) within the preceding two years, that the applicant's holding facility is in compliance with the minimum standards set forth in Rule .0302 of this Section, that the animal or bird which is the subject of the application has not been acquired unlawfully or merely as a pet, and that no other just cause for denial of the license exists, he shall issue to the applicant a captivity license authorizing retention of the animal or bird concerned. If the Executive Director finds that the application was made in good faith but the license is denied for other cause, any license fee tendered with the application shall be refunded.

- (5) (3) **Term of License**

- (A) **Dependent Wildlife.** When the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
- (B) **Rehabilitable Wildlife.** When the wild animal or wild bird is temporarily incapacitated and may be rehabilitated for release to the wild, the captivity license may be issued for such period less than one year as such rehabilitation may require.
- (C) **Concurrent Federal Permit.** No State captivity license for an endangered or

threatened species or a migratory bird shall be operative to authorize retention thereof for a longer period than is allowed by any concurrent federal permit for its retention.

Statutory Authority G.S. 113-134; 113-272.5; 113-274.

0302 MINIMUM STANDARDS

(a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education shall be exempt from all of the minimum standards put forth in this Rule for all birds and animals except the black bear. The following are deemed the minimum standards for holding the species indicated in captivity by all other licensees.

(b) ~~Permit to Hold Deer in Captivity~~

(1) Enclosure. The enclosure shall be on a well-drained site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded by a sturdy fence at least 10 feet high, dog-proof to a height of at least six feet. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each deer must be provided. This building shall be closed on three sides and provided with a wooden floor. It shall be constructed at least 10 feet from the fence.

(2) Sanitation and Care. Permittees shall provide an ample supply of clear water and salt at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. Straw and leaf litter, replenished every week, shall be used as a floor covering in the shelter. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal must be protected against fright. Domestic livestock and dogs shall be excluded from the enclosure.

(c) ~~Permit to Hold Wild Boars in Captivity~~

(1) Enclosure. The enclosure shall be on a site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded

by a sturdy fence at least five feet high. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each boar must be provided. This building shall be closed on three sides and provided with a wooden or concrete floor. A pool of water for wallowing or a sprinkler system shall be provided on hot days.

(2) Sanitation and Care. Permittees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

(d) ~~Permit to Hold Wild Birds in Captivity~~

(1) Enclosure. The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from excessive sun, weather, and predation shall also be provided.

(2) Sanitation and Care. The cage shall be kept clean, dry, and free from molded or damp feed. Ample food and clean water shall be available at all times.

(e) ~~Permit to Hold Alligators in Captivity~~

(1) Enclosure. The enclosure shall be surrounded by a sturdy fence so as to prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions being at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

(2) Sanitation and Care. The water area must be kept clean and adequate food provided. Protection shall be provided at all times from extremes in temperature.

(f) ~~Permit to Hold Black Bear in Captivity~~

(1) Educational Institutions and Zoos Operated or Established by Governmental Agencies

(A) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12

feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.

(B) Sanitation and Care. Adequate food shall be provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.

(2) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos must be held without caging under conditions simulating a natural habitat approved by the Wildlife Resources Commission. For a holding facility to be deemed in simulation of a natural habitat, the following conditions must exist:

(A) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.

(B) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear, and bears are free, under normal conditions, to move throughout such area.

(C) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.

(D) The area of confinement contains a pool not less than one and one-half feet deep and not less than four by five feet in size.

(E) Provision is made for a den for each bear to which the bear may retire for rest, shelter from the elements, or respite from public observation.

(F) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.

(G) Provisions are made for adequate food and water and for maintenance of sanitation.

(H) No circumstance exists which is calculated to avoid, circumvent, defeat or subvert the purpose of the law or these regulations.

(I) The applicant demonstrates by satisfactory evidence that he owns or has long-term control of the real property upon which the holding facility is located.

(g) ~~Permit to Hold~~ Other Wild Animals in Captivity

(1) Enclosure. The enclosure must provide protection from excessive sun, weather and free-ranging animals. A den area in which the animal can escape from view and large enough for the animal to turn around and lie down must be provided for each animal within the enclosure. No tethers or chains will be used to restrain the animal. Either a tree limb, exercise device, or shelf large enough to accommodate the animal must be provided to allow for exercise and climbing.

The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Animal

Cougar
Bobcat, Otter
Raccoon, Fox, Woodchuck
Opossum, Skunk, Rabbit
Squirrel

Dimensions in Feet

<u>Length</u>	<u>Width</u>	<u>Height</u>
18	9	9
10	5	5
8	4	4

6	3	3
4	2	2
Square Foot		
<u>Per Animal</u>		
162		
50		
32		
18		
8		

For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.

For multiple animal enclosures, the minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.

The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures must be met.

- (2) Sanitation and Care. Fresh food shall be provided daily, and clean water shall be available at all times. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

Statutory Authority G.S. 19A-11; 113-134; 113-272.5.

SECTION .0700 - FISH PROPAGATION

.0706 INSPECTION OF FACILITIES

(a) Inspection. Agents of the Wildlife Resources Commission are authorized to make periodic inspection of the facilities and stock of each operation licensed under this Section and located within the state. Every person engaged in the business of fish propagation shall permit such inspection at any reasonable time. Within the limits of personnel available for the purpose, the Wildlife Resources Commission shall respond to requests of licensed fish propagators for inspection of their facilities and stock and for

technical advice directed toward improvement of their operations and compliance with these regulations.

Statutory Authority G.S. 113-134; 113-273.

SECTION .0800 - FALCONRY

.0809 MARKING

(a) ~~Inventory.~~ Within 90 days following the effective date of this Section every person holding a raptor or raptors within this state, except those held for scientific, zoological purposes, or rehabilitation purposes as provided for through federal permit, shall submit to the commission an inventory with descriptions of all raptors in his possession, whether or not such person intends to apply for a falconry permit.

(b) (a) Markers. Each raptor held within this state, other than those held for scientific, zoological purposes, or rehabilitation purposes as provided for through federal permit, shall be affixed with a numbered, non-reusable marker supplied by the commission. After the effective date of this Section, before any unmarked raptor is acquired in this state, an appropriate marker must be first acquired and attached to the raptor immediately upon acquisition. A written application is required to obtain any such marker. Upon issuing any such marker, the executive director may impose such conditions on the method of acquisition or taking such unmarked raptor, the species to be taken, and the location in which the same is permitted to be taken as he may deem appropriate for the conservation of wild raptor populations in this state.

(c) (b) Counterfeiting or Alteration. No person shall counterfeit, alter, or deface any marker required by this Rule, except that permittees may remove the rear tabs on markers and may smooth any surface imperfections provided the integrity of the markers and numbering are not affected.

Authority G.S. 113-134; 113-270.3(b)(5); 50 C.F.R. 21.29.

SECTION .0900 - GAME BIRD PROPAGATORS

.0901 GAME BIRD PROPAGATION LICENSE

(a) License Required. It is unlawful for any individual, firm, association, or corporation to propagate upland game birds or migratory game birds or to have in possession any such birds, or their eggs, for the purpose of game bird propagation without first obtaining a license to do so from the North Carolina Wildlife Resources Commission.

~~(b) Limitations.~~ The game bird propagation license authorizes the purchase, possession, propagation, sale, and transportation of propagated upland game birds and migratory game birds, and their eggs in accordance with the other rules of this Section, subject to the following limitations and conditions:

- (1) No wild turkey may be propagated or sold for the purpose of restocking, and it is unlawful to release any wild turkey to the wild for any purpose or to allow any wild turkey to range free;
- (2) No ruffed grouse or wild turkey may be sold for the purpose of consumption as food;
- (3) The sale of dead pen-raised quail for food is governed by the regulations of the North Carolina Department of Agriculture;
- (4) The possession, sale, and transfer of migratory game birds is subject to additional requirements contained in Title 50 of the Code of Federal Regulations.

Authority G.S. 106-549.94; 113-134; 113-273; 50 C.F.R., Part 21.

