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The **NORTH CAROLINA REGISTER**

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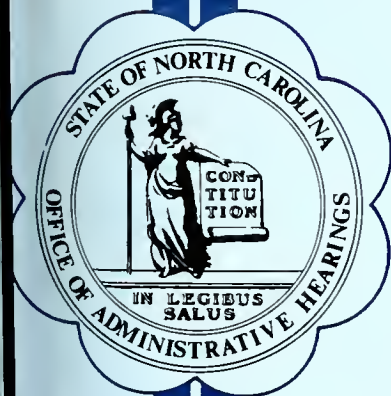
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ISSUE DATE: JANUARY 15, 1988

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

Requests for subscriptions 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 the time and place of the public hearing; 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; a reference to the Statutory Authority for the action 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.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, 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 with the Office of Administrative Hearings for publication in the NCAC.

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 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(January 1988 - March 1989)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
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
04/15/88	03/25/88	04/01/88	05/15/88	08/01/88
05/16/88	04/27/88	05/03/88	06/15/88	09/01/88
06/15/88	05/26/88	06/02/88	07/15/88	10/01/88
07/15/88	06/24/88	07/01/88	08/14/88	11/01/88
08/15/88	07/26/88	08/02/88	09/14/88	12/01/88
09/15/88	08/26/88	09/02/88	10/15/88	01/01/89
10/14/88	09/26/88	10/03/88	11/13/88	02/01/89
11/15/88	10/26/88	11/02/88	12/15/88	03/01/89
12/15/88	11/23/88	12/02/88	01/14/89	04/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89

* 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 ORDER NUMBER 58

**EXTENDED GRACE PERIOD FOR OBTAINING
1988 COMMERCIAL FISHING LICENSES**

Those persons engaged in commercial shellfishing in North Carolina are experiencing severe financial difficulties owing to the Red Tide infestation along portions of the North Carolina coast.

In order to help ease the financial burden on this segment of our State's population, I hereby direct the Division of Marine Fisheries of the Department of Natural Resources and Community Development to extend through March 31, 1988 the grace period for obtaining all 1988 commercial fishing licenses. This order shall apply only to those individuals who currently hold a 1987 license.

Done this 11th day of December, 1987.

EXECUTIVE ORDER NUMBER 59

**AMENDMENT TO EXECUTIVE ORDER
NUMBER 15 "JUVENILE
JUSTICE PLANNING COMMITTEE"**

The Juvenile Justice Planning Committee was established by Executive Order Number 15 on June 28, 1985.

In order to meet the Federal guidelines contained in the Federal Juvenile Justice and Delinquency Prevention Act of 1974 as amended, it is now necessary to alter the membership requirements of that committee.

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

Section 1(b) of Executive Order Number 15 is amended to read as follows:

The following seven members shall be appointed by the Secretary of the Department of Crime Control and Public Safety for a term of two years: a representative of a business group or a business that employs youth; two (2) representatives of private organizations that focus on strengthening the family unit or of parent groups or of those concerned with neglected or dependent children or delinquency prevention and

treatment; a representative of local government youth serving agency; three youth members under the age of 24, and who are or have been under the jurisdiction of the juvenile justice system.

All other provisions of Executive Order Number 15 remain in force.

This order shall be effective immediately and shall remain in effect until June 30, 1989.

EXECUTIVE ORDER NUMBER 60

**GOVERNOR'S TASK FORCE ON THE NORTH
CAROLINA DRIVER LICENSE SYSTEM**

Each year in North Carolina, approximately 1.75 million citizens visit examining stations operated by the Driver License Section of the Division of Motor Vehicles, North Carolina Department of Transportation, to obtain original, renewal and duplicate driver licenses, photo identification cards and learners' permits. The Driver License Section has more direct contact with the citizenry of North Carolina than does any other branch of State Government. Where, when and how the Driver License Section provides its services is vitally important to the State and to the public.

Since the establishment of the North Carolina Driver License System in 1935, no comprehensive study has been made by the State to evaluate the effectiveness of its delivery of services to the public, to analyze the need for enhancing the quality of the existing system, or to review administrative procedures and statutory requirements. In view of the elapsed time and the rapid increase in the number of licensed drivers who must be served by the Driver License Section, such comprehensive study is hereby deemed necessary and in the public interest.

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

Section 1. ESTABLISHMENT

The Governor's Task Force on the North Carolina Driver License System is hereby established. The Task Force shall consist of at least twenty and not more than thirty members appointed by the Governor to serve at the pleasure of the Governor. All vacancies shall be filled by the Governor. The Governor shall designate one of its members as Chairman and one as Vice-Chairman. The Secretary of Transportation or

EXECUTIVE ORDER

his designee and the Commissioner of Motor Vehicles or his designee shall serve as ex-officio members.

Section 2. FUNCTIONS

(1) The Task Force shall meet regularly at the call of the Chairman. The Task Force is authorized to conduct public hearings for the purpose of receiving the comments and suggestions of citizens throughout the State.

(2) The duties of the Task Force shall be to conduct a comprehensive study of the North Carolina driver license system, and shall formulate recommendations for enhancing the operations and improving the delivery of services to the public by the Driver License Section of the Division of Motor Vehicles.

Section 3. ADMINISTRATION

(a) The Special Assistant to the Commissioner of Motor Vehicles shall provide principal staff support to the Task Force. The Secretary of Transportation and the Commissioner of Motor Vehicles may designate such other personnel from their respective staffs as they deem appropriate and necessary to furnish guidance and assistance to the Task Force.

(b) The Task Force is authorized, subject to the availability of funds to retain consulting service(s) or employ such professional(s) if it determines that such service(s) or professional(s) would offer a cost-efficient method of gathering information. Funds for the retention and payment of such services(s) or professional(s) shall be made available from funds authorized by the Division of Motor Vehicles.

(c) Members of the Task Force may be reimbursed for necessary travel and subsistence expenses as authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Division of Motor Vehicles.

(d) Funds for the support of the Task Force study, in addition to expenses authorized in Section 3, subsections (b) and (c) above, shall be made available from funds authorized by the Division of Motor Vehicles.

Section 4. REPORTS

The Task Force shall present its final report and recommendations to the Governor not later than September 1, 1988.

Section 5. IMPLEMENTATION AND DURATION

(1) This order shall be effective immediately.

(2) The Commission shall dissolve at the pleasure of the Governor, but no later than December 30, 1988.

Done at Raleigh, North Carolina, this 11th day of December, 1987.

EXECUTIVE ORDER 61

AMENDMENT TO EXECUTIVE ORDER 49 GOVERNOR'S ADVISORY COMMISSION ON MILITARY AFFAIRS

The Governor's Advisory Commission on Military Affairs was created by Executive Order 49, signed on May 20, 1987.

In order for that Commission to properly carry out its duties it is necessary to amend Executive Order 49.

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

Section 1.

The first sentence of Section 4 of Executive Order 49 is hereby amended to read:

"Support staff for the commission shall be provided by the Department of Crime Control and Public Safety."

Section 2.

All other sections of Executive Order 49 remain in force.

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

EXECUTIVE ORDER NUMBER 62

AMENDMENT TO EXECUTIVE ORDER NUMBER 41 "GOVERNOR'S TASK FORCE ON DEVELOPMENT OF PRIVATE SEED VENTURE CAPITAL SOURCES"

The Governor's Task Force on Development of Private Seed Venture Capital Sources was established by Executive Order Number 41 signed on March 20, 1987. That executive order directed the Task Force to present a report of recommendations to encourage development of a private seed venture capital fund to the Governor and the Secretary of the Department of Commerce by not later than the 1st day of September, 1987.

Due to the Task Force's concentration on immediate legislative opportunities which occurred during the 1987 General Assembly, that report was not completed nor submitted. There continues to be a need for such a report.

EXECUTIVE ORDER

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

That the report called for in Section 4 of Executive Order Number 41 signed on March 20, 1987 be submitted to the Governor and the Sec-

retary of the Department of Commerce not later than the 1st day of May, 1988.

All other sections of Executive Order Number 41 shall remain in effect.

This the 30th day of December, 1987.

VOTING RIGHTS ACT FINAL DECISION LETTERS

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

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

WBR:MAP:KIF:sw
DJ 166-012-3
S5843-5847
S5645; S7959-7967
S8873-8876

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

December 3, 1987

DeWitt F. McCarley, Esq.
City Attorney
P.O. Box 7207
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the nineteen annexations [Ordinance Nos. 1715, 1716, 1717, 1718, 1719, 1720, 1727, 1728, 1729, 1730, 1736, 1737, 1738, 1739, 1740, 1749, 1750, 1751, and 1752 (1987)] to the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 5, 1987.

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

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

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

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

WBR:MAP:KIF:dvs
DJ 166-012-3
S7916

December 4, 1987

Robert C. Cogswell, Jr., Esq.
City Attorney
P. O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the change in the method of selecting the mayor pro-tem for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 6, 1987.

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

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

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

WBR:SSC:VNT:jmc
DJ 166-012-3
N2794-2796
N5092

Robert C. Cogswell, Jr., Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to your August 6, 1987, letter concerning Ordinance No. S1985-17 and Resolution No. R1985-119 which provide for an increase in the size of the city council from six to nine members and the districting plan for the City of Fayetteville in Cumberland County, North Carolina.

We have reviewed our files and it appears that our March 3, 1986, letter had a typographical error. Our files show that Section 5 preclearance was provided to Resolution No. R1985-119 rather than to Resolution No. R1985-109 as was stated in our letter. We apologize for any inconvenience we may have caused you in this matter.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

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

WBR:SSC:KIF:dvs:sw
DJ 166-012-3
S8310-8311

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

December 28, 1987

Robert Cogswell, Jr., Esq.
City Attorney
P.O. Box 1513
Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to the annexation (Ordinance No. 87-7-302) and the designation of the annexed area to District 1 for the City of Fayetteville in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 28, 1987.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend regulations cited as 1 NCAC 5A .0008; .0009; 1 NCAC 5B .0310; .1601.

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

The public hearing will be conducted at 2:00 p.m. on February 15, 1988 at Williamsburg Room, First Floor, Administration Building, 116 West Jones Street, Raleigh, N.C. 27603-8003.

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

CHAPTER 5 - PURCHASE AND CONTRACT

**SUBCHAPTER 5A - DIVISION OF
PURCHASE AND CONTRACT**

**.0008 FORMS: PROCEDURES: TERMS AND
CONDITIONS**

The division of purchase and contract establishes procedures for acquiring, ~~managing and disposing of~~ equipment, materials, supplies, printing and services and prescribes forms, terms and conditions applicable to such actions.

Statutory Authority G.S. 143-51; 143-53 (12); 143-55; 143-60.

.0009 BOARD OF AWARD

The Advisory Budget Commission designates two or more members to serve as a Board of Award for canvassing bids and recommending the award of contracts to the Secretary of Administration. The commission further designates the following state employees who can serve in this capacity in the absence of member(s) of the commission:

Controller, State Board of Education
State Treasurer
Secretary of State

Representative from Attorney General's Office.

~~All Departmental Secretaries with the exception of the Secretary of Administration.~~

These alternate members shall not further delegate this responsibility. The board normally meets weekly.

Bids are reviewed only by the Division of Purchase and Contract, the Board of Award and the Secretary of Administration. Records are kept of each meeting and made public by the State Purchasing Officer.

Statutory Authority G.S. 143-53.

SUBCHAPTER 5B - PURCHASE PROCEDURE

**SECTION .0300 - ADVERTISED (FORMAL)
BID PROCEDURE**

.0310 ADVERTISED PROCUREMENTS

Advertised procurements are awarded under procedures established by the Secretary of Administration ~~after consultation with the Advisory Budget Commission.~~ After contracts are awarded, successful bidders are notified by letter of acceptance or by purchase order as appropriate.

Statutory Authority G.S. 143-49; 143-52.

SECTION .1600 - EXEMPTIONS: EMERGENCIES AND DELEGATIONS

.1601 EXEMPTIONS

Unless directed otherwise by the Secretary of Administration, ~~after consultation with the Advisory Budget Commission,~~ it is not mandatory that published books, manuscripts and like material and perishable articles such as fresh meats be purchased through the Division of Purchase and Contract. Where such purchases are made directly by using agencies, however, competitive bids are required whenever possible.

The Secretary of Administration has directed that contracts for two such types of foods, bakery products and dairy products, be awarded through the Division of Purchase and Contract.

The printing of Supreme Court reports is exempted from handling through the Division of Purchase and Contract.

The purchase of liquor is not handled through the Division of Purchase and Contract.

Statutory Authority G.S. 18A; 143-56; 143-62.

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to adopt, amend, repeal regulations cited as 2 NCAC 9B .0016; .0033; 9K .0102; 9M .0001; 38 .0201; .0301; .0401; .0402; 43F .0003; 48A .0209; .0221; .0238; .0608; .0611; 52B .0204; .0207; 52C .0105.

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

The public hearing will be conducted at 10:00 a.m. on March 9, 1988 at Board Room, Agriculture Bldg., 1 West Edenton St., Raleigh, N.C.

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

CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 9B - RULES AND STANDARDS ADOPTED BY REFERENCE

.0016 ADOPTIONS BY REFERENCE

(a) The food and drug protection division adopts by reference in accordance with G.S. 150B-14(c) "Official Methods of Analysis of AOAC" (~~14th edition, 1984~~) published by the Association of Official Analytical Chemists.

(b) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the "U.S. Pharmacopeia National Formulary USP XXI-NFXVI" (~~January 1, 1985~~) and supplements published by the U.S. Pharmacopeial Convention, Inc.

(c) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the "ASTM Standards on Engine Coolants", ~~5th edition~~, published by the American Society for Testing Materials. ~~1980~~.

(d) The following volumes are adopted by reference in accordance with G.S. 150B-14 (c) by the food and drug protection division:

- (1) "EPA Manual of Chemical Methods for Pesticides and Devices", and supplements published by AOAC;
- (2) "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health, Education and Welfare, Food and Drug Administration;
- (3) "FDA Compliance Policy Guides," published by the United States Department of Health, Education and Welfare, Food and Drug Administration;
- (4) "Bergey's Manual of Determinative Bacteriology", ~~8th Edition~~, R. E. Buchanan and N. E. Gibbons, Editors, Williams & Wilkins Company, Baltimore; ~~1974~~;
- (5) "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Meat and Poultry Inspection Program, Washington, D.C.; ~~1974~~;
- (6) "FDA Bacteriological Analytical Manual," ~~5th Edition~~, published by the Association of Official Analytical Chemists; ~~1978~~;
- (7) "Standard Methods for the Examination of Dairy Products," ~~14th Edition~~, E. H. Marth, Editor, published by the American Public Health Association; ~~1978~~;
- (8) "Compendium of Methods for the Microbiological Examination of Foods," M. L. Speck, Editor, published by the American Public Health Association; ~~1976~~;
- (9) "Bergey's Manual of Systematic Bacteriology," Vol. I, Kreg and Holt, Editors, William E. Wilkens Company, Baltimore; ~~1984~~;
- (10) "Manual of Clinical Microbiology", ~~3rd edition~~, E. H. Lennette, Balows, et al., Editors, published by the American Society for Microbiology; ~~1980~~;
- (11) "Standard Methods for the Examination of Water and Waste Water", ~~14th edition~~, published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. ~~1975~~.