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10B .0115.

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

The public hearing will be conducted at 7:30 p.m. on November 17, 1987 at Courtroom No. 1 of the Transylvania County Courthouse in Brevard, North Carolina.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from October 19, 1987, to 5:00 p.m. on November 19, 1987. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury St., Raleigh, NC 27611.

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0115 SHINING LIGHTS IN DEER AREAS

(c) No person shall, between the hours of one-half hour after sunset and one-half hour be-

fore sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (36) Transylvania -- entire county;
- ~~(36)~~ (37) Union -- entire county;
- ~~(37)~~ (38) Washington -- entire county;
- ~~(38)~~ (39) Watauga -- entire county;
- ~~(39)~~ (40) Wilkes -- entire county;
- ~~(40)~~ (41) Yadkin -- entire county;
- ~~(41)~~ (42) Yancey -- entire county.

Statutory Authority G.S. 113-134; 113-291.1.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that The North Carolina State Board of Dental Examiners intends to adopt and amend regulations cited as 21 NCAC 16B .0303; .0305; 16C .0303; .0305; 16M .0001 - .0002; 16N .0304; .0308; .0503 - .0505; .0601; .0603; .0605; 16Q .0001 - .0006.

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

The public hearing will be conducted at 10:00 a.m. on November 14, 1987 at Offices of the Board of Dental Examiners, Suite 221, Koger Executive Center, Chatham Building, 3716 National Drive, Raleigh, N.C.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule may file a notice with the Board at least ten days prior to the public hearing. Any person may also file a written submission containing data, comments or arguments at any time up until ten days after the hearing.

CHAPTER 16 - DENTAL EXAMINERS

SUBCHAPTER 16B - LICENSURE EXAMINATION: DENTISTS

SECTION .0300 - APPLICATION

.0303 EXAMINATION FEE

A fee of ~~seventy five dollars (\$75.00)~~ two hundred dollars (\$200.00) for each examination or re-examination must accompany the application. Such fee is non-refundable.

Statutory Authority G.S. 90-28; 90-233.

.0305 TIME FOR FILING

The completed application, fee, photographs, pre-dental college and dental college transcripts must be in the hands of the secretary at least ~~thirty~~ sixty days prior to the date of examination. Dental college transcripts may be incomplete for those still in college but must be sent in before the examination date. All data received by the board concerning the applicant will be part of the application and will be retained as part of the record.

Statutory Authority G.S. 90-28; 90-48; 90-223; 90-224.

SUBCHAPTER 16C - LICENSURE
EXAMINATION: DENTAL HYGIENIST

SECTION .0300 - APPLICATION

.0303 EXAMINATION FEE

A fee of ~~fifty dollars (\$50.00)~~ one hundred twenty-five dollars (\$125.00) for each examination (or re-examination) must accompany the application which fee is non-refundable.

Statutory Authority G.S. 90-28; 90-233.

.0305 TIME FOR FILING

The completed application, fee, photographs, high school and college transcripts, and two letters of recommendation must be in the hands of the secretary at least ~~thirty~~ sixty days prior to the date of the examination. College transcripts may be incomplete for those still in college, but must be sent in before the examination date. All data received by the board concerning the applicant becomes a part of the required application and will be retained as part of the record.

Statutory Authority G.S. 90-28; 90-48; 90-223; 90-224.

SUBCHAPTER 16M - FEES PAYABLE

.0001 DENTISTS

(a) The following fees shall be payable to the North Carolina State Board of Dental Examiners:

- (1) Application for general dentistry examination ~~\$75.00~~ \$200.00
- (2) Application for instructor's license and examination or renewal ~~\$50.00~~ \$75.00
- (3) ~~General dentistry and instructor's license renewal~~ Application for provisional license ~~\$50.00~~ \$75.00
- (4) Application for provisional licensure - ~~general dentistry intern permit or renewal thereof~~ ~~\$50.00~~ \$75.00

(5) ~~Application for intern permit or renewal thereof~~ Certificate of license to a resident dentist desiring to change to another state or territory ~~\$50.00~~ \$25.00

(6) ~~Certificate of license to a resident dentist desiring a change to another state or territory~~ License issued to a practitioner of another state or territory to practice in this State ~~\$15.00~~ \$125.00

(7) ~~Licensure upon clinical examination of practitioner of another state~~ Reinstatement of license to resume practice ~~\$75.00~~ \$125.00

(8) ~~Reinstatement of a license to resume practice~~ \$75.00

(b) The fee payable to the North Carolina State Board of Dental Examiners for each general dentistry license renewal shall be annually fixed by the board. Each year the board shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this state by mailing such notice no later than November 30 to the last address of record for each dentist. Said renewal fee shall not exceed seventy-five dollars (\$75.00).

Statutory Authority G.S. 90-28; 90-233.

.0002 DENTAL HYGIENISTS

(a) The following fees shall be payable to the North Carolina State Board of Dental Examiners:

(1) Application for examination ~~\$50.00~~ \$125.00

(2) ~~Renewal certificate~~ Restoration of a license ~~\$35.00~~ \$60.00

(3) ~~Restoration of license~~ Application for provisional licensure ~~\$35.00~~ \$60.00

(4) ~~Application for provisional licensure~~ Certificate to a resident dental hygienist desiring to change to another state or territory ~~\$35.00~~ \$25.00

(5) ~~Certificate to a resident dental hygienist desiring to change to another state or territory~~ \$15.00

(b) The fee payable to the North Carolina State Board of Dental Examiners for each dental hygienist renewal certificate shall be annually fixed by the board. Each year the board shall give written notice of the amount of said renewal fee to each dental hygienist licensed to practice in this state by mailing such notice no later than November 30 to the last address of record for each such licensed dental hygienist. Said renewal fee shall not exceed sixty dollars (\$60.00).

Statutory Authority G.S. 90-28; 90-233.

SUBCHAPTER 16N - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

SECTION .0300 - RULEMAKING HEARINGS

.0304 WRITTEN SUBMISSIONS

Any person may file a written submission containing data, comments or arguments, after publication of a rulemaking notice and within 30 days after the hearing. ~~unless a different period has been prescribed in the notice granted upon request.~~ These written comments should be sent to the board's office. They should clearly state the rule(s) or proposed rule(s) to which such comments are addressed.

Statutory Authority G.S. 150B-38.

.0308 EMERGENCY RULES

~~Whenever reasons of imminent peril~~ Whenever a serious and unforeseeable threat to the public health, safety or welfare ~~require~~ requires the adoption of an emergency rule, the Board of Dental Examiners will issue such notice, written, telegraphic, telephonic, or other, and allow such comments, oral or written as time permits.

Statutory Authority G.S. 150B-38.

SECTION .0500 - ADMINISTRATIVE HEARING PROCEDURES

.0503 GRANTING OR DENYING HEARING REQUESTS

(a) The board will decide whether to grant a request for a hearing.

(b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the board to deny the request and shall contain a notice advising the requesting party of their right to file a petition for hearing at the Office of Administrative Hearings as provided in G.S. 150B-23(a).

(c) Approval of a request for a hearing will be signified by the issuing of a notice as required by G.S. 150B-38(b) and explained in Rule .0504 of this Section.

Statutory Authority G.S. 150B-38.

.0504 NOTICE OF HEARING

In addition to the items specified in G.S. 150B-38 (b) to be included in the notice, notices of administrative hearings of the board:

(1) shall give the name, position, address and telephone number of a person at the office

of the board to contact for further information or discussion;

(2) may give notice of the date and place for a prehearing conference, if any;

(3) may include any other information deemed relevant to informing the parties as to the procedure of the hearing.

Statutory Authority G.S. 150B-38.

.0505 WHO SHALL HEAR CONTESTED CASES

All administrative hearings will be conducted by a majority of the members of the board with voting authority or a hearing officer. All administrative hearings will be conducted by the board, a panel consisting of a majority of board members, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

Statutory Authority G.S. 150B-38.

SECTION .0600 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS AND PROCEDURES

.0601 FAILURE TO APPEAR

Should a party fail to appear at a scheduled hearing, the board, hearing panel, single board member, or its designated hearing officer or the designated administrative law judge may proceed with the hearing in the party's absence, or it may order a continuance, adjournment or like disposition. ~~or it may dismiss the proceeding.~~

Statutory Authority G.S. 150B-38.

.0603 SUBPOENAS

(h) Promptly after the close of such hearing, a majority of the board members with voting authority, or a hearing officer will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

(h) Promptly after the close of such hearing, the board, a hearing panel, or the designated administrative law judge will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

Statutory Authority G.S. 150B-38.

.0605 PROPOSALS FOR DECISIONS

(a) ~~When a hearing officer~~ When an administrative law judge, sitting pursuant to G.S. 150B-40(c) conducts a hearing, a "proposal for decision" shall be rendered. Any party may file

written exceptions to this "proposal for decision" and submit his own proposed findings of fact and conclusions of law. The exceptions and proposals must be received within 10 days after the party has received the "proposal for decision" as drafted by the ~~hearing officer, or the board.~~ administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the ~~hearing officer, single board member, administrative law judge, panel~~ rulings on evidence, or any other matters, must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within 10 days of the receipt of the proposal for decision. The title of such written exceptions should bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (name of case).

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of requests for further oral argument, notice will be issued promptly to all parties designating time and place for such oral argument.

(e) The board will direct whatever corrective action, if any, may be deemed advisable in light of the exceptions. Any decision made will be a part of the record and a copy thereof given to all parties. The board will issue its final agency decision giving due consideration to the proposal for decision and the exceptions and arguments presented by the parties. This decision will be the final agency decision for the right to judicial review.

Statutory Authority G.S. 150B-38.

SUBCHAPTER 16Q - PUBLIC RECORDS

.0001 PURPOSE OF RULE

The board recognizes the importance of public access to public records in promoting the accountability of government and the informed participation in the governing process by the people. By the same token, the board recognizes the potential damage to licensees in releasing information about complaints prior to investigation and resolution. This Rule is intended to guarantee the public's right of access to public records while protecting the privacy of licensees.

Statutory Authority G.S. 90-28; 90-223; 132-6; 150B-11(1).

.0002 DEFINITIONS

(a) "Public records" include all documentary material, regardless of physical form, which the board makes or receives pursuant to law, or which the board uses in connection with the transaction of public business. "Public records" do not include privileged records or confidential records.

(b) "Privileged records" include all records specifically exempted from disclosure by statute or common law privilege.

(c) "Confidential records" include all records which the board makes, receives or uses in connection with allegations against a licensee, or any investigation into allegations against a licensee, which may result in disciplinary action or criminal charges. Notwithstanding the foregoing, once disciplinary action is commenced by notice to the licensee, or once criminal charges are brought by indictment or otherwise, the records involved lose their confidential status.

Statutory Authority G.S. 90-28; 90-223; 132-1.1; 132-6; 150B-11(1).

.0003 ACCESS TO PUBLIC RECORDS

(a) The executive secretary is the custodian of the records of the State Board of Dental Examiners.

(b) Any person may inspect any public record of the board at the offices of the board by making a request of the custodian to receive the public records sought to be inspected.

(1) The custodian shall provide adequate space during office hours for all persons making a reasonable request to inspect the public records.

(2) The custodian shall supervise the inspection of the records in order to protect the public records and prevent disruption of the operations of the board.

(c) Upon request of any person, the custodian shall provide a copy of the public record to the person requesting the record at the cost of twenty cents (\$0.20) per page.

(1) If the public record is of a form prohibiting ready copying, custodian may, upon conditions satisfactory to the custodian, allow the person to remove the public record from the board's offices for the sole purpose of having the public record reproduced.

Statutory Authority G.S. 90-28; 90-223; 132-6; 150B-11(1).

.0004 ACCESS TO PRIVILEGED RECORDS

(a) If a person requests to inspect a record which the custodian considers to be a privileged

record, the custodian shall deny the request to the person to inspect the record.

(b) A person denied access to a privileged record may petition the board to allow inspection of the record.

(c) Upon receipt of such petition, the board shall seek the advice of counsel as to the privileged status of the record.

(1) If counsel advises the board that the record is privileged, inspection of the record may be granted only upon a vote by the majority of the board to waive the privilege.

(2) If counsel advises the board that the record is not privileged, the custodian shall release the record, not sooner than 20 days after receipt of counsel's opinion, unless a majority of the board votes to reject the opinion of counsel and to refuse to allow inspection of the document.

Statutory Authority G.S. 90-28; 90-223; 132-1.1; 132-6; 150B-11(1).

.0005 ACCESS TO CONFIDENTIAL RECORDS

(a) If a person requests to inspect a record which the custodian considers to be a confidential record, the custodian shall deny the request unless the custodian is convinced that:

(1) Inspection of the record by the person seeking the inspection will not result in an unwarranted invasion of the licensee's privacy; and

(2) That inspection of the record by the person seeking the inspection will not interfere in any way with an ongoing investigation by the board.

(b) A person denied access to a confidential record may petition the board to allow inspection of the record.

(c) Within 20 days of the receipt of the petition, the board may vote on the petition. If the board fails to act within 20 days of the receipt of the petition, the petition shall be deemed to have been denied.

Statutory Authority G.S. 90-28; 90-223; 132-6; 150B-11(1).

.0006 AUTHORITY OF CUSTODIAN

The custodian of the records of the board shall have the sole authority, subject to the provisions of the foregoing Rules, to allow public access to board records. No board member of employee, agent, attorney or investigator for the board may allow inspection of board records, or discuss the content of board records, without the knowledge and approval of the custodian.

Statutory Authority G.S. 90-28; 90-223; 132-6; 150B-11(1).

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to amend regulations cited as 25 NCAC 1C .0404; 25 NCAC 1H .0602; .0604; .0609; repeal regulation 25 NCAC 1D .0110; and adopt regulations 25 NCAC 1H .0618 - .0628.

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, N. C. 27611.

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

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

SECTION .0400 - APPOINTMENT

.0404 PROBATIONARY APPOINTMENTS

Individuals receiving original appointments to permanent positions must serve a probationary period. The probationary period is an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards. The maximum length of the probationary period shall be not less than three nor more than nine months of either full-time or part-time employment. Within 90 days of employment, prior to the granting of permanent status, credentials and application information provided by the employee must be verified. Agencies shall inform applicants in writing that credentials must be verified prior to the granting of permanent status.

Statutory Authority G.S. 96-29; 126-4; 126-30.

SUBCHAPTER 1D - COMPENSATION

SECTION .0100 - ADMINISTRATION OF THE PAY PLAN

.0110 POLICY (REPEALED)

Statutory Authority G.S. 126-4.

SUBCHAPTER III - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0602 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions to be filled in State Government will shall be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply. The term "agency" as used in this Subsection includes all state departments, institutions, commissions, and boards.

(b) Vacancies which will shall be filled from within the agency workforce will be prominently posted in an area known to employees, and will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum education and experience standard, and contact person for each position to be filled. An exception to this posting requirement will be permissible where a formal, preexisting "understudy" arrangement has been established by management. shall be prominently posted in at least the following locations:

- (1) The personnel office of the agency having the vacancy;
- (2) The particular work unit of the agency having the vacancy.