(e) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the code of Federal Regulations, Title 21, Subchapter A (General), as promulgated by the Commissioner of the Food and Drug Ad-

PROPOSED RULES

ministration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part	Subject of Part
(1)	1.1	General
(2)	1.3	Labeling - Definitions
(3)	1.20	Presence of Mandatory Label Information
(4)	1.21	Failure to Reveal Material Facts
(5)	1.24	Exemptions from Required Label Statements
(6)	1.31	Package Size Savings
(7)	1.35	"Cents-off," or Other Savings Representations
(8)	2.25	Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
(9)	2.35	Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
(10)	7.12	Guaranty
(11)	7.13	Suggested Forms of Guaranty
(12)	70	Color Additives
(13)	70.3	Definitions
(14)	70.5	General Restrictions on Use
(15)	70.10	Color Additives in Standardized Foods, New Drugs, and Antibiotics
(16)	70.11	Related Substances
(17)	70.20	Packaging Requirements for Straight Colors (Other Than Hair Dyes)
(18)	70.25	Labeling Requirements for Color Additives (Other Than Hair Dyes)
(19)	73	Listing of Color Additives Exempt from Certification
(20)	74	Listing of Color Additives Subject to Certification
(21)	81	General Specifications and General Restrictions for Provisioned Color Additives for Use in Foods, Drugs and Cosmetics
(22)	82	Listing of Certified Provisionally Listed Colors and Specifications

(f) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter B (Food for Human Consumption), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug and Cosmetic Act:

	Part	Subject of Part
(1)	100	General
(2)	101	Food Labeling
(Except 101.11 and 101.103)		
(3)	102	Common or Usual Name for Nonstandardized Foods
(4)	103	Quality Standards for Foods with No Identity Standards
(5)	104	Nutritional Quality Guidelines for Foods
(6)	105	Foods for Special Dietary Use
(7)	106	Infant Formula Quality Control Procedures
(8)	107	Infant Formula
(9)	108	Emergency Permit Control
(10)	109	Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material
(11)	110	Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food
(12)	113	Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers
(13)	114	Acidified Foods
(14)	123	Frozen Raw Breaded Shrimp
(15)	129	Processing and Bottling of Bottled Drinking Water
(16)	130	Food Standards: General
(17)	131	Milk and Cream
(18)	133	Cheeses and Related Cheese Products
(19)	135	Frozen Desserts
(20)	136	Bakery Products
	Provided, that:	
(a)	21 CFR 136.3(a) shall be changed to read: "The word 'Bread' when used in the name of the food means the unit weighs one pound or more after cooling;" and	
(b)	21 CFR 136.3(b) shall be changed to read: "The words 'rolls' and 'buns' when used in the name of the food mean the unit weighs less than six ounces after cooling."	

	Part	Subject of Part
(21)	137	Cereal Flours and Related Products
(22)	139	Macaroni and Noodle Products
(23)	145	Canned Fruits
(24)	146	Canned Fruit Juices
(25)	150	Fruit Butters, Jellies, Preserves, and Related Products

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- (26) 152 Fruit Pies
- (27) 155 Canned Vegetables
- (28) 156 Vegetable Juices
- (29) 158 Frozen Vegetables
- (30) 160 Eggs and Egg Products
- (31) 161 Fish and Shellfish (Except

Section 161.30 and 161.130 through 161.145)

- (32) 163 Cacao Products
- (33) 164 Tree Nut and Peanut Products
- (34) 165 Nonalcoholic Beverages
- (35) 166 Margarine
- (36) 168 Sweeteners and Table Syrups
- (37) 169 Food Dressings and Flavorings

- (38) 170 Food Additives
- (39) 172 Food Additives Permitted for Direct Addition to Food for Human Consumption

- (40) 173 Secondary Direct Food Additives Permitted in Food for Human Consumption

- (41) 174 Indirect Food Additives: General

- (42) 175 Indirect Food Additives: Adhesive Coatings and Components

- (43) 176 Indirect Food Additives: Paper and Paperboard Components

- (44) 177 Indirect Food Additives: Polymers

- (45) 178 Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

- (46) 179 Irradiation in the Production, Processing and Handling of Food

- (47) 180 Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study

- (48) 181 Prior-Sanctioned Food Ingredients

- (49) 182 Substances Generally Recognized as Safe

- (50) 184 Direct Food Substances Affirmed as Generally Recognized as Safe

- (51) 186 Indirect Food Substances Affirmed as Generally Recognized as Safe

- (52) 189 Substances Prohibited from Use in Human Food

- (53) 193 Tolerances for Pesticides in Food Administered by the Environmental Protection Agency

(g) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the Code of Federal Regulations, Title 21,

Subchapter C (Drugs: General) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part	Subject of Part
--	------	-----------------

- | | | |
|------|-----|---|
| (1) | 200 | General |
| (2) | 201 | Labeling |
| (3) | 202 | Prescription Drug Advertising |
| (4) | 210 | Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General |
| (5) | 211 | Current Good Manufacturing Practice for Finished Pharmaceuticals |
| (6) | 225 | Current Good Manufacturing Practice for Medicated Feeds |
| (7) | 226 | Current Good Manufacturing Practice for Medicated Premixes |
| (8) | 250 | Special Requirements for Specific Human Drugs |
| (9) | 290 | Controlled Drugs |
| (10) | 299 | Drugs; Official Names and Established Names |

(h) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter D (Drugs for Human Use) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part	Subject of Part
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- | | | |
|------|-----|--|
| (1) | 300 | General |
| (2) | 310 | New Drugs |
| (3) | 312 | New Drugs for Investigational Use |
| (4) | 314 | New Drug Applications |
| (5) | 320 | Bioavailability and Bioequivalence Requirements |
| (6) | 329 | Habit-Forming Drugs |
| (7) | 330 | Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded |
| (8) | 331 | Antacid Products for Over-the-Counter (OTC) Human Use |
| (9) | 332 | Antiflatulent Products for Over-the-Counter Human Use |
| (10) | 361 | Prescription Drugs for Human Use Generally Recognized as Safe |

- and Effective and Not Misbranded:
Drugs Used in Research
- (11) 369 Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
 - (12) 429 Drugs Composed Wholly or Partly of Insulin
 - (13) 430 Antibiotic Drugs: General
 - (14) 431 Certification of Antibiotic Drugs
 - (15) 432 Packaging and Labeling of Antibiotic Drugs
 - (16) 433 Exemptions from Antibiotic Certification and Labeling Requirements
 - (17) 436 Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs
 - (18) 440 Penicillin Antibiotic Drugs
 - (19) 442 Cepha Antibiotics
 - (20) 444 Oligosaccharide Antibiotic Drugs
 - (21) 446 Tetracycline Antibiotic Drugs
 - (22) 448 Peptide Antibiotics
 - (23) 449 Antifungal Antibiotics
 - (24) 450 Antitumor Antibiotic Drugs
 - (25) 452 Macrolide Antibiotic Drugs
 - (26) 453 Lincomycin Antibiotic Drugs
 - (27) 455 Certain Other Antibiotic Drugs
 - (28) 460 Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease

(i) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter H (Medical Devices) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

Part	Subject of Part
(1) 809	In Vitro Diagnostic Products for Human Use
(2) 812	Investigational Device Exemptions
(3) 813	Investigational Exemptions for Intraocular Lenses
(4) 820	Good Manufacturing Practices for Medical Devices: General
(5) 860	Medical Device Classification Procedures

- (6) 861 Procedures for Performance Standards Development
- (7) 870 Cardiovascular Devices
- (8) 882 Neurological Devices
- (9) 884 Obstetrical and Gynecological Devices
- (10) 895 Banned Devices

(j) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter E (Animal Drugs, Feeds, and Related Products) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

Part	Subject of Part
(1) 500	General
(2) 501	Animal Food Labeling
(3) 502	Common or Usual Names for Nonstandardized Animal Foods
(4) 505	Interpretive Statements Re: Warnings on Animal Drugs for Over-the-Counter Sale
(5) 507	Thermally Processed Low-Acid Animal Foods Packaged in Hermetically Sealed Containers
(6) 508	Emergency Permit Control
(7) 509	Unavoidable Contaminants in Animal Food and Food-Packaging Material
(8) 510	New Animal Drugs
(9) 511	New Animal Drugs for Investigational Use
(10) 514	New Animal Drug Applications
(11) 520	Oral Dosage Form New Animal Drugs Not Subject to Certification
(12) 522	Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification
(13) 524	Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification
(14) 526	Intramammary Dosage Forms Not Subject to Certification
(15) 529	Certain Other Dosage Form New Animal Drugs Not Subject to Certification
(16) 536	Tests for Specific Antibiotic Dosage Forms
(17) 539	Bulk Antibiotic Drugs Subject to Certification
(18) 540	Penicillin Antibiotic Drugs for Animal Use

- (19) 544 Oligosaccharide Certifiable Antibiotic Drugs for Animal Use
- (20) 546 Tetracycline Antibiotic Drugs for Animal Use
- (21) 548 Certifiable Peptide Antibiotic Drugs for Animal Use
- (22) 555 Chloramphenicol Drugs for Animal Use
- (23) 556 Tolerances for Residues of New Animal Drugs in Food
- (24) 558 New Animal Drugs for Use in Animal Feeds
- (25) 561 Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency
- (26) 564 Definitions and Standards for Animal Food
- (27) 570 Food Additives
- (28) 573 Food Additives Permitted in Feed and Drinking Water of Animals
- (29) 582 Substances Generally Recognized as Safe

(k) The food and drug protection division adopts by reference in accordance with G.S. 150B-14 (c) the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter G (Cosmetics) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

Part Subject of Part

- (1) 700 General
- (2) 701 Cosmetic Labeling
- (3) 720 Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements
- (4) 730 Voluntary Filing of Cosmetic Product Experiences
- (5) 740 Cosmetic Product Warning Statements

(l) Part 180 of the Code of Federal Regulations, Title 40, entitled "Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities" as promulgated by the Administrator of the Environmental Protection Agency, under the authority of the Federal Food, Drug, and Cosmetic Act is hereby adopted by reference in accordance with G.S. 150B-14 (c) by the food and drug protection division.

(m) The Code of Federal Regulations, Title 9, Part 319, entitled "Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products", promulgated by the Secretary of Agriculture under the Federal Meat Inspection

Act (as amended by the Wholesome Meat Act) is hereby adopted by reference in accordance with G.S. 150B-14 (c) by the food and drug protection division.

(n) The Code of Federal Regulations, Title 9, Part 381, Subpart P, Sections 381.155 through 381.170, entitled "Definitions and Standards of Identity or Composition for Poultry and Poultry Products," promulgated by the Secretary of Agriculture under the Federal Poultry Inspection Act (as amended by the Wholesome Poultry Products Act) are hereby adopted by reference in accordance with G.S. 150B-14 (c) by the food and drug protection division.

~~(o) All documents adopted by reference in 2 NCAC 9B shall be those documents in effect as of January 14, 1987.~~

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

.0033 DOCUMENT AVAILABILITY

Copies of documents adopted by reference in ~~2 NCAC 9B .0021 through .0030~~ 2 NCAC 9B .0016 are available for inspection in the Office of the Director of the Food and Drug Protection Division and may be obtained at a cost as determined by the publisher by contacting the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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

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

SECTION .0100 - SAMPLING AND TESTING OF MILK AND CREAM

.0102 GENERAL SAMPLING PROCEDURES

(a) The sampling of raw milk for producer payment shall be as outlined in ~~2 NCAC 9B .0020~~ 2 NCAC 9B .0016 (d) (7) (Standard Methods for the Examination of Dairy Products).

(c) Farm Bulk Milk Hauler Samplers shall follow the procedures found in Sections VI through XIX of the "Farm Bulk Milk Haulers Manual" compiled by the United States Department of Agriculture, ~~August 14, 1980~~, which is hereby adopted by reference in accordance with G.S. 150B-14 (c). A copy of the manual is available for inspection in the Office of the Director of the Food and Drug Protection Division and may be obtained at a cost as determined by the publisher by con-

tacting U.S.D.A. Agriculture Marketing Service, Dairy Division, Washington, DC 20250.

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

SUBCHAPTER 9M - DRUGS

.0001 MANUFACTURER REGISTRATION

(a) Every person doing business in North Carolina and operating as a prescription drug manufacturer, repackager or wholesaler shall submit a completed prescription drug registration form to the department. A separate registration form shall be submitted for each establishment operating in the state of North Carolina. Each registration form shall be signed by the owner or individual in charge.

(b) A registration fee of one hundred dollars (\$100.00) shall be submitted with each prescription drug registration form.

(c) On or before December 31 of each year, every person registered in accordance with (a) of this Rule shall submit a renewal form furnished by the division.

(d) A fee of one hundred dollars (\$100.00) shall be submitted with each renewal form.

(e) Prescription Drug Registration Forms may be obtained from the Food and Drug Protection Division.

Statutory Authority G.S. 106-140.1.

CHAPTER 38 - STANDARDS DIVISION

SECTION .0200 - APPROVAL OF WEIGHING AND MEASURING DEVICES

.0201 ADOPTION BY REFERENCE

The board hereby adopts by reference in accordance with G.S. 150B-14(c) the National Bureau of Standards, Handbook 44, ~~1987 edition~~, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices" except as otherwise indicated in this Chapter.

Copies of the above are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost of ~~fifteen dollars (\$15.00) per copy as determined by the publisher~~ by contacting the publisher at the following address: National Bureau of Standards, Department of Commerce, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Statutory Authority G.S. 81A-2; 150B-14.

SECTION .0300 - PACKAGE AND LABELING REQUIREMENTS

.0301 ADOPTION BY REFERENCE

The following are adopted by reference in accordance with G.S. 150B-14(c) as standards for packaging and labeling and for determining compliance of packaged goods with net contents labeling requirements:

- (1) National Bureau of Standards, Handbook 130, ~~1987 edition~~, "Packaging and Labeling Regulation," with the exception of Sections 13, 14, and 15 of the "Packaging and Labeling Regulation" which are deleted;
- (2) National Bureau of Standards, Handbook 133, Second Edition "Checking the Net Contents of Packaged Goods".

Copies of Handbook 130 and Handbook 133 are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost of ~~ten dollars (\$10.00) and nine dollars (\$9.00), respectively, per copy, as determined by the publisher~~ by contacting the publisher at the following address: National Bureau of Standards, Department of Commerce, Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Statutory Authority G.S. 81A-4; 150B-14.