(c) Any vacancy for which an agency wishes to consider applicants from within the overall state government work force shall be listed by announcement, as defined in this Rule, with the Counseling and Career Support Unit of the Office of State Personnel. Such vacancies shall have an application period of not less than seven work days. If the decision is made, initially or at any time a vacancy remains open, to receive applicants from within the overall state government workforce, that vacancy shall be listed with the Office of State Personnel for the purpose of informing current state employees of the opening. Such vacancies shall have an application period of not less than seven work days from the time the listing is received by the Office of State Personnel. Each vacancy for internal posting or listing with the Office of State Personnel will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum education and experience standard, the application period and the appropriate contact person. The

foregoing posting requirements shall not apply to:

- (1) Vacancies which must be used to meet management necessity, for which an agency will not openly recruit. Examples include vacancies committed to a budget reduction, vacancies used for disciplinary transfers or demotions, use of an existing vacancy to avoid reduction in force, transfer of an employee to an existing opening to avoid the threat of bodily harm, and the promotion of an employee into an opening under a formal, pre-existing "understudy arrangement".
- (2) Vacancies for positions which have been designated policy-making exempt under G.S. 126-5(d).
- (3) Vacancies which must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security.
- (4) Vacancies which are not filled by open recruitment, but rather by specific and targeted recruitment of special groups for the Careers in Government, Model Co-operative Education and state government intern programs.

(f) The Office of State Personnel may withhold approval for an agency to fill a job vacancy if the agency cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. If any agency hires any person in violation of these posting requirements, and it is determined by the Office of State Personnel that the employment of the person hired must be discontinued as a result of the posting violation, the agency shall pay such person for the work performed during the period of time between his/her initial employment and separation.

Statutory Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1.

.0604 APPLICANT INFORMATION AND APPLICATION

(c) Each agency shall be responsible for investigating the accuracy of statements and the quality of references data contained in each individual's application, including the verification of academic and professional credentials. The agency shall inform the applicant in writing that credentials must be verified within 90 days and prior to the granting of permanent status.

Statutory Authority G.S. 126-4(4); 126-30.

.0609 FINAL COMMITMENTS

(a) An appointment may be made only if a classified and budgeted vacancy exists in the position complement authorized for the agency. A commitment should not be made to an employee or an applicant until final certification has been obtained through approval by the Office of State Personnel. Questions about funds or other fiscal matters should be directed to the Office of State Budget and Management.

(b) In order for the Office of State Personnel to certify an appointment, the Office of State Personnel must have a copy of the application for employment which accompanies the Forms PD - 105. The application must be completed in every detail and written in blue/black ink or typed.

Statutory Authority G.S. 126-4(4); 126-30.

.0618 VERIFICATION OF CREDENTIALS

The employing authority within each department, university, board or commission shall verify the validity of credentials and the accuracy of data contained in each individual application within 90 days from the date of the employee's initial employment.

Statutory Authority G.S. 126-4; 126-30.

.0619 COMPLETION OF APPLICATIONS

Applications for those persons who have been offered and have accepted employment must be completed in every detail; applications must be completed in black/blue ink or typed or the application shall be returned to the agency for compliance. A copy of the original application for employment shall be forwarded to the Office of State Personnel with the appointing Forms PD-105.

Statutory Authority G.S. 126-4; 126-30.

.0620 VERIFICATION PROCEDURES

The following procedures shall be followed in order to insure the accuracy and veracity of the verification process:

- (1) Agencies are responsible for and shall request from issuing institutions, written verification of applicants' dates of enrollment, degrees awarded, professional licenses, professional registrations and professional certifications. The original(s) of verification response(s) shall be made a part of the agency personnel record and a copy(ies) sent to the Office of State Personnel with the applicant's social security number included on the document(s). When credentials are being verified on a "post-hire" basis, agen-

cies will expedite this activity to meet the 90 day deadline.

- (2) Methods of acceptable verification are:

- (a) Telephone Contact - To expedite the hiring process, agency staff may telephone the educational institution to verify dates of enrollment and the degree awarded. The same procedure may be used for professional licensure/ registration/ certification. In each case a written follow-up request shall be made to insure that written verifications are included in personnel records.

- (b) Requests for Verification Letter - These requests may be sent to educational institutions or to professional licensure, registration, and/or certification officials to verify claimed credentials.

- (3) Agencies may request transcripts for verification of credentials, course content, or grades. If transcripts are used for verification of credentials, the original shall be kept for the agency personnel record and a copy sent to the Office of State Personnel with social security number included. If used for course content and grades only, transcripts shall remain with the agency.

Statutory Authority G.S. 126-4; 126-30.

.0621 AGENCY CERTIFICATION

Each agency must certify on the Form PD-107 that academic and professional credentials have been or will be verified in accordance with statutes, policies, and procedures. Lack of such certification will require that the forms implementing the hiring process be placed in suspense until the proper certification is supplied.

Statutory Authority G.S. 126-4; 126-30.

.0622 APPLICANT DISQUALIFICATION

When credentials or work history falsification cases are discovered prior to employment, the applicant must be disqualified from consideration for the position in question.

Statutory Authority G.S. 126-4; 126-30.

.0623 DISCIPLINARY ACTION

When credential or work history falsification is discovered after employment by the state, disciplinary action is required and shall be administered in accordance with the following criteria:

- (1) If an employee was determined to be qualified and was selected for a position based on fraudulent work experience, educational, registration, licensure or certification infor-

mation which was a requirement of the position, the employee is to be dismissed, regardless of length of service.

- (2) In all other post-hire discovery cases of false or misleading information, disciplinary action will be taken, but the severity of such action shall be at the discretion of the agency head. The actions may include: dismissal; demotion; reduction in pay; written reprimand.

The agency head's decision, while discretionary, should consider: sensitivity of the agency's mission; sensitivity of the employee's position; effect of the false information on the hiring decision; advantage gained by the employee over other applicants; effect of the false information on the starting salary; and the advantage gained by employee in subsequent promotion and salary increases. Job performance shall not be considered in such cases, nor can decisions be made on the basis of race, creed, color, religion, national origin, sex, age, handicapped condition, or political affiliations.

Statutory Authority G.S. 126-4; 126-30.

.0624 DISMISSAL

Dismissal on the basis of knowingly and willfully providing false information on a state employment application, or knowingly and willfully concealing a dishonorable military discharge shall be accomplished in accordance with the State Personnel Commission's procedures on discipline and dismissal. Providing false information on an employment application or concealing information shall be considered personal conduct for the purposes of implementing the dismissal procedure, except that two weeks' pay in lieu of notice may be given upon the recommendation of the agency and the approval of the Office of State Personnel. Only employees who are permanent, as that term is defined in G.S. 126-39, are entitled to the procedures for dismissal set out in the State Personnel Commission's rules on dismissal.

Statutory Authority G.S. 126-4; 126-30; 126-39.

.0625 PROMOTIONAL PRIORITY CONSIDERATION FOR CURRENT EMPLOYEES

(a) A promotional priority consideration shall be provided by all agencies to all current state employees who have achieved permanent status, as that term is defined in G.S. 126-39.

(b) If a current state employee applies and is qualified for another state position of a higher level, and has substantially equal qualifications

as those of the highest ranking applicant who is not a state employee, the state employee shall receive the job offer.

(c) "Qualifications" within the meaning of this Rule shall include training and education, years of related work experience, and other skills, knowledge, and abilities demonstrated in the selection process which bear a reasonable functional relationship to the requirements of the position applied for.

(d) "Substantially equal qualifications" occur when the employer cannot make a reasonable determination that the job-related qualifications held by one person are significantly better suited for the position than the job-related qualifications held by another person.

Statutory Authority G.S. 126-4; 126-7.1.

.0626 RELATIONSHIP TO OTHER EMPLOYMENT PRIORITY CONSIDERATIONS

(a) Policy-making exempt employees, employees separated by reduction in force, employees disabled on the job - state employees separated from policy-making exempt jobs for reasons other than cause, state employees separated by reduction in force and on active priority reemployment status, and employees returning to state employment following a disability due to on-the-job injury are not considered outside applicants for the purpose of the promotional priority policy. Existing policy and statutory priorities which apply to these employees shall be afforded before the promotional priority for current state employees.