SECTION .0400 - METHOD OF SALE OF COMMODITIES

.0401 ADOPTION BY REFERENCE

The board hereby adopts by reference in accordance with G.S. 150B-14(c) the National Bureau of Standards, Handbook 130, ~~1987 edition~~, "Method of Sale of Commodities Regulation" with the following additions and exceptions to the 1987 "Method of Sale of Commodities Regulation":

- (1) Delete Section 1.2., "Bread", since this is addressed in General Statute 81A-41.
- (2) The preferred method for measuring fireplace and stove wood is by the cord or fractional parts of a cord, however, nothing in Section 2.3, "Fireplace and Stove Wood", shall be construed as preventing the purchaser and seller of fireplace or stove wood from agreeing on a quantity other than a cord or fractional parts of a cord.
- (3) Sections 2.9., 2.11., 2.19., 4., and 5. are deleted.
- (4) Section 2.18 applies only to kerosene sold in a container or kerosene sold through a

retail device. In addition, a container or a device shall clearly and conspicuously indicate for 1-K kerosene "SUITABLE FOR USE IN UNVENTED HEATERS" and for 2-K kerosene "MAY NOT BE SUITABLE FOR USE IN UNVENTED HEATERS".

- (5) In Section 2.20., the temperature compensation requirements are not mandatory. However, if a company elects to sell liquefied petroleum gas on a temperature compensated basis, then all meters in the truck fleet must be equipped with an activated automatic temperature compensator which will remain in continuous operation for a period of not less than one year.

Copies of National Bureau of Standards, Handbook 130, "Method of Sale of Commodities Regulation" are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Statutory Authority G.S. 81A-4; 150B-14.

**.0402 DOCUMENT AVAILABILITY
(REPEALED)**

Statutory Authority G.S. 81A-4; 150B-14.

CHAPTER 43 - MARKETS

**SUBCHAPTER 43F - MARKETING AND
BRANDING: APPLES AND PEACHES**

**.0003 STANDARDS FOR RECEPTACLES:
LABELING: ETC.**

All closed containers in which apples or peaches are packed for sale, exposed for sale, or offered for sale, shall clearly and conspicuously be marked immediately after the containers are closed in accordance with the following regulations:

- (7) Apple containers must show the applicable U.S. Grade or the equivalent state grade as registered with and approved by the North Carolina Board of Agriculture. Grades must appear on the principal display panel or be marked "Unclassified," "Not Graded," or "Grade Not Determined." State grades shall not be shown without corresponding U.S. Grades. Peach containers are not required to show grade markings; however, when grade is

shown, the product must meet that standard.

Statutory Authority G.S. 106-185; 106-188; 106-195.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

**SECTION .0200 - HONEY AND BEE
INDUSTRY**

**.0209 INSPECTION OF NUCLEI AND QUEEN
BREEDING APIARIES**

(f) All persons who sell, ship, or deliver either queen bees, package bees, or Nuclei in North Carolina must keep complete records of their acquisitions, sales, shipments, or deliveries. These records must show contents of shipments; where sold, shipped, or delivered; to whom it was sold, shipped, or delivered; and the date sold, shipped, or delivered. These records must be kept for three years after the transaction and must be made available to any North Carolina Department of Agriculture apiary inspector on request. All persons who sell, ship, or deliver either queen bees, package bees, or Nuclei in North Carolina must register with the Plant Industry Division of the North Carolina Department of Agriculture.

Statutory Authority G.S. 106-638.

**.0221 DISEASES AND DISORDERS OF
SPECIAL CONCERN**

The following diseases, disorders, and conditions are of special concern to beekeeping in North Carolina. These are prescribed for special regulatory action as referenced in these Rules:

(8) Africanized bee - Hybrids of Apis mellifera scutellata;

(9) Varroa mite - Varroa jacobsoni.

Statutory Authority G.S. 106-638; 106-639.

**.0238 AFRICANIZED BEE/VARROA MITE
CLEAN UP AREA**

To prevent introduction of the Africanized bee (hybrids of *Apis mellifera scutellata*) and/or the Varroa mite (*Varroa jacobsoni*) into North Carolina through the ports at Morehead City and Wilmington, Africanized bee/Varroa mite clean up areas are hereby established at these ports.

The clean up areas shall be that area encompassed by a circle of two mile radius with center at western terminus of Morehead City-

Beaufort bridge on U.S. 70 in Morehead City, North Carolina and a circle of two mile radius with center at the western terminus of Shipyard Boulevard in Wilmington, North Carolina.

These areas are hereby declared bee-free areas. No bees shall be kept or husbanded in these areas without permission of the state apiarist. Apiary inspectors are authorized to take and/or destroy any bees found in these areas including bees on ships or in cargo. No one shall transport or ship bees into or from these areas unless they are part of a bee shipment through the ports.

Any cargo containing bees shall not be removed from the area until declared bee-free by an Apiary Inspector. No one shall capture or take a swarm of bees from the area. Bees and their progeny taken from the area shall be subject to destruction without regard as to whether they are Africanized or not.

Statutory Authority G.S. 106-638; 106-639.

SECTION .0600 - BOLL WEEVIL

.0608 REPORTING OF ACREAGE:

LOCATION OF COTTON ACREAGE

All cotton farm operators and growers of noncommercial cotton in an elimination zone shall submit a Cotton Acreage Reporting Form by June 15 July 1 of the current growing season to the county ASCS office. A report shall be filed for each year of participation in the program.

- (1) Noncommercial cotton shall not be planted in an elimination zone. Growers of noncommercial cotton in an elimination zone may apply for a waiver to grow cotton in an elimination zone. Applications, in writing, shall be made to the Plant Pest Administrator stating the conditions under which he requests such waiver. The decision whether or not to waive all or part of these requirements shall be based on the following:
 - (a) location of growing area;
 - (b) size of growing area;
 - (c) pest conditions in the growing area;
 - (d) accessibility of growing area;
 - (e) any stipulations set forth in a compliance agreement between the individual and the Department of Agriculture that are necessary for the effectuation of the program.
- (2) Written application for waivers shall be made to the Plant Pest Administrator for review.

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

.0611 REQUIREMENTS FOR PROGRAM PARTICIPATION

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

- (1) Filling out a Cotton Acreage Reporting Form at the ASCS office by June 15 July 1 of the current growing season for which participation is desired. At this time a nonrefundable fee of no more than ten dollars (\$10.00) six dollars (\$6.00) per acre as determined by the commissioner based on certified acreage reported by the farm operator, shall be paid. Those farm operators not reporting their acreage by June 15 July 1 will not be considered as a program participant. All acreage reported by such nonparticipants after June 15 July 1 will be considered in excess and subject to penalty.
- (2) All fees shall be paid by the farm operator. Fees shall be made payable to and collected by ASCS.

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

shall be based on the following: meteorological conditions, economic conditions, and any other uncontrollable destructive forces.

Failure to pay all remaining fees on or before July 4 July 15 of the current growing season will result in a penalty fee of ten dollars (\$10.00) per acre. Failure by a farm operator to pay all program costs as of July 4 July 15 or upon notification of ASCS measured acreage, whichever is later, shall be a violation of this Section. The farm operator when found in violation of this Section and upon notification shall completely destroy all cotton not found to be in compliance with the provisions of this Section. If such farm operator fails to comply with these Regulations, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to destroy such cotton in accordance with the provisions of Article 4 and Article 36 of Chapter 106 of the North Carolina General Statutes.

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

Statutory Authority G.S. 106-65.74; 106-65.77; 106-65.88; 106-65.91.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

.0204 IMPORTATION REQUIREMENTS: BRUCELLOSIS

(a) All cattle imported into North Carolina, regardless of the class of state, are subject to the provisions of this Rule, as follows:

- (4) no cattle will be accepted (other than those consigned to immediate slaughter) which have been adult vaccinated against brucellosis or originate from infected, exposed or quarantined herds; ~~and~~
- (5) required retests will be performed by representatives of State Veterinarian at no expense to the owner, or the owner may have the tests conducted by an accredited veterinarian at his expense; and

(6) all cattle shall be negative in all dilutions if tube or plate agglutination test is used, or negative to official card test.

(b) In addition to the requirements of (a) of this Rule, cattle imported from brucellosis-free and class-A states shall comply with the following:

- (2) cattle from Free states and class A states which originate from the farm of origin and move directly to an approved stockyard or farm in North Carolina in compliance with this part are not required to be tested within 45 to 120 days after entry. However, the State Veterinarian strongly recommends a retest and retests may be performed by a representative of the State Veterinarian at no expense to the owner. Eligible cattle which have been commingled in a stockyard prior to importation must in addition to the requirements of this part pass a negative retest within 45 to 120 days after arrival in this state.

Statutory Authority G.S. 106-22; 106-307.5; 106-396.

.0207 IMPORTATION REQUIREMENTS: SWINE

(b) Breeding swine shall originate from a "Validated Brucellosis-Free" herd or a "Validated Brucellosis-Free" State and ~~pass a negative official blood test for pseudorabies within 30 days prior to entry into the state or~~ originate from a "Qualified Pseudorabies- ~~Free~~ Negative" herd as defined in Title 9, Parts 78.1 and 85 of the Code of Federal Regulations. A permit issued by the State Veterinarian of North Carolina is required for all breeding swine entering the state. The permit number must be shown on the interstate health certificate accompanying each shipment.

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

- (1) No pseudorabies vaccine has been used in the herd of origin, unless the herd is a pseudorabies Controlled Vaccinated herd as defined in Title 9, Part 85.1 of the Code of Federal Regulations, or a pseudorabies monitored vaccinated herd; or
- (2) The swine were tested and found negative for pseudorabies within 30 days prior to importation; or

- (3) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or
- (4) the swine originated from a Qualified Pseudorabies Negative Herd as defined in Title 9, Part 85 of the Code of Federal Regulations; or
- (5) the swine originated from a monitored feeder pig herd. For the purposes of this Regulation, in order to qualify as a monitored feeder pig herd, testing must have been performed in accordance with the following standards:
 - (A) In herds of 10 or fewer breeding swine, all breeding swine must test negative within 12 months prior to importation.
 - (B) In herds of 11 to 35 breeding swine, 10 randomly selected breeding animals, (to include gilts, sows and boars) must test negative within 12 months prior to importation.
 - (C) In herds of more than 35 breeding swine, either 30 or 30 percent of the total herd, whichever is less, randomly selected breeding gilts, sows and boars must test negative within 12 months prior to importation.
 - (D) All breeding gilts, sows and boars in a herd shall be subject to random selection for testing.
 - (E) Testing must be done by use of an official pseudorabies test, as defined in Title 9, Part 85 of the Code of Federal Regulations.

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

(d) Swine imported into the state for feeding purposes, except as provided for in Paragraph (e) of this Rule, and those swine exposed to them on the same premises, shall be quarantined and sold or consigned only to slaughter. This requirement may be waived

by written permit from the State Veterinarian or his authorized representative.

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

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

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

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

SUBCHAPTER 52C - CONTROL OF LIVESTOCK DISEASES: MISCELLANEOUS PROVISIONS

SECTION .0100 - DISEASED AND DEAD ANIMALS

.0105 PSEUDORABIES STATUS AND TESTING

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

- (1) No pseudorabies vaccine has been used in the herd of origin, unless the herd is a pseudorabies Controlled Vaccinated herd as defined in Title 9, Part 85.1 of the Code of Federal Regulations, or a pseudorabies monitored vaccinated herd; or
- (2) The swine were tested and found negative for pseudorabies within 30 days prior to movement; or
- (3) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or

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

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

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

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

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

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

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

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

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

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

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

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

Notice is hereby given that in response to a rulemaking petition filed by the Chatham County Board of Commissioners, the North Carolina Pesticide Board intends to hold a public hearing, in accordance with G.S. 150B-12, to consider the amendment of 2 NCAC 9L .1002 and 2 NCAC 9L .1005.

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

The public hearing will be conducted at the following locations, times and dates:

*Auditorium
Catawba Valley Technical College
Highway 64-70 East
Hickory, NC 28601
February 17, 1988
7:30 p.m.*

*Lumber Building, Room 209
Pitt Community College
Highway 11 South
Greenville, NC 27834
February 25, 1988
7:30 p.m.*

*Board Room (Room 359), Agriculture Bldg.
N.C. Department of Agriculture
One West Edenton Street
Raleigh, NC 27611
March 3, 1988
2:00 p.m.*

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

SUBCHAPTER 9L - PESTICIDE SECTION

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

.1002 GENERAL REQUIREMENTS

(1) Any person who contracts for an aerial application of a pesticide shall provide in-

dividual and public notification not less than 72 hours prior to the commencement of each such application.

- (1) Individual and public notification shall include at least the following information:
 - (A) date and approximate time of day of the application;
 - (B) brand name and EPA registration number of each pesticide to be applied;
 - (C) name, address, and telephone number of the individual, firm, or corporation conducting the spraying; and
 - (D) name, address, and telephone number of the individual contracting for the application.
- (2) For the purposes of this Paragraph, individual notification is defined as written communication delivered to the head of household or, in his or her absence, to an inhabitant of legal age of any residence located within 1,000 feet of the target area to be sprayed. Such written communication may be by means of:
 - (A) U.S. mail; or
 - (B) notice left at residence.
- (3) For the purposes of this Paragraph, public notification is defined as posting of clear warning signs to be in place at least 72 hours prior to commencement of the application:
 - (A) at the corners and at a distance of every one-half mile along the perimeter of the target area to be sprayed; and
 - (B) at a distance of every one-half mile along any public road located within one-half mile of the boundary of the target area to be sprayed.

Statutory Authority G.S. 143-458; 143-466.

.1005 RESTRICTED AREAS

(c) No pesticide shall be deposited within ~~400~~ 1,000 feet of any residence unless the aerial applicator has prior written consent of ~~an inhabitant of said residence of legal age~~ the head of household. The party who is contracting for the services of an aerial applicator shall obtain the written consent and forward it to the aerial applicator for record keeping purposes. The consent agreement shall include:

- (1) date of agreement;
- (2) time period for which the consent is valid;
- (3) location or designation of the residence;
- (4) ~~signature of the consenting inhabitant of residence.~~

- (4) name and EPA registration number of the pesticide(s) to be applied as well as an explanation of possible hazards;
- (5) name, address, and telephone number of aerial applicator and/or contractor as well as contracting agent;
- (6) a statement that any consenting party may withdraw his or her consent at any time by notifying in writing the party which requested the consent. Upon such notification, the previous consent shall be invalidated; and
- (7) signature of person consenting and person seeking consent. A copy of the agreement will be kept by both parties.

~~Any consenting inhabitant may withdraw his consent at any time by notifying in writing the party which requested the consent. Upon such notification, the previous consent shall be invalidated. No party may consent to aerial application of pesticides within 300 feet of a residence, and no pesticide may be deposited by aircraft within 300 feet of a residence.~~

Statutory Authority G.S. 143-458.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Alcoholic Beverage Control Commission intends to amend regulations cited as 4 NCAC 2R .0902; 2S .0107; .0515.

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

The public hearing will be conducted at 10:00 a.m. on March 4, 1988 at the ABC Commission Offices, Hearing Room 101, 3322 Garner Road, Raleigh, NC.

Comment Procedures: Data, opinions and arguments should be submitted prior to January 19, 1988, to the Commission at P. O. Box 26687, Raleigh, N.C., 27611-6687. Persons desiring to speak at the hearing are requested to notify the Commission prior to March 4, 1988.

CHAPTER 2 - ALCOHOLIC BEVERAGE CONTROL COMMISSION

SUBCHAPTER 2R - ORGANIZATIONAL RULES: POLICES AND PROCEDURES

SECTION .0900 - FISCAL RULES FOR LOCAL
BOARDS

.0902 MAINTENANCE OF WORKING CAPITAL

(b) A local board shall set its Working Capital requirements at not less than ~~one month's~~ two weeks' average gross sales of the last fiscal year nor greater than four months' average gross sales of the last fiscal year. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2),(3), and (4).

Statutory Authority G.S. 18B-702(e); 18B-805(d).

SUBCHAPTER 2S - RETAIL BEER: WINE:
MIXED BEVERAGES:
BROWNBAGGING: ADVERTISING: SPECIAL
PERMITS

SECTION .0100 - DEFINITIONS: PERMIT
APPLICATION PROCEDURES

.0107 SPECIAL REQUIREMENTS FOR PRIVATE
CLUBS

(c) Mandatory Requirements. To qualify as a private club, a facility shall meet the following requirements concerning membership:

- (6) ~~grant no membership sooner than three days after receipt of application;~~
- (7) (6) issue written or printed evidence of membership to each member, which evidence of membership or other reasonably reliable document of identification shall be in the possession of each member present on the licensed premises;
- (8) (7) maintain on the premises a current alphabetical roster of all members and their complete addresses;
- (9) (8) maintain and provide to each member a written policy concerning the use of facilities by guests.

Statutory Authority G.S. 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(5); 18B-1008.

SECTION .0500 - ADDITIONAL
REQUIREMENTS FOR MIXED BEVERAGES
PERMITTEES

.0515 PRIVATE CLUBS: GENERAL
PROHIBITIONS: GUESTS

- (a) ~~Neither a private club mixed beverages permittee nor his employee shall:~~
- (1) ~~allow any person who is not a member or a bona fide guest of a member to be~~

~~present as a patron on the premises of a private club; or~~

- (2) ~~grant membership privileges to the private club to any person earlier than three days from the receipt of his application for membership.~~

(a) Neither a private club permittee nor his employee shall allow any person who is not a member or a bona fide guest of a member to be present as a patron on the premises of a private club.

Statutory Authority G.S. 18B-207; 18B-1008.

* * * * *

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

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

The public hearing will be conducted at 10:00 a.m. on March 24, 1988 at Room 2063, Dobbs Building, Raleigh, NC.

Comment Procedures: Written comments may be sent to the Cemetery Commission, Post Office Box 25249, Raleigh, North Carolina 27611. Requests for opportunity to present oral testimony and a summary of the testimony must be received at this address by March 21, 1988.

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5D - TRUST FUNDS

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

.0202 DELIVERY

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

(b) Markers, bases and vases shall not be considered delivered unless installed or stored at the cemetery or if stored off premises by a

supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. ~~No person, firm or corporation shall be deemed a supplier for purposes of this rule unless it: If vaults, crypts or other merchandise are stored off premises the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a North Carolina cemetery company and which at the date of the report was then in storage and properly designated the property of the cemetery company's customer and not the property of the supplier.~~

- (1) permanently and unalterably identifies each such merchandise item with the name of the purchaser; and when the item is manufactured and placed into the storage facility a Certificate of Title is prepared and issued to the lot owner through the cemetery;
- (2) submits to the Cemetery Commission not less than annually a report by a certified public accountant of each merchandise item which has been purchased through a North Carolina cemetery company and which, at the date of such report, was then in storage;
- (3) permits the Cemetery Commission or its designee, at any time, to examine all stored merchandise which was purchased through any North Carolina cemetery and to examine any document pertaining thereto;
- (4) submits evidence of a bond insuring the existing and good title of any merchandise due any purchaser purchased through a North Carolina cemetery company; and which unconditionally guarantees to the North Carolina Cemetery Commission prompt delivery of an owner's merchandise item;
- (5) submits evidence insuring that all merchandise purchased through a North Carolina cemetery company is insured for fire, casualty, theft or other loss normally assumed by a bailee for hire;
- (6) submits a certified financial statement of the applicant company at the time of application for storage approval and annually thereafter for the approval of the commission.

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

Statutory Authority G.S. 65-49.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to adopt, amend and repeal regulations cited as 10 NCAC 41A .0007; 24A .0504 - .0505; 3J .0101 - .0106; .0201 - .0205; .0301 - .0308; .0401 - .0413; .0501 - .0507; .0601 - .0609; .0701 - .0708; .0801 - .0807; .0901 - .0902; .1001 - .1002; .1101 - .1105; .1201 - .1204; .1301 - .1307; .1401 - .1419; .1501 - .1507; .1601 - .1603; .1701 - .1704; .1801; .2101 - .2102; .2201 - .2206; .2301 - .2308; .2401; .2501 - .2508; .2601 - .2604; .2701 - .2711; .2801 - .2802; .2901 - .2907; .3001 - .3003; .3101 - .3104; .3201 - .3202; .3301 - .3307; .3401 - .3408; .3501 - .3502; .3601 - .3602; .3701 - .3702; 24A .0607; 47A .0502; 49B .0312; 49B .0309, .0605; 0609; 47A .0507.

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

The public hearing will be conducted at 10:00 a.m. on February 17, 1988 at Woodoak Building, Second Floor Conference Room, 1100 Navaho Drive, Raleigh, NC 27609.

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

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3J - THE OPERATION AND CONSTRUCTION OF LOCAL CONFINEMENT FACILITIES

SECTION .0100 - DEFINITIONS

- .0101 COUNTY JAIL (REPEALED)
- .0102 MUNICIPAL JAIL (REPEALED)
- .0103 LOCAL LOCK-UP (REPEALED)
- .0104 REGIONAL OR DISTRICT JAIL (REPEALED)
- .0105 DETENTION FOR CHILDREN (JUVENILE DETENTION HOMES) (REPEALED)
- .0106 TERMINOLOGY (REPEALED)

PROPOSED RULES

Statutory Authority G.S. 153A-220; 153A-221; 153A-221.1.

SECTION .0200 - DESIGN DEVELOPMENT AND APPROVAL FOR NEW JAILS AND MAJOR RENOVATIONS

- .0201 ARCHITECT OR ENGINEER (REPEALED)
- .0202 CONSULTATIVE AND TECHNICAL SERVICES (REPEALED)
- .0203 SUBMISSION OF WORKING PLANS AND SPECIFICATIONS (REPEALED)
- .0204 APPROVAL (REPEALED)
- .0205 COMPLIANCE WITH BUILDING CODE (REPEALED)

Statutory Authority G.S. 108-80; 153A-220; 153A-221.

SECTION .0300 - BUILDING MATERIALS AND CONSTRUCTION REQUIREMENTS

- .0301 EXTERIOR (REPEALED)
- .0302 INTERIOR WALLS IN SECURITY (REPEALED)
- .0303 INTERIOR FLOORS (REPEALED)
- .0304 INTERIOR CEILINGS (REPEALED)
- .0305 INTERIOR STEEL GRATINGS (REPEALED)
- .0306 SAFETY VESTIBULES (REPEALED)
- .0307 NON-COMBUSTIBLE MATERIALS (REPEALED)
- .0308 FIRE-RESISTIVE CONSTRUCTION (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0400 - DOORS

- .0401 BOOKING OR CONTROL AREA DOORS (REPEALED)
- .0402 EXIT DOORS (REPEALED)
- .0403 SALLY PORT DOOR (REPEALED)
- .0404 SPEAKING PANEL AND OBSERVATION PORT (REPEALED)
- .0405 ENTRANCE TO INSPECTION CORRIDORS (REPEALED)
- .0406 ENTRANCE TO SECURITY AREA (REPEALED)
- .0407 INDIVIDUAL ROOM GRILL DOORS (REPEALED)
- .0408 PIPE CHASE ACCESS DOORS OR PLATES (REPEALED)
- .0409 OBSERVATION PORTS AND FOOD PASSES (REPEALED)
- .0410 OPERATING HATCH (REPEALED)
- .0411 OVER-RIDE OPERATION (REPEALED)
- .0412 DOOR-LOCKING MECHANISMS (REPEALED)
- .0413 ELEVATOR DOORS (REPEALED)

Statutory Authority G.S. 14-261; 153A-220; 153A-221; 153A-228.

SECTION .0500 - WINDOWS AND SECURITY SCREENING

- .0501 CONFINEMENT AREA WINDOWS (REPEALED)
- .0502 DETENTION SASH (REPEALED)
- .0503 INSPECTION CORRIDOR WINDOWS (REPEALED)
- .0504 SCREENING (REPEALED)
- .0505 GLAZING (REPEALED)
- .0506 SKYLIGHTS (REPEALED)
- .0507 BOOKING AREA WINDOWS (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0600 - SINGLE ROOM REQUIREMENTS

- .0601 PERCENTAGE OF TOTAL CAPACITY (REPEALED)
- .0602 AREA (REPEALED)
- .0603 PLUMBING (REPEALED)
- .0604 ISOLATION ROOMS (REPEALED)
- .0605 SHOWER (REPEALED)
- .0606 SHELF AND CLOTHES HOOK (REPEALED)
- .0607 MIRROR (REPEALED)
- .0608 BUNK (REPEALED)
- .0609 NATURAL LIGHT (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0700 - MULTIPLE ROOM REQUIREMENTS

- .0701 CAPACITY (REPEALED)
- .0702 SIZE (REPEALED)
- .0703 PLUMBING (REPEALED)
- .0704 SHOWER (REPEALED)
- .0705 SHELF AND CLOTHES HOOK (REPEALED)
- .0706 MIRROR (REPEALED)
- .0707 BUNK (REPEALED)
- .0708 NATURAL LIGHT (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0800 - DORMITORY AREA REQUIREMENTS

- .0801 CAPACITY (REPEALED)
- .0802 AREA (REPEALED)
- .0803 PLUMBING (REPEALED)
- .0804 SHOWER (REPEALED)
- .0805 MIRROR (REPEALED)
- .0806 TABLE AND BENCH (REPEALED)
- .0807 NATURAL LIGHT (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .0900 - AREAS FOR SEPARATION BY INMATE CATEGORY

- .0901 FEMALES (REPEALED)
- .0902 JUVENILES (REPEALED)

Statutory Authority G.S. 14-261; 153A-220; 153A-221; 153A-221.1; 153A-228.

SECTION .1000 - JAIL BUNKS

- .1001 STEEL BUNKS (REPEALED)
- .1002 DOUBLE BUNKS (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1100 - DAY ROOM AND SAFETY
VESTIBULE REQUIREMENTS: COUNTY
JAIL

- .1101 AREA (REPEALED)
- .1102 PLUMBING (REPEALED)
- .1103 BENCH AND TABLE (REPEALED)
- .1104 DOUBLE DOOR (REPEALED)
- .1105 CAPACITY (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1200 - HOLDING AREAS

- .1201 AREA REQUIRED (REPEALED)
- .1202 OBSERVATION (REPEALED)
- .1203 CONSTRUCTION (REPEALED)
- .1204 FURNISHINGS (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1300 - OTHER AREAS

- .1301 STORAGE (REPEALED)
- .1302 MEDICAL EXAMINING ROOM
(REPEALED)
- .1303 CONFERENCE AREAS (REPEALED)
- .1304 INMATE VISITATION (REPEALED)
- .1305 LAUNDRY (REPEALED)
- .1306 MOP CLEAN-UP STATIONS
(REPEALED)
- .1307 WATER DRAINS (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1400 - SAFETY AND SECURITY
REQUIREMENTS

- .1401 KEYS (REPEALED)
- .1402 SLEEPING ROOM AND DAYROOM
LIGHTING FIXTURES (REPEALED)
- .1403 CORRIDOR LIGHTING (REPEALED)
- .1404 NIGHT LIGHTING (REPEALED)
- .1405 NON-DOMICILIARY LIGHTING
(REPEALED)
- .1406 SECURITY FIXTURES (REPEALED)
- .1407 HEATING EQUIPMENT (REPEALED)
- .1408 VENTILATION (REPEALED)
- .1409 COOLING (REPEALED)

- .1410 SALLY PORT CONTROL (REPEALED)
- .1411 MIRRORS (REPEALED)
- .1412 MATTRESSES (REPEALED)
- .1413 FIRE EXTINGUISHERS (REPEALED)
- .1414 TRAVEL DISTANCE (REPEALED)
- .1415 TYPE OF EXTINGUISHER (REPEALED)
- .1416 INSPECTION OF EXTINGUISHER
(REPEALED)
- .1417 MAINTENANCE OF EXTINGUISHERS
(REPEALED)
- .1418 FIRE ESCAPES (REPEALED)
- .1419 SMOKE DETECTORS (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

SECTION .1500 - SUPERVISION

- .1501 PERSONNEL (REPEALED)
- .1502 POLICIES (REPEALED)
- .1503 MATRON (REPEALED)
- .1504 JUVENILES (REPEALED)
- .1505 SEPARATION OF SEXES (REPEALED)
- .1506 FIRE PROGRAM (REPEALED)
- .1507 DISEASE (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221; 153A-221.1; 153A-224; 153A-228.

SECTION .1600 - SANITATION AND
PERSONAL HYGIENE

- .1601 BEDDING (REPEALED)
- .1602 SHAVING (REPEALED)
- .1603 TOWELS AND SOAP (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221; 153A-226.

SECTION .1700 - FOOD

- .1701 NUMBER OF MEALS (REPEALED)
- .1702 DIET (REPEALED)
- .1703 FOOD RECORDS (REPEALED)
- .1704 FOOD SANITATION (REPEALED)

Statutory Authority G.S. 153A-221.

SECTION .1800 - MEDICAL CARE OF
PRISONERS

- .1801 MEDICAL PLAN (REPEALED)

Statutory Authority G.S. 153A-221; 153A-225(a).

SECTION .2100 - REPORTS

- .2101 MONTHLY REPORT OF LOCAL
CONFINEMENT FACILITIES
(REPEALED)
- .2102 MUNICIPAL CONFINEMENT FACILITY
MONTHLY REPORT (REPEALED)

Statutory Authority G.S. 153A-220; 153A-221.