(b) Affirmative Action Considerations - Affirmative action policy requires that hiring authorities act affirmatively in minimizing or eliminating underrepresentations of women, minorities and handicapped persons throughout all levels of the state's workforce. Therefore, when promotional opportunities exist in occupational categories where there is an established underrepresentation of minorities, women, and handicapped persons, and the selection decision will be made from among applicants in the existing state workforce, hiring authorities shall consider and support these affirmative action needs as usual. The promotional priority for current employees only applies when the applicants being considered include persons from outside state government. When the selection decision involves outside applicants in addition to current state employees, and a current state employee has substantially equivalent qualifications as those of the highest ranking outside applicant who happens to be a member of the underrepresented group, the state

employee shall receive the job offer. However, affirmative recruitment efforts shall be taken, both internally and externally, to optimize the presence of well qualified persons from the underrepresented categories in the applicant pool.

Statutory Authority G.S. 126-4; 126-7.1; 126-16.

**.0627 RIGHT OF APPEAL: DENIAL
OF PRIORITY AND NON-POSTING**

A permanent state employee, as defined by G.S. 126-39, who has reason to believe that promotion was denied due to the failure of an agency, department, or institution to post notice of a vacancy pursuant to G.S. 126-7.1(a), or to afford priority as required by G.S. 126-7.1(c), may appeal directly to the State Personnel Commission through the established contested case hearing procedure.

Statutory Authority G.S. 126-7.1; 126-39; 150B, Article 3.

**.0628 RESOLUTION OF CONFLICT
BETWEEN EMPLOYMENT
PRIORITIES**

In the event that the applicant group includes both a qualified non-state employee veteran and a qualified current state employee with permanent status as defined by G.S. 126-39, who is seeking a promotional opportunity, the current state employee shall be offered the position if the appointing authority determines, consistent with the promotional priority policy, that the qualifications of the veteran and the current state employee are substantially equal. The same priority over any non-state employee applicant shall apply to state employees separated from policy making exempt positions for reasons other than cause, state employees separated by reduction in force and on active priority reemployment status, and employees returning to state employment following a disability due to on the job injury.

Statutory Authority G.S. 126-4; 126-7.1; 126-39.

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 17 - DEPARTMENT OF REVENUE

CHAPTER 5 - CORPORATE INCOME FRANCHISE TAX

SUBCHAPTER 5B - CORPORATE INCOME AND FRANCHISE TAX DIVISION

SECTION .0100 - GENERAL INFORMATION

.0104 INACTIVE CORPORATIONS

A corporation that is inactive and without assets is subject annually to a minimum franchise tax. For franchise tax returns due before March 15, 1987, the tax is ten dollars (\$10.00). For franchise tax returns due on or after that date, the tax is twenty-five dollars (\$25.00). A return is required containing a statement of the status of the corporation. Failure to file this return and pay the minimum tax will result in suspension of the Articles of Incorporation or Certificate of Authority. Any corporation which intends to dissolve or withdraw through suspension for nonpayment of franchise tax should indicate its intention in writing to the department.

*History Note: Statutory Authority G.S.
105-114; 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1987.*

SUBCHAPTER 5C - CORPORATE INCOME TAX

SECTION .2000 - EXTENSION OF TIME FOR FILING RETURN

.2001 AUTOMATIC EXTENSION

(a) A corporation will automatically be allowed an extension of time without filing an application of up to six months to file its return and pay its tax if the total amount of franchise tax and income tax for its taxable year is expected to be five hundred dollars (\$500.00) or less, and it has an approved federal extension. However, in case the corporation needs additional time beyond the six-month period to file its return, it must follow the procedure below as if its expected franchise and income liability were over five hundred dollars (\$500.00). A copy of the approved federal extension must be included with the corporation's state return when it is filed.

(b) A corporation which expects its total combined franchise tax and income tax liability to exceed five hundred dollars (\$500.00) for the taxable year must file a completed application (Form CD-419) before the due date of the return and pay the required amount of franchise tax and income tax as provided below.

Franchise Tax - One hundred percent of the amount of franchise tax expected to be due for the taxable year must be paid with the first extension application filed.

Income Tax - The amount of income tax payable with the extension application is determined after deducting estimated tax payments made during the corporation's taxable year. Depending upon the amount of additional time needed to file the return, the percentage of income tax that must be paid is as follows:

Up to three months extension	-Twenty-five percent of balance of estimated income tax liability less estimated tax payments.
Up to six months extension	-Fifty percent of balance of estimated income tax liability less estimated tax payments.
Up to nine months extension	-Seventy-five percent of balance of estimated income tax liability less estimated tax payments.

The corporation should complete Form CD-419 in duplicate, file the original copy with the corporate income and franchise tax division within 75 days following the close of its income year and attach the duplicate copy to its return when filed.

An approved copy of the application will not be returned to the taxpayer.

*History Note: Statutory Authority G.S.
105-262; 105-263;
Eff. February 1, 1976;*

*Amended Eff. November 1, 1987;
October 23, 1977.*

**.2002 APPLICATION FOR AN ADDITIONAL
EXTENSION**

If an additional extension of time is needed to file a corporate franchise and income tax return, a request for the additional extension must be made before the original extension application expires. The appropriate percentage of franchise tax and/or income tax as prescribed in Section (b) of .2001 must be included with the additional extension application. This application will be approved only when, in the judgment of the secretary, good cause exists. A copy of this extension application must be included with the return when it is filed.

*History Note: Statutory Authority G.S.
105-263; 105-262;
Eff. February 1, 1976;
Amended Eff. November 1, 1987;
October 23, 1977.*

**TITLE 19A - DEPARTMENT OF STATE
TRANSPORTATION**

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0200 - TRAFFIC ENGINEERING

.0221 SERVICES SIGNS

(a) State Rural Primary System. Signing for services shall be in conformance with the "Manual on Uniform Traffic Control Devices". Requests for signing for services should be directed to the highway division engineer having jurisdiction in the county in which the sign is proposed. If approved, services signing will be installed and maintained by the Department of Transportation. The following general requirements shall be applied in determining the placement of service signs on the interstate or controlled access highways.

(b) General Requirements for All Services. Any facility warranting signs must have a public telephone, which is a coin-operated telephone or a business telephone which is available for public use during all business hours. If there is an outside coin-operated telephone in the immediate vicinity of the business (within the intersection area, at an adjacent business or across the road), the business is in compliance. A business phone at an adjacent business is not a public telephone for a particular applicant business. The maximum distance that a "Gas" or "Diesel" service can be located from the facility shall not exceed one mile, with the maximum distances being

three miles for "Food" and "Lodging", and five miles for "Camping", in either direction via on all-weather road. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the facility route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than 0.2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

- (1) Gas and Diesel and Associates Services. Criteria for erection of a Gas service sign and/or a Diesel service sign shall include:
 - (A) appropriate licensing as required by law;
 - (B) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
 - (C) restroom facilities and drinking water suitable for public use;
 - (D) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs; and
 - (E) year-round operation at least 16 continuous hours per day, 7 days a week.
- (2) Food. Criteria for erection of a Food service sign shall include:
 - (A) appropriate licensing as required by law, and a permit to operate by the health department;
 - (B) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), 7 days a week;
 - (C) indoor seating for at least 20 persons; and
 - (D) public restroom facilities.
- (3) Lodging. Criteria for erection of a Lodging service sign shall include:
 - (A) appropriate licensing as required by law, and a permit to operate by the health department;
 - (B) adequate sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping rooms;

- (C) off-street vehicle parking for each lodging room for rent; and
- (D) year-round operation.
- (4) Camping. Criteria for erection of a Camping service sign shall include:
 - (A) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (B) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
 - (C) adequate parking accommodations;
 - (D) continuous operation, 7 days a week during business season;
 - (E) removal or masking of said business sign by the Department during off seasons, if operated on a seasonal basis.
- (5) Phone. Signs may be posted for a phone location only in respect to outdoor telephone booths where service is available on a twenty-four hour basis.
- (6) Hospital. Hospital signs consist of the word "Hospital" along the main roadway and the blue "H" at the end of the ramp. The blue "H" is used to trailblaze from the ramp terminal to the hospital where needed. The intent of providing "Hospital" signs along interstate or controlled access highways is to direct unfamiliar motorists to a hospital in case there is a need for emergency medical services. The blue "Hospital" sign is used on the interstate or controlled access highways. These hospital signs shall be used only for hospitals equipped to handle emergency cases with a physician on duty 24 hours each day and within a practical distance from the interchange. A blue sign showing the name of the hospital at the end of the ramp along with the proper directional arrow may be provided. Trailblazer signs where necessary will mark the route to the hospital using the blue "H". Use of the name of the hospital on green directional signs along conventional (non-interstate or non-controlled access) type streets and roads when a traffic engineering investigation has shown they are needed may be permitted. These green directional signs apply only to those hospitals which do not provide the 24-hour emergency service.
- (7) Service signs will not be erected on non-controlled or partially controlled access

facilities or at locations within or near municipalities where it is obvious to the motorist that services are available.