**SECTION .2200 - SPECIAL REQUIREMENTS
FOR HOLDOVER FACILITIES**

- .2201 HOLDOVER FACILITY (REPEALED)**
- .2202 PLACEMENT OF JUVENILES
(REPEALED)**
- .2203 SUPERVISION AND CONTACT
(REPEALED)**
- .2204 DETENTION AUTHORIZATION
(REPEALED)**
- .2205 MATERIALS TO BE PROVIDED
(REPEALED)**
- .2206 CONSTRUCTION (REPEALED)**

*Statutory Authority G.S. 153A-220; 153A-221;
153A-221.1.*

**SECTION .2300 - ENFORCEMENT OF
MINIMUM STANDARDS**

.2301 INSPECTIONS

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

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

.2302 REPORT OF INSPECTION

After each local confinement facility is inspected, the inspector shall complete the Local Confinement Facility Semiannual Inspection Report, DFS-7923, as revised (hereinafter referred to as "Report"). Upon completion of a Report in which there are findings of non-compliance with 10 NCAC 3J .3000, .3100, .3200, .3300, .3400, .3500, or subsections thereof, or G.S. 153A-224 or receipt of a report required by G.S. 153A-226 finding that a facility or its kitchen or other place for preparing food is disapproved for public health purposes, the procedures contained in 10 NCAC 3J .2303 - .2307 will control. In all other cases, the procedures contained in G.S. 153A-222 will control.

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

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

If a finding is made, pursuant to G.S. 153A-226, that a facility or its kitchen or other

place for preparing food is disapproved for public health purposes, the provisions set out in 10 NCAC 3J .2306 or .2307 will control.

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

**.2304 CONDITIONS OF PERSONS CONFINED
IN THE FACILITY**

(a) Upon completion of the Report, if there are findings of noncompliance with 10 NCAC 3J .3000, .3100, .3200, .3300, .3400, .3500, or subsections thereof, or G.S. 153A-224, the Report shall, within ten days of completion, be forwarded to the secretary, or his designee, together with a written description of the conditions giving rise to the finding(s) of noncompliance and a preliminary determination as to whether the conditions, as reflected in the findings of noncompliance with respect to the rules and statutes set forth herein, jeopardize the safe custody, safety, health or welfare of the persons confined in the facility.

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

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

- (1) Failure to have mattresses which comply with the flame retardant requirements of 10 NCAC 3J .3104(a);
- (2) Failure to provide or maintain fire extinguishers in compliance with 10 NCAC 3J .3102;
- (3) Failure to provide the required number or ways of fire escapes in compliance with 10 NCAC 3J .3101(a);
- (4) Failure to provide or maintain smoke detectors as required by the N.C. State Building Code incorporated by reference in 10 NCAC 3J .2602(b);
- (5) Failure to provide for the separation of juveniles and females in compliance with 10 NCAC 3J .3001 and .3003;
- (6) Failure to have an emergency evacuation plan, or failure to have a posted master fire plan, in compliance with 10 NCAC 3J .3103;
- (7) Failure to conduct quarterly fire drills in compliance with 10 NCAC 3J .3103;
- (8) Failure to have the local fire department conduct a yearly fire-prevention inspection of the facility, in compliance with 10 NCAC 3J .3102(f);
- (9) Failure to segregate inmates with contagious or infectious disease from the general prisoner population, in compliance with 10 NCAC 3J .3501(b)(14); or
- (10) Failure to have a medical plan in compliance with 10 NCAC 3J .3501.

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

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

.2305 CONDITIONS JEOPARDIZE/SAFE CUSTODY/SAFETY/HEALTH/WELFARE

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

- (1) give notice of intent to order corrective action;
- (2) give notice of intent to order facility closed;
- (3) order corrective action; or
- (4) order the facility closed.

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

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

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

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

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

.2307 ORDER OF CORRECTIVE ACTION AND ORDER OF CLOSURE

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

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

.2308 DESIGNATION BY SECRETARY

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

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

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

SECTION .2400 - DEFINITIONS

.2401 DEFINITIONS

The following definitions shall apply in 10 NCAC 3J:

- (1) "Activity space" means any space other than a day room which is designated for inmate activities such as recreation, study or work.
- (2) "Cell" means any room in a local confinement facility that is designed to incarcerate one or more inmates.
- (3) "County jail" is a local confinement facility designated for the confinement of inmates for varying periods of time including inmates awaiting adjudication, serving short term sentences or serving sentences on work release. The facility is authorized, maintained, and administered by officials at the county level.
- (4) "County jail annex" (satellite jail) means a minimum secure local confinement facility designated for the confinement of convicted persons sentenced for varying periods of time; short term sentences, weekend sentences (DWI-shoplifting), and specific work release sentences. This facility is authorized, maintained, and administered by officials at the county level.
- (5) "Custodial employee" means any person employed or appointed by a county, municipal or regional local confinement authority or official whose primary responsibility is the supervision, protection, care, custody and control of inmates.
- (6) "Day room" means that area of a local confinement facility which is used for general purposes of inmates such as letter writing or television viewing and is generally adjacent to the cell area.
- (7) "Delinquent juvenile" means a person less than 16 years of age who has committed a criminal offense under State law or under an ordinance of local government, including violation of the motor vehicle laws.
- (8) "Department" means the Department of Human Resources of the State of North Carolina.
- (9) "Division" means the Division of Facility Services of the Department of Human Resources.
- (10) "Dormitory" means any room in a local confinement facility that is designed to confine more than two inmates and contains day room space in addition to sleeping space.
- (11) "Holding cell" means any cell used to hold inmates for up to six hours awaiting booking, interrogation or court appearances.
- (12) "Inmate" means a person who is legally confined in a local confinement facility.
- (13) "Isolation cell" means a single occupancy cell used for the removal of an inmate from the general population.
- (14) "Juvenile" means any person who has not reached his 18th birthday and is not married, emancipated, or a member of the armed services of the United States. Exception is made to this for those persons classified as delinquent juveniles or undisciplined juveniles as defined in G.S. 7A-517. [Refer to Paragraphs (7) and (c).]
- (15) "Local confinement facility" means a county jail, municipal jail, jail annex, local lockup or regional or district jail.
- (16) "Local lockup" is a facility designated for the confinement of inmates not to exceed six hours pending release or transfer. This type of facility is authorized, maintained and administered by officials at the municipal level.
- (17) "Maximum security facility" means a local confinement facility, or a portion thereof, designed to house inmates that are determined by a classification process to pose a threat to the custody, security, or welfare of themselves or others.
- (18) "Medium security facility" means a local confinement facility, or a portion thereof, designed to hold inmates confined for such crimes as voluntary manslaughter, arson, abduction of children, forgery, card theft and fraud (Class E-J type crimes); persons with no history of escape from armed supervision; persons with no history of seriously assaultive behavior; and persons with no history of more serious offenses.
- (19) "Minimum security facility" means a local confinement facility, or a portion thereof, designed to hold inmates in a dormitory or barracks type setting or

other appropriate setting when such inmates do not pose a threat to the custody, security, or welfare of others as determined by a classification process. A jail annex is an example of a minimum secure facility.

- (20) "Multiple occupancy cell" means a cell that contains sleeping space for two or more inmates with a partition between the cell and day room space.
- (21) "Multipurpose space" means any space which is designated for the use of inmates for a combination of programs, activities, dining, exercise or training.
- (22) "Municipal jail" is a local confinement facility designated for the confinement of inmates for a period not to exceed 24 hours pending release or transfer. The facility is authorized, maintained and administered by officials at the municipal level.
- (23) "Regional or district jail" is a facility designated for the same purpose as a county jail except authorization, maintenance and administration is under the control of a governing body composed of authorized representatives of the participating counties.
- (24) "Sally port" means any entry area for vehicles where one gate must be closed prior to the opening of the other gate.
- (25) "Security vestibule" means any entry into a confinement area for personnel where one security door must be closed prior to another security door being opened.
- (26) "Single occupancy cell" means a cell that contains sleeping space for one inmate.
- (a) "Terminology" because of current changes from the traditional in terminology associated with the confinement setting, the following explanation of a limited number of terms is included:
 - (i) Terminology used in these standards is the same as traditional or approximate synonym.
 - (ii) "Single sleeping room" is the same as "single cell."
 - (iii) "Multiple sleeping room" is the same as "multiple (four-man) cell."
 - (iv) "Isolation room" is the same as "solitary cell."
 - (v) "Dayroom" is the same as "cell run-around."
 - (vi) "Confinement unit" is the same as "cell-block."

(vii) "Holding area" is the same as "bull pen."

(viii) "Sally port" is the same as "yard gate" (for vehicles).

(b) "Trusty" is an inmate in minimum custody status who performs work or services in and about the local confinement facility.

(c) "Undisciplined juvenile" means a person less than 16 years of age who is unlawfully absent from school; or who is regularly disobedient to his parent, guardian or custodian, and beyond their disciplinary control; or who is regularly found in places where it is unlawful for a juvenile to be; or who has run away from home.

(d) "Work Station" is a designated area in the jail that serves as a focal point for a jails officer or staff member. It may be a desk, a work counter or simply a chair at a designated location.

Statutory Authority G.S. 153A-221.

SECTION .2500 - OPERATIONS PROGRAM

.2501 REQUIREMENT FOR OPERATIONS PROGRAM

Within 12 months of the effective date of this rule, the local authority, generally the sheriff, having jurisdiction over the local confinement facility shall develop or have developed an operations program or plan which shall describe, in writing, how the jail will be operated. This plan shall be called a Standard Operating Procedure Manual for the facility.

Statutory Authority G.S. 153A-221.

.2502 APPLICABILITY OF STANDARDS

10 NCAC 3J .2300 - .3702 apply to all local confinement facilities except Satellite Jail/Work Release Units that are designed, staffed and used for the housing of misdemeanants participating in a work release program. If an existing facility is unable to comply with these standards due to the facility's age, construction or equipment, the local confinement authority may apply for a waiver of such standards. A waiver may be granted by the department provided the conditions for which waivers are requested are determined not to be hazardous to the health or safety of inmates or staff.

Statutory Authority G.S. 153A-221.

.2503 WAIVER

An application for waiver may be submitted in letter form and shall address all defi-

ciencies cited which relate to jail standards. A plan of correction shall be included with each application outlining actions planned to correct each deficiency and the projected dates for completion of such actions. For a plan of correction to be acceptable corrective actions shall be initiated and progress shown within a reasonable period of time, normally one - two years.

Statutory Authority G.S. 153A-221.

.2504 ENFORCEMENT

In the event non-compliance with a standard(s) is determined by the department to be hazardous to the health or safety of inmates or staff, the provisions of Section .2300 of these Rules shall apply.

Statutory Authority G.S. 153A-221.

.2505 CONTENTS OF OPERATIONS PROGRAM

The operations program must cover the following subject areas at a minimum:

- (1) transportation of inmates to and from the facility;
- (2) loading and unloading of inmates;
- (3) staffing;
- (4) inmate observation;
- (5) inmate movement within the facility;
- (6) search methods;
- (7) food service;
- (8) alarm systems;
- (9) detention equipment type and controls;
- (10) levels of confinement - maximum, medium, minimum, over 24 hours, 6 hours, or 24 hours;
- (11) evacuation and fire plans;
- (12) inmate classification plans;
- (13) medical care, including mental health care if needed;
- (14) personnel employment and training;
- (15) sanitation;
- (16) recreation areas and plan;
- (17) access to legal assistance or legal materials;
- (18) grievance procedures;
- (19) visitation policy;
- (20) religious activities;
- (21) administration and management of the jail (operations program could go here);
- (22) operational procedures for inmates and jail staff;
- (23) program services available at the jail (work release, community service)--community based programs.

Statutory Authority G.S. 153A-221.

.2506 GUIDE FOR PROGRAM DEVELOPMENT

The Model Policies and Procedures Manual for North Carolina Jails shall be used as a guide in developing this operations program.

Statutory Authority G.S. 150B-14 (a) (1); 150B-14 (c); 153A-221.

.2507 APPROVAL OF PROGRAM

Prior to implementation of the operational program, the local confinement authority, generally the sheriff, shall submit the program to the division for review and approval. Following notification by the department of approval, a copy of the program, signed by the local confinement authority shall be sent to the department for its files.

Statutory Authority G.S. 153A-221.

.2508 REVIEW OF PROGRAM

The approved program shall be reviewed no less than once each year by the local confinement authority, and necessary changes made. Alterations or revisions must be submitted to the division for approval and a copy of the revised program shall be sent to the division for its files.

Statutory Authority G.S. 153A-221.

SECTION .2600 - FACILITY PLANNING

.2601 BUILDING PROGRAM

Prior to development of schematic drawings and specifications, the local planning authority, generally the County Commissioners, shall develop a written building program describing the facility to be built. The building program shall include the name, size and function of each department or unit and how it relates to other units or departments. The building program shall be designed to implement the approved operations program required under Section .2500 of these standards and to comply with all applicable standards in this Subchapter. The building program shall be submitted to the division for review and approval by the department. Upon approval by the department, the building program shall be signed by the sheriff and the county manager or chairman of commissioners and a copy sent to the division for its files.

Statutory Authority G.S. 153A-221.

.2602 PLAN DEVELOPMENT

(a) Before beginning construction and after approval of the building program, the local confinement authority shall submit copies of drawings and specifications to the department for review and approval in the following sequence:

- (1) three sets of schematic drawings and outline specifications;
- (2) three sets of preliminary working drawings or design development drawings and outline specifications;
- (3) three sets of completed final working drawings and specifications.

(b) Each stage of submittal shall be reviewed by the department for compliance with the N.C. State Building Code and for compliance with North Carolina Minimum Standards for the Operation and Construction of Local Confinement Facilities. This is to insure that the design and construction meet the intent and requirements of the approved operational program, approved building program and the minimum standards in this Subchapter.

(c) Upon receipt of the three sets of drawings and specifications at each stage of development, the division shall send one set to the Department of Insurance and one set to the Division of Health Services for their review and approval.

Statutory Authority G.S. 153A-221.

.2603 SPECIFIC REQUIREMENTS

The plan shall be prepared so as to comply with the following:

- (1) New dietary facilities shall comply with Commission for Health Services Subchapter 10 NCAC 10A, Section .0100. Project designers shall send one copy of plans and specifications for new construction/major modification to the local health directors for review and endorsement.
- (2) Facilities designed to restrain inmates under lock and key within the confines of the building shall meet the requirements of the North Carolina State Building Code for "Institutional Occupancy - Restrained" and appropriate Sections of these Rules.
- (3) Facilities designed to house inmates for sleeping and to permit unrestrained movement at all times within and from the building to a secured yard enclosure shall meet the requirements of the North Carolina State Building Code for "Institutional-unrestrained."

- (4) When a facility is located within a fenced compound, yard space must be provided at a minimum rate of four square feet per inmate and four square feet per employee on duty to provide that in the event of evacuation of the building no person will be closer than 30 feet to any building within the compound.

Statutory Authority G.S. 153A-221.

.2604 APPLICABILITY

(a) Preliminary working drawings or final working drawings submitted to the division after the effective date of this rule shall use the construction standards adopted in this Subchapter. Drawings submitted prior to the effective date of this Rule shall be governed by the Rules in effect at the time of submission.

(b) The construction standards established in this Subchapter shall apply to all new construction, additions to existing facilities and major renovations or alterations as defined by the N.C. State Building Code.

(c) Local confinement facilities constructed under these standards shall include the elements included in this Subchapter in addition to those elements included in the approved operating program unless specifically excluded.

Statutory Authority G.S. 153A-221.