- (c) Tourist Information Center. Tourist information center service signing may be approved and installed when the following conditions are met:

- (1) The motorist using the highway in a particular direction must be able to leave and return to the highway via the same interchange and continue in the same direction of travel.
- (2) The service must be located in a rest area on the freeway or within one mile of the interchange off ramp and on a direct route from the freeway.
- (3) Continuous operation for at least eight hours per day, seven days per week, and 360 days per year.
- (4) At least one separate and trained attendant with knowledge of tourist facilities in the state, on duty to service visitors during all hours of operation.
- (5) The facility must have available at no charge to visitors complete information on tourist facilities in the state; such as lodging, auto service, food, medical, recreational, historical and scenic sites; and it must also be readily available when attendant is off duty.
- (6) Housed in a separated area from other facilities in an appropriate building to provide an area, heated in winter and cooled in summer, of not less than 625 square feet of floor area for displays and lounge devoted for providing this service.
- (7) At least one 50 pocket rack for noncommercial public service materials and displays.
- (8) Rest room facilities available at no cost to the visitor and designed for use by handicapped individuals.
- (9) Drinking water approved by appropriate local authority.
- (10) Public telephone designed for use by handicapped individuals.
- (11) Adequate off-street parking at no cost to the motorist. Must have curb cuts and ramps for the handicapped.
- (12) Any displays, literature, magazines, etc., that would be judged to be offensive to visitors with children must not be readily visible.
- (13) Designated facilities for pets.
- (14) The name of the operating agency, community, group or enterprise shall not appear in the legend of any sign.
- (d) Removal of General Services Signs.

- (1) If municipal limits are revised so that an interchange is totally within a municipality, then existing general services signs should remain in place so long as they are in a serviceable appearance and are not in need of refurbishing maintenance. When the signs are no longer serviceable they shall be removed.
- (2) When specific services (Logo) signing is installed along a section of Interstate roadway, then the existing general services signing shall be removed on that section of roadway. When general services signs exist on an Interstate roadway inside a municipality that does not qualify for specific services (Logo) signing, the general services signs may remain in place, except as covered in (1) above, until such time that all rural sections of the Interstate route adjacent to the municipality are covered, then the general services signs shall be removed.

*History Note: Statutory Authority G.S. 136-18(5); 136-30; 136-128;
Eff. July 1, 1978;
Amended Eff. November 1, 1987;
August 1, 1984; February, 1, 1984.*

SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS

SECTION .0200 - OUTDOOR ADVERTISING

.0219 ELIGIBILITY FOR PROGRAM

Business signs may be permitted, provided said businesses comply with the following criteria and have a public telephone:

- (1) The individual business installation whose name, symbol or trademark appears on a business sign shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin.
An individual business, under construction, may participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application.
- (2) The maximum distance that a "GAS", "FOOD", or "LODGING" service can be located from the Interstate, or other fully controlled access highway shall not exceed three miles, with the maximum distance being five miles for a "CAMPING" service, in either direction via an all-weather road. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the Interstate or other fully controlled access highway route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring.
If the office (main building) of a business is located more than .2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

- (3) "GAS" and associated services. Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law;
 - (b) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
 - (c) restroom facilities and drinking water suitable for public use;
 - (d) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs;
 - (e) year-round operation at least 16 continuous hours per day, seven days a week.
- (4) "FOOD". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week;
 - (c) indoor seating for at least 20 persons;
 - (d) public restroom facilities.
- (5) "LODGING". Criteria for erection of a business sign on a panel shall include:
 - (a) appropriate licensing as required by law, and a permit to operate by the health department;
 - (b) adequate sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room;
 - (c) off-street vehicle parking for each lodging room for rent;
 - (d) year-round operation.

- (6) "CAMPING". Criteria for erection of a business sign on a panel shall include:
- (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
 - (b) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
 - (c) adequate parking accommodations;
 - (d) continuous operation, seven days a week during business season;
 - (e) removal or masking of said business sign by the department during off seasons, if operated on a seasonal basis.

*History Note: Authority G.S.
136-89.56; 136-137; 136-139; 143B-346;
143B-348; 143B-350(f); 23 C.F.R. 750,
Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. November 1, 1987;
April 1, 1986; March 1, 1986;
November 1, 1985.*

.0220 COMPOSITION OF SIGNS

Composition, design and layout of panels and logo signs shall be in accord with standards approved by the State Highway Administrator. Businesses which contract with the Department shall be furnished the standards and must conform the business signs to the standards.

No business sign shall be displayed which would mislead or misinform the traveling public. Any message, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device is prohibited.

No business sign shall be displayed for a business which is not open for business and in full compliance with the standards required by the program.

*History Note: Authority G.S.
136-89.56; 136-137; 136-139; 143B-346;
143B-348; 143B-350(f); 23 C.F.R. 750,
Subpart A; 23 U.S.C. 131(f);
Eff. November 1, 1987; April 1, 1982.*

.0222 CONTRACTS WITH THE DEPARTMENT

(a) The department shall perform all required installation, maintenance, removal and/or replacement of all business signs upon panels.

(b) Individual businesses requesting placement of business signs on panels shall apply by sub-

mitting to the Department of Transportation a completed Agreement form. As a condition of said Agreement, the applicant must agree to submit the required initial fee within 30 days after the business is approved by the department. The department shall provide a statement(s) to the applicant at the time agreements are provided that itemize the number of business signs required, their fee(s) and remittance requirements. Failure to submit the required fee and forms will result in removal by the department of the business's signs from the construction project plans.

(c) Businesses must submit a layout of their proposed business sign for approval by the department before the business sign is fabricated.

(d) No business sign shall be displayed which, in the opinion of the department, is unsightly, badly faded, or in a substantial state of dilapidation. The department shall remove, replace, or mask any such business signs as appropriate. Ordinary initial installation and maintenance services shall be performed by the department at such necessary times upon payment of the annual renewal fee, and removal shall be performed upon failure to pay any fee or for violation of any provision of these Rules and the business sign shall be removed. The business shall furnish all business signs.

(e) When a business sign is removed, it will be taken to the division traffic services shop of the division in which the business is located. The business will be notified of such removal and given 30 days in which to retrieve their business sign(s). After 30 days, the business sign will become the property of the department and will be disposed of as the department shall see fit.

(f) Should the department determine that trailblazing to a business that is signed for at the interchange is desirable, it shall be done with an assembly (or series of assemblies) consisting of a ramp size business sign and an appropriate white on blue arrow. The business shall furnish all business sign(s) required and deemed necessary by the department. Fees shall be same as for other business sign(s). If several different services are located on the same business site, duplicate type logo signs shall not be erected in a single logo trailblazer installation. In such trailblazer installations, only one logo sign and one directional arrow sign will be used. The business may submit, subject to approval by the department, different logo signs to identify different services which may be located on the same business site.

(g) Should a business qualify for business signs at two interchanges, the business sign(s) will be erected at the nearest interchange. If the business desires signing at the other interchange also, it may be so signed provided it does not prevent another business from being signed.

(h) Where there are more businesses which meet the criteria to participate in the program than space is available on the panel(s), then those businesses closer to the interchange, measured as described in Rule .0219(b), shall be permitted to participate, except as provided for in Rule .0221 (a), (e), and (f).