SECTION .2700 - MAXIMUM SECURITY FACILITIES OR UNITS

.2701 SECURITY PERIMETER

Each facility keeping maximum security inmates shall:

- (1) provide for secure confinement of the inmate from the time he or she passes through the first security perimeters until released;
- (2) have a controlled entrance for public or other unauthorized persons;
- (3) have a separate entrance for inmates;
- (4) have entrances capable of being controlled at a central control post and monitored visually or by closed circuit TV and audibly;
- (5) have a temporary weapons locker or depository at each entrance;
- (6) have a security vestibule at each entrance;
- (7) have at least one entrance accessible for passage of a stretcher;
- (8) have a system to prevent passage of contraband; prevent any unauthorized contact between inmates and persons

- outside the facility; and assure that direct contact with perimeter exterior is controlled by design or physical barrier;
- (9) provide a perimeter exterior that is well lighted.

Statutory Authority G.S. 153A-221.

.2702 CENTRAL CONTROL

The central control station shall:

- (1) be strategically located and equipped to regulate and monitor traffic flow throughout the facility;
- (2) be constructed to prohibit access by unauthorized persons, while protecting the safety of assigned staff;
- (3) have a security vestibule at entrance;
- (4) have a secure key storage cabinet;
- (5) have a communications link with outside agencies for emergency use;
- (6) have direct voice communication with all prisoner-occupied areas;
- (7) have direct voice communication with all staff posts and traffic areas;
- (8) have the capability to monitor the facility's emergency systems;
- (9) have the capability to remote unlocking of housing areas in an emergency;
- (10) have separate toilet facilities within easy access of staff.

Statutory Authority G.S. 153A-221.

.2703 WORK STATIONS/SUPERVISION

Each facility or unit:

- (1) shall have at least one work station manned by an officer of the same sex as the inmates, located and designed to enable direct voice and visual contact with all inmate occupied areas, central control and other permanent stations;
- (2) may use video devices to supplement the system of surveillance, but not to replace the face-to-face observation of each inmate, as outlined in Section .3100.

Statutory Authority G.S. 153A-221.

.2704 RECEPTION/RELEASE AREA

Each facility shall have a reception/release area which shall contain a Booking/Intake station which includes:

- (1) a prisoner entrance providing visual privacy from general public and protection from the weather;
- (2) a vehicle sallyport;
- (3) direct access to building exterior;
- (4) a booking desk/counter;

- (5) a telephone with capability for local and long-distance calls;
- (6) a photograph and fingerprint area;
- (7) a sobriety testing equipment area if facility accepts DWIs;
- (8) capability of separating males and females, by sight, sound and touch,
- (9) capability for separating violent from nonviolent inmates during reception, processing and holding and maintaining direct view to all areas.

Statutory Authority G.S. 153A-221.

.2705 CONFINEMENT UNIT

Each maximum security confinement unit shall:

- (1) have a security vestibule at its entrance;
- (2) have a minimum of one shower per 12 inmates, which is observable by staff, and that is designed to prevent drainage outside of the shower area;
- (3) have a telephone hookup or other arrangement provided within that area;
- (4) have a dayroom/activity room for each unit of a size to provide a minimum of 105 total square feet or no less than 35 square feet per inmate, whichever is greater;
- (5) have a dayroom/activity room designed to allow a variety of activities to take place and have: sufficient seating and tables for each inmate in the unit, space for television (optional) with appropriate viewing/seating, natural light, artificial lighting at 30 footcandles in reading areas that may be reduced during sleeping hours, visual control by staff to observe entire area from point of entrance, and direct voice contact with continuously staffed work station or central control center;
- (6) have single occupancy cells with a minimum of 60 square feet of floor space, a minimum floor dimension of 7 feet, fixtures and furnishings of the security type, a toilet, a sink and a drinking fountain, a securely mounted bed frame, artificial lighting of 30 footcandles which can be reduced during sleeping hours, natural light provided by window with exterior exposure, direct voice contact with staff at a work station or central control center, a view panel in cell front that permits observation of entire cell and a food pass in door;
- (7) have the capability to isolate inmates when necessary, either in designated iso-

lation cells within the unit or by movement to cells elsewhere in the facility.

Statutory Authority G.S. 153A-221.

.2706 PROGRAMMING AREAS

(a) Each facility shall have general visitation area with:

- (1) access to the public entrance to the facility, with provision for handicapped persons;
- (2) an entry located to permit direct observation and control by staff;
- (3) an entry designed and located to facilitate efficient use of staff;
- (4) a public waiting area provided with toilet facilities, drinking fountain and pay telephones;
- (5) storage facilities for visitors' coats and packages;
- (6) facilities to insure visitors to remain outside security perimeter at all times;
- (7) controlled package passage to staff;
- (8) capability to prohibit the passage of contraband into the security perimeter;
- (9) individual visiting stations;
- (10) a sufficient number of stations to accommodate visitation needs;
- (11) seating for both prisoner and visitor(s);
- (12) a minimum 2 feet x 2 feet vision panel between inmate and visitor;
- (13) telephone communication system or equivalent sound link between the inmate and visitor;
- (14) visual contact during conversation between prisoner and visitor;
- (15) visiting arrangements that can be visually observed.

(b) Each facility shall have a confidential /attorney visitation area that:

- (1) is separate and distinct from general visitation area;
- (2) permits passage of paper or documents;
- (3) provides seating with table or desk for writing for visitor and inmate;
- (4) provides artificial lighting at 30 footcandles;
- (5) permits contact visiting;
- (6) provides for visual monitoring but not heard by staff;
- (7) provides for visitor to contact staff if needed.

(c) Each facility shall have a medical area designed:

- (1) to prohibit access by unauthorized persons;

- (2) to provide locked storage for equipment, supplies, medication refrigeration unit, and records;

- (3) to provide equipment as approved by jail physician including a sink; a toilet; a shower; an examining table; a nurse's and physician's work station(s); a telephone and with direct voice contact with central control;

- (4) that provides a separate area to house sick inmates (particularly those with communicable diseases).

(d) Each local confinement facility must have a kitchen or feeding program which complies with Commission for Health Services Subchapter 10 NCAC 10A, Section .0100, governing sanitation. Those rules include construction and operation requirements.

(e) Each facility shall have laundry services on the premises or contracted for.

(f) Each facility shall have an exercise-multipurpose area designed for vigorous physical activities/recreation by each prisoner for a minimum of 5 hours per week. This space may be combined with day room area. The exercise area may be either indoors or outdoors. In addition, there shall be adequate storage areas, a staff observation post for all areas, and staff controlled access to all areas.

(g) Each facility shall make available for purchase by inmates such commissary items as food snacks, soft drinks, toothpaste, deodorant, toothbrushes, etc., either in a designated area on premises or through contract vending.

Statutory Authority G.S. 153A-221.

.2707 JAIL ADMINISTRATION

Each facility shall have administration facilities that provide:

- (1) Adequate space for administrative offices accessible to the public while located to maintain the integrity of the security perimeter;
- (2) Secretarial support area(s);
- (3) An area for record storage;
- (4) Space for information resources, report writing and training materials;
- (5) Space and equipment for the dissemination of information to staff e.g., mail boxes, bulletin boards;
- (6) Space for staff assembly, training, etc. when included in the facility's program;
- (7) Offices for program staff when included in the facility's program;
- (8) Office space within security perimeter for chief jailer.

Statutory Authority G.S. 153A-221.

.2708 CONSTRUCTION MATERIALS

These standards pertain to those facilities within the security perimeter or fenced in compound which prisoners would use and from which inmates may exit to a secure area. Traditional building materials may be used where security and safety will not be jeopardized, taking into consideration the type of security facility described in the operations program submitted by the local authority having jurisdiction and approved by the department. The following specifications shall be applicable:

- (1) Ceilings shall be:
 - (a) concrete;
 - (b) cement plaster on reinforced metal lathe securely anchored to walls for approved areas;
 - (c) non-removable acoustic-tile or other acoustically altered materials in approved areas; and
 - (d) a minimum height of 8 feet.
- (2) Floors shall be:
 - (a) concrete, or;
 - (b) terrazzo, or;
 - (c) resilient tile and;
 - (d) sloped or pitched to drains and;
 - (e) provided with floor drains that are secured with tamper-resistant fasteners and never located in cells.
- (3) Walls shall be:
 - (a) concrete block - reinforced with steel rods and/or poured concrete or;
 - (b) poured reinforced concrete or;
 - (c) precast reinforced concrete panels or;
 - (d) steel or;
 - (e) glazed tile where appropriate.
- (4) Privacy walls when used shall be securely mounted to wall and floor, of sufficient height to allow for supervision of prisoners, and of materials selected consistent with the security level of the area.
- (5) Glazing shall be:
 - (a) of sufficient strength to prevent breakage and penetration;
 - (b) for exterior windows, sufficient to allow the admittance of natural light and have one maximum dimension of five inches;
 - (c) for exterior window(s), a minimum of six feet from ground level to sill if exterior perimeter is accessible to persons outside the facility;
 - (d) impact-resistant similar to tempered glass bonded to polycarbonate in multi-layer construction;

- (e) mar-resistant;
 - (f) constructed with detention framing secured with tamper-resistant fasteners;
 - (g) in frames securely anchored to wall;
 - (h) in the case of view panels in doors or cells, of sufficient size and dimension to permit observation of entire area and have a minimum of 180 square inches and be designed and located so as not to compromise the strength of the door.
- (6) Finishes shall be:
- (a) nonflammable;
 - (b) nontoxic;
 - (c) smooth, washable and easily cleanable;
 - (d) predominantly light-colored;
- (7) Finishes may vary in program or other selected areas when appropriate.

Statutory Authority G.S. 153A-221.

.2709 HARDWARE

The following requirements shall be met with respect to hardware:

- (1) Beds/bunks shall be designed to fit standard detention mattress dimensions and elevated 18 inches from floor.
- (2) Closed circuit TV, when included in the facility's program, shall be securely mounted, used to monitor perimeter, points of egress, hallways, stairwells, sallyports, and common areas, booking and recreational areas, located in a manner which preserves the dignity of the inmates.
- (3) Clothing or towel hooks are not permitted.
- (4) Doors and hinges shall have:
 - (a) all components - lock, frame, hinges, handles and fasteners - constructed of materials which are compatible with one another and designed to inhibit their use during an act of attempted suicide;
 - (b) construction from materials that are adequate to serve the function for which the door is intended and maintain the level of security in the area where they are located;
 - (c) doors in prisoner occupied areas outswinging or sliding; design of pass through openings shall give consideration to size of food trays to insure adequate opening;
 - (d) designs to prevent the operation of one door from interfering with that of another.
- (5) Duct systems, vent louvers, panel doors, screens or other devices shall be securely

anchored and designed to prevent the escape of prisoners, the passage of contraband, and to inhibit their usage during an act of suicide.

- (6) Locking devices shall:
 - (a) be adequate to withstand tampering and attempted forceful entry or egress while being securely mounted to both door and frame;
 - (b) be provided with a manual override of electronic devices;
 - (c) have a keying system that enhances the security perimeter, that is designed to minimize the possibility of keys carried in one security zone being used to penetrate other security zones, that is as simple as possible consistent with security needs, and minimizes confusion during emergency situations. Efforts should be made to notch keys or provide some other means of identification by feel in the event of smoke or loss of lights.
- (7) Plumbing fixtures shall:
 - (a) be securely mounted and constructed of materials which are sufficiently durable to meet the requirements of the level of security in the area where they are located;
 - (b) be stainless steel fixtures;
 - (c) regulate hot water supply for inmate lavatories, sinks and shower facilities not to exceed 116 degrees Fahrenheit;
 - (d) have an emergency water shutoff valve located outside housing area.
- (8) Safety equipment such as intercom, fire extinguishers, smoke detectors, sprinkler heads, and breathing apparatus shall be designed, mounted and secured to inhibit prisoners from tampering with these systems.
- (9) Storage shelves shall:
 - (a) be securely anchored with tamper-resistant fasteners or mounting systems;
 - (b) be of materials selected for their durability and resistance to vandalism;
- (10) Table and seats shall:
 - (a) be constructed of materials that are sufficiently durable for use in the area in which they are located;
 - (b) be securely mounted with tamper-resistant fasteners and anchoring systems.
- (11) When selecting materials and hardware, the need to control the noise level throughout the facility must be considered.

Statutory Authority G.S. 153A-221.

.2710 MECHANICAL SYSTEMS

Mechanical systems shall:

- (1) Provide heating, ventilation, and air conditioning to meet the requirements of the North Carolina State Building Code;
- (2) Have master controls for electrical, plumbing, heating, and air conditioning which are inaccessible to inmates;
- (3) Have auxiliary power and emergency lighting available;
- (4) Have emergency multiple-release capability for cells;
- (5) Be accessible to security elevators controlled by the staff.

Statutory Authority G.S. 153A-221.

.2711 GENERAL

Other requirements of maximum security units are:

- (1) To have the arsenal located outside security perimeter, if such is provided;
- (2) To have evidence storage located outside the security perimeter, if provided;
- (3) To have vehicle parking located to preclude unauthorized persons from entering the security perimeter;
- (4) To provide, when in close proximity to other criminal justice facilities, a secure access route to those facilities other than that used by the public, judges, jurors, and witnesses.
- (5) To comply with all safety standards in Section .3100.

Statutory Authority G.S. 153A-221.

SECTION .2800 - MEDIUM SECURITY FACILITIES

.2801 CLASSIFICATION

Jail officials in the exercise of their responsibilities for classification of inmates according to security risk and level of supervision required may determine that certain inmates may be assigned to medium custody. The act of assigning inmates to medium security, in itself, provides the jail staff with an increased awareness of the security needs and any precautions that need to be taken in dealing with the inmates.

Statutory Authority G.S. 153A-221.

.2802 CONFINEMENT UNIT

Each medium security confinement unit shall have a security vestibule, showers, tele-

phone hookup and day room/activity room as outlined in Rule .2705. Single occupancy cells shall meet the same minimum space and equipment standards as in maximum security units. Local officials are encouraged to consider providing some multi-occupancy cells (up to four inmates) as a cost-reduction measure when planning for new construction or major renovation/alteration of an existing facility. In addition, the following requirements shall be satisfied:

- (1) Cells designed for four inmates shall provide for a minimum of 50 square feet per occupant and a minimum floor dimension of ten feet; security type fixtures and furnishings shall be installed.
- (2) Each multi-occupancy cell shall have a toilet, sink, drinking fountain, a security mounted bed frame and artificial light of 30 footcandles that can be reduced during sleeping hours; natural light shall be provided by having windows in exterior walls; there shall be voice contact between inmates and the staff post or central control center; and, each cell shall have a food pass in the door and a view panel in the cell front that permits observation of the entire cell.

Statutory Authority G.S. 153A-221.

SECTION .2900 - MINIMUM SECURITY UNITS

.2901 MINIMUM SECURITY UNITS

Minimum security units may be located in the same facility with a maximum or medium security unit or in a separate facility near or remote from a maximum or medium security unit. Minimum security units or facilities designed and constructed under these Rules shall include the elements listed in this Section in addition to those included or implied in the approved operating program unless specifically excluded in the approved operating program.