A business, under construction, shall not be allowed to apply for participation in the program if it's participation would prevent an existing open business applicant from participating, unless the open business has turned down a previous opportunity offered by the Department to participate in the program as provided in Subsection .0222 (i). After approval of an application to participate a business, under construction, shall be allowed priority participation over another business, which qualifies and becomes open for business prior to the time specified for opening in the application by the business under construction.

(i) Should the number of businesses of a particular service at an interchange increase to more than the maximum number of business signs allowed on a panel, and a closer business qualifies and requests installation of its business signs, the business sign(s) of the farthest business shall be removed at the renewal date, provided that any business which has previously paid the full cost of erecting a panel shall not be removed under this Rule. A business which has turned down a previous opportunity offered by the department to participate in the program may not qualify as a closer business under this Rule, except as provided in Rule .0221 (a), (e), and (f).

(j) When it comes to the attention of the department that a participating business is not in compliance with the minimum state criteria, the division engineer's office shall promptly verify the information and if a breach of agreement is ascertained, inform the business that it will be given a maximum of 30 days to correct any deficiencies or its business signs will be removed. If the business is removed and later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant.

At the time specified for opening, if the business under construction is found to not be in compliance, or not open for business, the Division Engineer shall promptly verify the information. If a breach of agreement is ascertained, the Division Engineer shall inform the business that it will be given a maximum of 30 days to correct any deficiencies or its business signs will not be erected. If the business later applies for reinstatement, this request will be handled in the same manner as a request from a new applicant.

(k) The department reserves the right to cover or remove any or all business signs in the con-

duct of maintenance or construction operations, or for research studies, or whenever deemed by the department to be in the best interest of the department or the traveling public, without advance notice thereof. The department reserves the right to terminate this program or any portion thereof by furnishing the business written notice of such intent not less than 30 calendar days prior thereto.

(l) The transfer of ownership of a business for which an agreement has been lawfully executed with the original owner shall not in any way affect the validity of the agreement for the business sign(s) of the business, provided that the appropriate division engineer is given notice in writing of the transfer of ownership within 30 days of the actual transfer.

*History Note: Authority G.S.
136-89.56; 136-137; 136-139; 143B-346;
143B-348; 143B-350(f); 23 C.F.R. 750,
Subpart A; 23 U.S.C. 131(f);
Eff. April 1, 1982;
Amended Eff. November 1, 1987;
April 1, 1986; November 1, 1985;
February 1, 1984.*

TITLE 20 - DEPARTMENT OF STATE TREASURER

CHAPTER 9 - EDUCATIONAL FACILITIES FINANCE AGENCY

SECTION .0100 - GENERAL PROVISIONS

.0101 ORGANIZATION AND FUNCTIONS

(a) The Educational Facilities Finance Agency operates within the Department of State Treasurer and is the State's agency charged with the duty of advising and assisting institutions of higher education in financing the construction and renovation of higher education facilities.

(b) The following is general information about the Educational Facilities Finance Agency:

- (1) The Administrative Officer is the Secretary-treasurer of the Agency;
- (2) The mailing address is 325 North Salisbury Street, Raleigh, North Carolina 27611; and
- (3) The office is located in the Albemarle Building, 325 North Salisbury Street, Raleigh, North Carolina.

(c) The staff of the Educational Facilities Finance Agency is provided by the State and Local Government Finance Division.

*History Note: Filed as a Temporary Rule
to be Eff. September 30, 1987, for a
Period of 153 Days to Expire on*

March 1, 1988;

Statutory Authority G.S. 115E-4(e).

.0102 DEFINITIONS

The words and phrases defined in this Rule will have the meanings indicated when used in this Chapter, unless the context clearly requires another meaning:

- (1) "Agency" is the Educational Facilities Finance Agency and/or the Board of Directors thereof.
- (2) "Secretary-treasurer" is the Secretary-treasurer of the Educational Facilities Finance Agency.
- (3) "Institution" means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.
- (4) "Participating institution" means an institution which, pursuant to the provisions of this Chapter, undertakes the financing, refinancing, acquiring, construction, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, renovating, or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in the Higher Educational Facilities Finance Act.

History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-3.

SECTION .0200 - RULE-MAKING

.0201 RULE-MAKING PROCEDURES

- (a) 20 NCAC 1F .0100 shall govern the issuance of rules by the Agency.
- (b) All correspondence shall be addressed to the Secretary-treasurer at the mailing address of the Commission.

History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-5.

.0202 DECLARATORY RULES

- (a) 20 NCAC 1F .0200 shall govern the issuance of declaratory rules by the Agency.
- (b) All correspondence shall be addressed to the Secretary-treasurer at the mailing address of the Agency.

History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-5.

SECTION .0300 - CONTESTED CASES

.0301 CONTESTED CASE PROCEDURES

- (a) 20 NCAC 1F .0300 shall govern the hearings and decisions in contested cases.
- (b) All correspondence shall be directed to the Secretary-treasurer at the mailing address of the Agency.

History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-5.

SECTION .0400 - APPROVAL OF APPLICATION

.0401 REQUESTS FOR ACTION

- (a) All requests for action shall be addressed to the Secretary-treasurer at the mailing address of the Agency.
- (b) Each request for action shall include the following information:
 - (1) cover letter which includes:
 - (A) name and address of the institution of higher education,
 - (B) brief description of circumstances and action requested,
 - (C) statutory basis for request and for action;
 - (2) detailed description of circumstances and reasons for which action is requested;
 - (3) list of all persons (real and corporate) who may be beneficially or adversely affected by any action of the Agency; and
 - (4) such other applicable material and information as requested by the Secretary-treasurer.
- (c) After receipt of a request, the Secretary-treasurer shall review the case. The Secretary-treasurer may require the petitioner to attend an informal conference with the staff of the Agency. The Secretary-treasurer may require the filing of such additional information as he may consider valuable to the consideration of the issues. The Secretary-treasurer may invite the staff of the Local Government Commission to the preliminary informal conference to discuss financing of the project.
- (d) At a preliminary informal conference the following matters may be discussed:
 - (1) the nature and feasibility of the proposed project;

- (2) the need for the project;
- (3) the feasibility of financing the project;
- (4) the institution's debt management policies and practices;
- (5) the financial strengths and capabilities of the institution;
- (6) any other matters relating to the institution, to the proposed project, or to the proposed financing or lease;
- (7) the procedures for application of approval to be used in that case; and
- (8) future requirements to finance the project including requirements inherent in the method of financing proposed, such as the costs and need for experts, and the special requirements of those experts.

(c) The governing body of the institution shall adopt and file with the Agency a resolution authorizing filing of the application to the Agency.

(f) The institution shall submit to the Agency as a part of the application for approval all documents requested by the Secretary-treasurer.

(g) At any time after the acceptance of the application, the application may be considered by the Agency together with all applicable data available to the Agency. The Agency shall use the factors set forth in the Higher Educational Facilities Finance Act and any other factors which in its opinion are applicable to the circumstances under consideration.

(h) The amount approved shall be considered the maximum amount of debt to be incurred.

(i) The Secretary-treasurer shall promptly provide a copy of the final decision to the applicant.

(j) The Secretary-treasurer shall promptly provide a copy of any decision of the Local Government Commission relevant to the project to the applicant.

(k) The Agency may hold a public hearing on the application.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-7.*

.0402 HEARING ON CONFORMANCE TO PRIOR APPROVALS

(a) Any party at interest may request from the Agency a hearing on whether a participating institution, for which the Agency has provided an approval under this Section, has conformed to the terms of the approval so provided under this Section.

(b) In the discretion of the Agency, the Agency may refuse to consider any request which does not specify actual instances of non-compliance

by the participating institution and provide adequate documentation thereon.

(c) After receiving a valid request for a hearing, the staff shall provide a copy thereof to the participating institution and request comments and adequate documentation supporting the comments within 20 days of receipt by the participating institution of the request.

(d) After receiving the comments of the participating institution, the staff shall prepare a summary of the request, the rebuttal, and any other comments received on the matter. The summary and all other pertinent documentation shall be furnished to the Agency at its next regular meeting. All interested parties which have requested notification shall be provided the opportunity to attend the meeting.

(e) The Agency shall discuss the matter in open meeting and may make one of the following decisions, based on its assessment of the validity of any claims made:

- (1) The Agency may require the participating institution to correct the non-conformance within a given period not longer than 120 days;
- (2) The Agency may request a contested case hearing on the matter, so that it may have a proper evidential record before it, prior to making its final decision; and
- (3) The Agency may deny the request for hearing on the grounds of lack of substance.

(f) After the end of any corrective period or after the Agency has received the report of a contested case, the Agency shall again bring the matter before it at a regular meeting. Notice of the meeting shall be provided to all persons represented at the first meeting and all other persons requesting notices of the meeting in writing.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-7.*

.0403 APPLICATION TO AMEND PRIOR APPROVALS

(a) Whenever there is a substantial change in the economic environment or situation in which the participating institution operates, the governing board of the participating institution may make an application to amend a prior approval by the Agency.

(b) An application to amend prior approvals shall be submitted in the same manner as required for initial approval plus such other additional items as the Agency may request.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-7.*

SECTION .0500 - REVIEW CRITERIA

.0501 GENERAL

In order for the Secretary-treasurer to recommend approval of a project, he must make certain findings. It is the purpose of this Section to specify the standards and criteria the Secretary-treasurer will use in making his findings.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-6.*

.0502 JURISDICTIONAL FINDINGS

(a) Before making technical findings, the Secretary-treasurer shall make a finding that the project is eligible as defined by law.

(b) The Secretary-treasurer shall make findings on the criteria established for approval of revenue bonds.

(c) Unless the applicant has met his various burdens of proof, the Secretary-treasurer shall not make his required findings.

(d) All findings shall be in writing and where adverse findings are made, they shall specifically indicate in detail which elements of proof were weak, the required conclusions which could not be made, and any suggestions for amending the application.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-6.*

SECTION .0600 - FEES

.0601 COLLECTING FEES

(a) Fees shall be collected for all actions of the Agency in connection with the approval or denial of requests.

(b) Application fees shall be payable prior to a final request for approval or participation by the Agency.

(c) Annual fees shall be payable on the anniversary date of each financing so long as any of such obligations are outstanding and unpaid.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-5(17).*

.0602 FEES AND EXPENSES

(a) A non-refundable application fee shall be required of .05 percent (five hundredths of one percent) of the par amount of the issue with a minimum fee of two thousand dollars (\$2,000), plus any and all fees charged by the Local Government Commission.

(b) An annual fee of five hundred dollars (\$500) per year shall be required.

(c) In addition to the fee set forth in this Rule, all travel and subsistence incurred, and all material amounts of other expenses, e.g. telephone and postage when paid by the State, shall be billed to the institution.

(d) The Agency will not incur extraordinary expenses without prior agreement of the applicant to reimburse the Agency for all related costs.

*History Note: Filed as a Temporary Rule to be Eff. September 30, 1987, for a Period of 153 Days to Expire on March 1, 1988;
Statutory Authority G.S. 115E-5(17).*

LIST OF RULES AFFECTED

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EFFECTIVE: October 1, 1987

AGENCY				ACTION TAKEN	
<u>DEPARTMENT OF AGRICULTURE</u>					
2	NCAC	9B	.0016		Amended
		9C	.0302		Amended
		9D	.0001		Amended
		9E	.0003		Amended
			.0011		Amended
			.0013		Amended
		9L	.1111		Temp. Adopted Expires 3-29-88
		10G	.0301-.0302		Amended
		20A	.0001-.0002		Repealed
		20B	.0101		Amended
			.0208		Amended
			.0217		Repealed
			.0301		Amended
		34	.0503		Temp. Repealed Expires 9-22-87
			.0505		Temp. Repealed Expires 9-22-87
		38	.0302		Repealed
		43A	.0001		Repealed
		48A	.0201		Amended
		48B	.0015-.0016		Amended
		52B	.0211		Repealed
		52H	.0001		Amended
<u>DEPARTMENT OF COMMERCE</u>					
4	NCAC	16D	.0404		Amended
			.0901		Adopted
			.1001-.1004		Adopted
		16F	.0001		Amended
<u>GOVERNOR'S OFFICE</u>					
9	NCAC	2			Executive Order Number 52 Eff. July 30, 1987
					Executive Order Number 53 Eff. July 30, 1987
					Executive Order Number 54 Eff. August 25, 1987
					Executive Order Number 55 Eff. September 30, 1987
					Executive Order Number 56 Eff. September 30, 1987

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10	NCAC 10G .0108	Temp. Adopted
	.0504	Expires 3-29-88
		Temp. Amended
		Expires 3-29-88
	26G .0403	Repealed
	.0707	Adopted
	26H .0501	Repealed
	.0601-.0605	Adopted
	35E .0105-.0106	Amended
	.0315	Amended

DEPARTMENT OF LABOR

13	NCAC 7C .0101	Amended
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DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

14A	NCAC 9B .0101	Amended
	9H .0105	Adopted
	.0804-.0805	Amended
	9I .0003	Adopted

DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

15	NCAC 1H .0101-.0102	Amended
	.0201	Amended
	2B .0303	Amended
	.0305	Amended
	.0311	Amended
	.0525	Amended
	2D .0524	Amended
	.0530-.0532	Amended
	2H .0101	Amended
	.0105	Amended
	.0107-.0109	Amended
	.0112-.0113	Amended
	.0115	Amended
	.0117	Amended
	.0122-.0124	Amended
	.0127-.0141	Adopted
	.0204-.0206	Amended
	.0208-.0209	Amended
	.0210	Repealed
	.0211-.0213	Amended
	.0214	Repealed
	.0215	Amended
	.0218	Amended
	.0219-.0221	Adopted
	.0901-.0910	Amended
	.0911	Repealed
	.0912-.0915	Amended
	.0916-.0917	Adopted
	7I1 .0308	Amended
	.0406	Amended
	13O .0101-.0104	Temp. Adopted
		Expires 3-29-88
	.0201-.0202	Temp. Adopted
		Expires 3-29-88
	.0301-.0304	Temp. Adopted

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	.0601-.0605	Expires 3-29-88 Temp. Adopted
	.0701-.0704	Expires 3-29-88 Temp. Adopted
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	.0108	Expires 11-1-87 Temp. Amended
		Expires 11-1-87

DEPARTMENT OF TRANSPORTATION

19A	NCAC	2D	.0608	Amended
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DEPARTMENT OF STATE TREASURER

20	NCAC	1G	.0402	Amended
		9	.0101-.0102	Temp. Adopted
			.0201-.0202	Expires 3-1-88
			.0301	Temp. Adopted
			.0401-.0403	Expires 3-1-88
			.0501-.0502	Temp. Adopted
			.0601-.0602	Expires 3-1-88
				Temp. Adopted
				Expires 3-1-88

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21	NCAC	8F	.0504	Adopted
		8G	.0113	Adopted

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22	NCAC	2A	.0001-.0005	Repealed
		2B	.0101-.0102	Repealed
			.0201-.0205	Repealed
			.0301-.0302	Repealed
			.0401-.0404	Repealed
			.0501-.0504	Repealed
			.0601-.0603	Repealed
			.0701-.0704	Repealed
		2C	.0101-.0104	Repealed
			.0201-.0202	Repealed
			.0301-.0308	Repealed
			.0401-.0403	Repealed
			.0501-.0504	Repealed

HOUSING FINANCE AGENCY

24	NCAC	1D	.0601-.0604	Temp. Adopted
				Expires 1-20-88

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1K .0501-.0504

Temp. Adopted
Expires 1-7-88

OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 3 .0025
.0026

Temp. Repealed
Expires 12-24-87
Temp. Adopted
Expires 12-24-87

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