Statutory Authority G.S. 153A-221.

.2902 CONFINEMENT UNIT

Each minimum security confinement unit shall:

- (1) Include no more than 24 inmates per sleeping area;
- (2) Have no less than 50 square feet per inmate devoted to sleeping areas only when of the barracks or ward type;
- (3) Have one shower per ten inmates, one water closet per six inmates, one sink per

six inmates and one water fountain per ten inmates. Shower and toilet facilities shall be designed to provide maximum privacy (line of sight), but not so as to interfere with the capability of jail staff to complete security rounds;

- (4) Have a telephone hookup or other arrangement provided within the area;
- (5) Have a dayroom/activity room for each unit separate from the sleeping area and of a size to provide a minimum of 105 total square feet or no less than 35 square feet per inmate, whichever is greater;
- (6) Have a dayroom/activity room designed to allow a variety of activities to take place and which has:
 - (a) sufficient seating and tables for each inmate in unit;
 - (b) natural light;
 - (c) artificial lighting at 30 footcandles in reading areas that may be reduced during sleeping hours;
 - (d) access to toilet, to sink with hot and cold water and to drinking fountain;
 - (e) visual control by staff to observe entire area from point of entrance;
 - (f) direct voice contact with continuously staffed post and/or central control center.
- (7) Have single occupancy cells when called for by the building and construction program with:
 - (a) a minimum of 60 square feet of floor space;
 - (b) a minimum floor dimension of seven feet;
 - (c) fixtures and furnishings;
 - (d) a toilet, sink, and drinking fountain;
 - (e) a bed frame;
 - (f) artificial lighting of 30 footcandles which can be reduced during sleeping hours;
 - (g) natural light provided by window with exterior exposure;
 - (h) direct voice contact with staff post and/or central control center.

Statutory Authority G.S. 153A-221.

.2903 PROGRAMMING AREAS

Each minimum security unit when located in a separate facility from a maximum security unit shall have:

- (1) A general visitation area with:
 - (a) access to the public entrance to facility;
 - (b) an entry located to permit direct observation and control by staff;

- (c) a public waiting area provided with toilet facilities, drinking fountain and pay telephones;
- (d) storage facilities for visitors' coats and packages;
- (e) controlled package passage to staff;
- (f) capability to prohibit the passage of contraband into the security perimeter;
- (g) a sufficient number of stations to accommodate minimum visitation needs;
- (h) seating for both prisoner and visitors;
- (i) visiting arrangements that can be properly supervised by staff;
- (2) When a facility is a "work release center" only, items (3), (5), (6), and (9) of this Rule may be omitted.
- (3) A confidential/attorney visitation area that:
 - (a) is separate and distinct from general visitation area;
 - (b) permits passage of papers and documents;
 - (c) provides seating with table/desk for writing for visitor and inmate;
 - (d) provides artificial lighting of 30 footcandles;
 - (e) permits contact visiting;
 - (f) provides for visual monitoring but not hearing by staff;
 - (g) provides for visitor to contact staff if needed.
- (4) A medical area designed:
 - (a) to prohibit access by unauthorized persons;
 - (b) to have locked storage for equipment, supplies, medications, and records;
 - (c) for equipment as approved by jail physician including a sink; a toilet; a shower; and examining table; a nurse's and physician's work station(s); a telephone; and direct voice contact with central control;
- (5) A medical area is not required in a facility used for "work release" only.
- (6) A food service that meets the sanitation requirements of Commission for Health Services Subchapter 10 NCAC 10A, Section .0100, with adequate storage and food preparation area.
- (7) A laundry service on premises or contracted for;
- (8) Recreation facilities with:
 - (a) an area designed for vigorous physical activities, such as basketball, volleyball, and similar activities. Scheduled use of this area shall be such as to permit a minimum of five hours of recreation by each inmate per week;

- (b) equipment storage areas;
- (c) staff observation post for all areas;
- (d) access to areas controlled by staff;
- (9) In facilities used only for "work release," recreation facilities are not required.
- (10) A commissary through contract services or built on premises.

Statutory Authority G.S. 153A-221.

.2904 ADMINISTRATION

Each minimum security unit located apart from the facility housing a maximum security unit shall have administration facilities that provide:

- (1) Adequate space for administrative offices accessible to the public;
- (2) Secretarial support area(s);
- (3) Record storage;
- (4) Space for information resources, report writing and training materials;
- (5) Space for staff assembly and training, when included in the facility's program;
- (6) Offices for program staff when included in the facility's program;
- (7) Office space for chief jailer or shift commander.

Statutory Authority G.S. 153A-221.

.2905 CONSTRUCTION MATERIALS FOR MINIMUM SECURITY UNITS

These standards pertain to those facilities within the security perimeter or fenced in compound which prisoners would use and from which inmates may exit to a secure area. Traditional building materials may be used where security and safety will not be jeopardized, taking into consideration the type of security facility described in the operations program submitted by local authority having jurisdiction and approved by the department.

Statutory Authority G.S. 153A-221.

.2906 MECHANICAL SYSTEMS

Mechanical systems shall:

- (1) Provide heating, ventilation, and air conditioning to meet the requirements of the N.C. State Building Code;
- (2) Have master controls for electrical, plumbing, heating, and air conditioning which are inaccessible to inmates;
- (3) Have master cutoff control for electric and water supplies to each cell, dormitory or other security unit having such facilities;

- (4) Have capability of maintaining temperatures in prisoner quarters within 68 degrees Fahrenheit minimum in the heating season and 85 degrees Fahrenheit maximum during the nonheating season.

Statutory Authority G.S. 153A-221.

.2907 GENERAL

In addition to the foregoing, the facility shall be designed to:

- (1) have access for emergency equipment (e.g., fire hose, stretcher) provided at appropriate entrances;
- (2) have auxiliary power and emergency lighting available;
- (3) have vehicle parking located to inhibit unauthorized persons from entering the security perimeter;
- (4) comply with all safety standards in Section .3100.

Statutory Authority G.S. 153A-221.

SECTION .3000 - CLASSIFICATION

.3001 FEMALE INMATES

Female inmates must be housed separately and must also be separated from male inmates by sight and normal sound. Sound separation must eliminate normal verbal communication.

Statutory Authority G.S. 153A-221.

.3002 CLASSIFICATION SYSTEM

Each local confinement facility shall have a written procedure for placement of inmates in the type quarters that best meet the individuals needs and provides reasonable protection to the other inmates, the custodial staff and the inmate himself within the limitations of the physical structure. Guidelines for a classification system are available from the division.

Statutory Authority G.S. 153A-221.

.3003 CONFINEMENT OF PERSONS UNDER 18 YEARS OF AGE

Persons under 18 years of age, when confined, must be separated from the adult population of the jail. They shall be in areas under close supervision where the juveniles cannot converse with, see or be seen by the adult inmates.

Statutory Authority G.S. 153A-221.

SECTION .3100 - SAFETY AND SECURITY

.3101 EXITS AND KEYS

The following requirements shall apply to exits:

- (1) Each facility shall provide alternative exits, readily accessible in case of fire and in compliance with building codes.
- (2) There will be at least two complete sets of facility and emergency exit keys for each exit.
- (3) One set of keys not in use shall be stored in a safe place but accessible to supervisory personnel for use in an emergency.
- (4) Emergency exit keys should be maintained on a separate key ring.

Statutory Authority G.S. 153A-221.

.3102 FIRE EXTINGUISHERS

The following requirements shall be met with respect to fire extinguishers:

- (1) There shall be a sufficient number of fire extinguishers, approved by the Underwriters Laboratories, readily accessible on each floor as outlined in the National Fire Prevention Association pamphlet number 10.
- (2) Maximum distance of travel to a fire extinguisher shall not exceed 75 feet for Class A., 50 feet for Class B., and 75 feet for Class C. extinguishers.
- (3) The type of extinguisher shall be appropriate for the area where mounted, i.e., Class ABC for categories of combustibles including cellulose products, grease and chemicals.
- (4) Fire extinguishers shall be inspected and recharged by a qualified person in accordance with manufacturer's instructions and so marked or tagged by date.
- (5) Fire extinguishers shall be maintained in a fully charged and operable condition and kept in their designated places at all times when they are not being used.
- (6) Arrangements shall be made with the local fire department to inspect the jail facility at least once each year. Staff training may be included in this arrangement.

Statutory Authority G.S. 150B-14 (a) (1); 150B-14 (c); 153A-221.

.3103 FIRE PLAN

Each facility shall have a written plan for evacuation and control of inmates in the event of fire. The plan shall include a requirement

for training of staff to include, at a minimum, quarterly fire drills. Records should be made of fire drills and retained in file for future reference.

Statutory Authority G.S. 153A-221.

.3104 MATTRESSES

The following requirements shall be met with respect to mattresses:

- (1) Mattresses and bedding shall comply with Commission for Health Services Rules, 10 NCAC 10C, Rules .0312 - .0326 and G.S. Chapter 130A-273. Bedding shall meet Federal flammability standards.
- (2) Finished dimensions of mattresses provided inmates of local confinement facilities shall be not less than four inches thick and shall be of the same length and breadth as the jail bunks.
- (3) Mattresses shall have no metallic, plastic or other rigid framing component in the finished unit.
- (4) Mattress ticking shall be a durable water repellent and flame retardant polyvinyl chloride sheeting which may include reinforcing fiber in the flexible sheeting, or ticking shall be a product of equal strength and equal chemical safety properties. The ticking shall be sewn to envelope configuration enclosing the core material securely without metal or other fasteners.
- (5) Core material shall be all cotton batting impregnated with 10 percent boric acid solids by weight, or equal fire resistant core material with combustible characteristics which produce no more human hazard than the treated cotton batting in areas of high temperatures and heat fluxes, untenable gas levels and visibility obscuration by smoke when subjected to burning tests of full-size mattresses or bench-scale tests which subject mattress specimens to an average imposed heat flux of at least 2.5 w/cm².
- (6) Suppliers of mattresses shall provide permanent identification with year of production on the product as evidence of meeting these requirements.
- (7) Mattresses must be kept in good repair.

Statutory Authority G.S. 153A-221.

SECTION .3200 - STAFFING

.3201 PERSONNEL

(a) Sufficient supervisory personnel must be on duty so that sight and sound observation

may be maintained at any time. An officer will observe each inmate at least every 30 minutes, on an irregular schedule.

(b) In multi-level facilities supervisory personnel must be on each level where inmates are confined.

(c) Sufficient personnel must be on duty to ensure that special surveillance can be maintained for mentally ill or emotionally disturbed inmates, inmates identified as suicide risks and inmates in isolation.

(d) Supervisory personnel must remain awake during their work shifts.

(e) Supervisory personnel shall not be assigned other duties which would interfere with continuous surveillance of inmates.

(f) Female jailers must be on duty when female inmates are confined.

(g) Provision shall be made for additional personnel in cases of emergency.

Statutory Authority G.S. 153A-221.

.3202 RECORDS

(a) A job description shall be in writing for each category of jail employee listing education, experience and other qualifications required and a description of duties and responsibilities.

(b) An individual personnel file shall be maintained on each employee which includes previous employment history, education, and experience.

Statutory Authority G.S. 153A-221.

SECTION .3300 - SANITATION AND PERSONAL HYGIENE

.3301 BEDDING AND FURNITURE

With respect to bedding and furniture, the following requirements shall be met:

- (1) Clean and adequate bedding, mattresses, sheets and blankets will be supplied to inmates except those inmates not housed overnight. Bedding shall be exchanged a minimum of twice weekly.
- (2) Furniture, bunks and mattresses shall be kept clean and in good repair. Clean bed linen and easily cleanable or washable mattress covers shall be provided for each occupant and shall be changed as often as necessary. Clean linen shall be stored and handled through use of suitable bags or closed hampers in order to reduce the spread of contamination. Suitable room shall be provided for the separate storage of clean linens from soiled linen.

Statutory Authority G.S. 153A-221.

.3302 SHAVING

Inmates shall be provided necessary safety equipment for shaving and a mirror. Razors shall not be shared between inmates.

Statutory Authority G.S. 153A-221.

.3303 TOWELS AND SOAP

Inmates shall be provided necessary towels and soap for bathing purposes.

Statutory Authority G.S. 153A-221.

.3304 SHOWERS

Inmates shall be provided access to showers a minimum of twice per week. Shower areas must be smooth and easily cleanable and shall be kept clean. The hot water supply shall be adequate for the population served.

Statutory Authority G.S. 153A-221.

.3305 SANITATION

The Commission for Health Services has adopted Rules, as required by G.S. 153A-226, governing the sanitation of local confinement facilities, including the kitchens and the places where food may be prepared for prisoners. A copy of the rules may be obtained from the Department of Human Resources, Division of Health Services, Sanitation Branch, P.O. Box 2091, Raleigh, N.C. 27601-2091.

Statutory Authority G.S. 153A-221.

.3306 WATER SUPPLY

The water supply shall be from an approved source, shall be adequate and shall be of safe, sanitary quality. Reference: Commission for Health Services Subchapter 10 NCAC 10A, Governing the Protection of Private Water Supplies, Section .1700 and Commission for Health Services Subchapter 10 NCAC 10D, Governing Public Water Supplies, Sections .0600 - .2600.

Statutory Authority G.S. 153A-221.

.3307 LIQUID WASTES

All sewage and liquid wastes shall be disposed of in a public sewer system or other sanitary disposal method approved by the local health director. Reference; Commission for Health Services Subchapter 10 NCAC 10A, for

Sanitary Sewage Collection, Treatment and Disposal, Section .1900.

Statutory Authority G.S. 153A-221.

SECTION .3400 - FOOD

.3401 NUMBER OF MEALS

The following requirements concerning meals shall be met:

- (1) Three meals shall be served daily. No more than 14 hours shall elapse between the evening meal and breakfast of the following day. The specific meal times shall be included in the written policies and procedures of the confinement facility. In facilities where inmates are confined for 24 hours or less, meal times shall be posted where the inmates can readily see them.
- (2) A daily record shall be kept of the number of inmates, staff, and outsiders who are served at each meal. This census shall indicate the specific numbers of meals served to each of these groups. In addition, the number and specific kind of therapeutic diets served at each meal shall be recorded.

Statutory Authority G.S. 153A-221.

.3402 DIET

The following requirements shall be met with respect to diet:

- (1) Meals shall meet the nutritional needs of the inmates according to the recommended daily allowances of the National Research Council, National Academy of Sciences. A copy of the current edition of the North Carolina Dietetic Association Diet Manual shall be available in the jail for use in food service. Daily menus shall include the following:
 - (a) Homogenized Milk, low fat milk, or buttermilk: One cup (eight ounces) shall be offered to each inmate at least twice a day and served to them if they accept. Four cups (eight ounces each) shall be offered daily to teenagers and pregnant women. Although dry milk and evaporated milk can be used in cooking, neither should be used for drinking.
 - (b) Fruit: Two servings. Included a good source of vitamin C daily. $\frac{1}{2}$ cup orange juice, one orange, $\frac{1}{2}$ cup grapefruit juice, $\frac{1}{2}$ grapefruit, one cup tomato juice, one tomato, or $\frac{1}{2}$

cantaloup equal one serving. Include an additional serving of one fresh fruit, ½ cup canned fruit, or ¼ cup dried fruit.

- (c) Vegetables: Two servings of ½ cup each. Include a good source of vitamin A three times a week. One-half cup of spinach, collards, turnips, mustard or kale greens, broccoli, carrots, pumpkin, sweet potatoes or winter squash equal one serving.
- (d) Fats: Include oil or margarine and butter in moderation.
- (e) Protein: At least two ounces of cooked meat must be served at both the noon and evening meal. A meat substitute equal to two ounces of cooked meat may be served three times a week but not more than once a day.

Notes:

"Meat" - lean meat, fish or poultry (bacon is considered a fat instead of a meat).

"Meat Substitutes" - each amount listed equals 2 ounces of meat:

- (i) 2 eggs;
- (ii) 2 ounces sliced cheese;
- (iii) 1 cup cooked dried peas or beans;
- (iv) 4 tablespoons peanut butter or two tablespoons peanut butter plus an additional ounce of protein (e.g., 1 egg, 1 ounce of cheese, or ½ cup cooked dried beans or peas;
- (v) combination of the above (e.g., 1 chicken leg plus ½ cup blackeyed peas);
- (vi) 2 ounces of soy protein; or
- (vii) ½ cup cottage cheese.
- (f) Cereals and Breads: At least four servings, whole grain or enriched, such as oatmeal, enriched rice, enriched macaroni and noodles, corn meal, enriched prepared cereals, or bread. Examples of one serving of bread are one slice, one biscuit, one roll, and one square of corn bread. One serving of cereal equals ½ cup cooked cereal or ¾ cup dry cereal. One serving of rice, macaroni or noodles equals ½ cup.
- (2) The same menu shall not be served at lunch and dinner on a given day.
- (3) The evening meal shall consist of more than just a sandwich and beverage. The evening meal shall provide at least one-third of the day's total calories; (e.g., canned soup, saltines, cheese sandwich, fruit, milk).
- (4) To meet the energy needs of the majority of inmates, the daily menu shall include

at least 2,200 calories for males and 2,000 for females.

- (5) Therapeutic diets shall be served as ordered:

- (a) If an inmate needs a therapeutic diet, (for example, diabetic, low sodium, or bland) a signed order from the inmate's personal physician or the facility physician shall be kept on file for the length of the inmate's confinement. Special diet orders must be calorie or gram specific.
- (b) Written menus for therapeutic diets shall be planned and/or reviewed by a registered dietitian.
- (c) If evening or between meal snacks are ordered as part of the therapeutic diets (e.g. diabetic or bland diets), these snacks shall be served.
- (d) Policies and procedures for ordering, planning and serving therapeutic diets shall be in writing.

Statutory Authority G.S. 153A-221.

3403 SAMPLE MENU

The following sample menu contains approximately 2,200 calories:

Breakfast

4 ounces orange juice
½ cup enriched grits
1 scrambled egg
1 buttered toast
(whole grain)
Coffee, milk
Water

Noon Meal Prepared with Meat Substitute

1 cup pinto beans
½ cup mixed greens
½ cup chilled tomatoes
Sliced onion, if desired
Cornbread or corn muffin
Coffee, tea, milk
Water

Evening Meal

Baked chicken thigh and leg
½ cup rice w gravy
½ cup green beans
1 tbsp. cranberry sauce
1 biscuit
½ cup sliced peaches
Coffee, tea, milk
Water

Snacks - a serving of

10:00 a.m. cranberry, prune, or

3:00 p.m. pineapple juice
After supper lemonade or other fluids
milk or juice, 2 graham
crackers w/peanut butter

Statutory Authority G.S. 153A-221.

.3404 FOOD PREPARATION AND SERVICE

The following requirements shall be met with respect to food preparation and service:

- (1) Sufficient space and equipment shall be provided for safe, sanitary food preparation and/or service.
- (2) The kitchen and storage area shall be clean, orderly, and protected from possible contamination.
- (3) Food shall be attractively served, seasoned, and at proper temperatures.
- (4) All food shall be placed on individual serving trays in the serving area before being served to the inmates. Inmates shall not have to ask for milk or juice upon receipt of trays.
- (5) Appropriate eating utensils and condiments shall be provided.
- (6) While being transported, all food items shall be covered to prevent contamination.

Statutory Authority G.S. 153A-221.

.3405 FOOD RECORDS

Records with respect to food shall be maintained as follows:

- (1) Menus shall be planned in writing with portion sizes specified and served as written.
- (2) If substitutions are necessary, written records of these substitutions shall be kept.
- (3) Records of dated menus and substitutions shall be kept for one year. If different menus are served to staff and/or outsiders, records of these menus shall also be kept.
- (4) Menus shall be dated and posted one week in advance. The use of seasonal, three-week cycle menus is suggested.
- (5) Dated invoices or bills shall be kept by the month. All invoices or bills shall state the specific food item and the amount purchased.

Statutory Authority G.S. 153A-221.

.3406 SANITATION

The following sanitation requirements shall be met:

- (1) In those facilities where it is necessary to purchase meals from an outside food-handling establishment, a contract shall be written which insures compliance with these standards.
- (2) The outside agency shall provide records under Rule .3405 (a), (b), and (c).
- (3) If the outside agency can not provide equipment for sanitary meal transportation (such as insulated trays), the confinement facility shall provide permanent equipment (insulated containers) which maintains proper temperature. The equipment used and the procedures for transporting meals shall be approved by the local health director.
- (4) Each food handling establishment shall be approved by the local health director. Meals shall be served in single service eating and drinking utensils.

Statutory Authority G.S. 153A-221.

.3407 FOOD FROM OUTSIDE ESTABLISHMENTS

With respect to food from outside establishments, the following requirements shall be met:

- (1) In those facilities where it is necessary to purchase meals from an outside food-handling establishment, a contract shall be written which insures compliance with these standards.
- (2) The outside agency shall provide records under Rule .3405 (a), (b), and (c).
- (3) If the outside agency can not provide equipment for sanitary meal transportation (such as insulated trays), the confinement facility shall provide permanent equipment (insulated containers) which maintains proper temperature. The equipment used and the procedures for transporting meals shall be approved by the local health director.
- (4) Each food handling establishment shall be approved by the local health director. Meals shall be served in single service eating and drinking utensils.

Statutory Authority G.S. 153A-221.

.3408 STAFFING

The facility shall provide sufficient personnel to meet these minimum standards. Trusty inmates may be used to supplement the food service staff but shall not be used as the sole source of manpower for this service for any meal.

Statutory Authority G.S. 153A-221.

SECTION .3500 - MEDICAL CARE OF INMATES

.3501 MEDICAL PLAN

A written medical care plan must be developed in compliance with G.S. 153-225 and available in the working area of the facility for ready reference by all jail personnel. This written medical care plan must include the following:

- (1) A basic description of the health services available to inmates within the facility, from outside resources, and under contract;
- (2) Policies and procedures in the following areas of medical care:
 - (a) the handling of inmates with acute illnesses;
 - (b) administration, dispensing and control of medications;
 - (c) emergency services;
 - (d) care of chemically dependent inmates;
 - (e) care of pregnant inmates;
 - (f) dental care;
 - (g) health record format and contents;
 - (h) confidentiality of medical records and retention schedule;
 - (i) health screening of inmates upon admission;
 - (j) provision of psychiatric service;
 - (k) staff development and training including volunteers, correctional staff and inmate workers;
 - (l) provision of social services;
 - (m) medical care of inmates in segregation;
 - (n) segregation of inmates with a known communicable disease or infection;
 - (o) therapeutic diets, as identified in the N.C. Dietetic Association Diet Manual;
 - (p) provision for a periodic medical clinic at which qualified medical personnel, such as a registered nurse, physician's assistant, or medical doctor, will be available to evaluate the medical needs of detainees. Such clinic shall be provided at least once each week;
 - (q) provision that a duty officer or other responsible person shall determine if detainees have been prescribed medication, and, if so, for ensuring that such medication is made available according to the prescribing physicians' orders.

Statutory Authority G.S. 153A-221.

.3502 REPORT OF DEATH

With respect to the death of an inmate, the following requirements shall be met:

- (1) Within five days of the death of an inmate, the facility shall complete and file the form "Report of Prisoner's Death", send an original copy to the local or district health director, and send a second copy to: Department of Human Resources, Division of Facility Services, Jail and Detention Branch, 701 Barbour Drive, Raleigh, North Carolina 27603.
- (2) The form shall include prisoner's name, and birth date, race, and sex; the name and address of the facility; the place, date, and time of death; cause of death (natural/suicide) and method of suicide (sheet/towel, etc.); name of coroner; whether a physician was in attendance; and any other information which the division may require.

Statutory Authority G.S. 153A-221.

SECTION .3600 - TRAINING OF PERSONNEL

.3601 EMPLOYEE REQUIREMENTS

Local governmental officials responsible for the administration and supervision of jails shall employ only persons with good moral character who appear capable of being trained in principles of proper care and welfare of inmates confined in their care and keeping.

Statutory Authority G.S. 153A-221.

.3602 TRAINING

All jail employees must comply with training requirements of G.S. 17E and a record of satisfactory completion of required courses must be maintained in individual personnel files.

Statutory Authority G.S. 153A-221.

SECTION .3700 - REPORTS

.3701 MONTHLY REPORT OF LOCAL CONFINEMENT FACILITIES

Monthly reports shall be prepared as follows:

- (1) Local confinement facilities shall complete a monthly report on Form DHR-JDS-1 and send it no later than the tenth day of the following month to: Department of Human Resources, Division of Facility Services, Jails and De-

tention Branch, 701 Barbour Drive, Raleigh, North Carolina, 27603.

- (2) The report shall include the name of the county; month; name of superintendent; name, race, sex, number, and status of inmates; name, race, sex, age, and offense of inmates held as mental patients; and any other information the division may require.

Statutory Authority G.S. 153A-221.

.3702 ANNUAL REPORT

A yearly report shall be submitted to the division by the local authority. This report shall include yearly totals for commitment of male/female by race, number serving sentence, number awaiting trial, federal prisoners, mental patients, DWI sentences, number of inebriates sentenced, and average yearly population figures. This report shall be mailed no later than the 31st day of January for the previous calendar year.

Statutory Authority G.S. 153A-221.

CHAPTER 24 - SOCIAL SERVICES: GENERAL

SUBCHAPTER 24A - GENERAL

SECTION .0500 - GENERAL POLICIES

.0504 STANDARDS FOR OFFICE SPACE AND FACILITIES

The purpose of this rule is to establish standards for office space, equipment and facilities for county departments of social services that will adequately and effectively meet program, staff and client needs. These requirements are supplementary to, and do not replace, Federal Confidentiality of Information requirements and any provisions in state, county or municipal building codes.

- (a) (1) Identification of Office. All social services offices, including satellite offices, shall be appropriately marked and identifiable in the community as a social services agency:
 - (+) (a) Each office shall be identified by an outside sign clearly visible from the road or street.
 - (2) (b) If the office is housed within a public building occupied by other agencies or units of government, the agency shall be listed on a standard building directory in a manner similar and equal to that accorded every other agency.
- (b) Accessibility. Social services offices must be reasonably accessible in relation to the

population distribution so that services are readily available to most citizens of the county.

- (c) Physical Plant. Buildings housing social services agencies shall be certified by competent authority to be of sound and substantial construction and in compliance with the state/local fire and building codes:

- (1) Adequate and separate restroom facilities for male and female employees and clients shall be provided.
- (2) Facilities for clients shall be located near waiting rooms and furnished with soap, towels, and tissue.
- (3) A drinking fountain shall be conveniently located within the office for the comfort of staff and clientele.

(2) Requirements for Physical Plant:

- (a) Buildings housing social services agencies shall be certified by competent authority to be of sound and substantial construction and in compliance with the state/local fire and building codes.
- (b) All buildings for which site clearance began before June 3, 1977, shall meet the equal access provisions specified in Section 504 of the Rehabilitation Act of 1973 as amended.

- (3) Requirements for Space. Adequate office space shall be provided for each employee. The following guidelines show the acceptable minimum range of space which will vary due to position function, special equipment and furniture needs, fixed existing conditions or the availability of separate private interviewing rooms. The staff category descriptions and recommended minimum square footages of space range are shown below:

- (a) Staff Who Interview Clients In Their Offices 80 - 120.
- (b) Supervisors 80 - 120.
- (c) Management 96 - 180.
- (d) Staff Members Not Required to Conduct Interviews In Their Offices 56 - 96.
- (e) Separate Private Interviewing Rooms : Adequate for Function.

- (4) Requirements for Office Space for Staff. Each worker shall be provided with a minimum of 80 square feet, excluding files, reception, and auxiliary areas:

(4) Requirements for Privacy:

- (+) (a) Private offices shall be required for the county director and each supervisor.

- (2) (b) Private offices or interviewing room(s) shall be available to all staff who interview clients.
- (e) (5) Requirement for Waiting Room and Reception Area. The principle location of each county department of social services shall be arranged to provide a waiting room of sufficient size to accommodate the optimum number of people availing themselves of its use each day. A separate area is required for the receptionist.
- (f) (6) Requirement for Conference Room. A conference or staff training room with seating capacity (15 to 20 sq. ft. person) adequate to accommodate the professional staff average number of people usually in attendance shall be provided for use in meetings and training sessions.
- (g) (7) Requirement for Storage Space and Confidentiality of Records. Sufficient space shall be provided for conveniently locating files and records, supplies, and forms:
 - (h) (a) Files and supplies shall be accessible and convenient to staff responsible for their maintenance, use and protection.
 - (2) (b) Files and records shall be adequately protected from fire, other damage and theft.
 - (3) Space shall be available for storing janitorial and maintenance supplies and equipment used in maintaining the building and grounds.
 - (c) Access to confidential information shall be limited to authorized personnel only.
 - (d) Space shall be available for storing janitorial and maintenance supplies and equipment used in maintaining the building and grounds.
- (h) (8) Requirement to Provide Office Space for Persons Who Periodically Visit the Agency on DSS Related Business. Office space shall be provided to persons who periodically visit the agency on DSS related business.
- (i) (9) Equipment. Furnishings and equipment shall be provided to enable staff to adequately perform its duties.

Authority G.S. 108A-80; 143B-153; 45 C.F.R. 205.170(a), (b).

.0505 ADMINISTRATION AND AGENCY COMPLIANCE

(a) Federal and state participation in the cost of administration may not be claimed when office space, equipment and facilities are

not in compliance with the standards established set forth in 10 NCAC 24A .0504 or when the county fails to submit an acceptable plan for compliance within 90 days of notification of non-compliance.

(b) The regional director or his designated representative shall inspect and evaluate each county department of social services at least annually periodically, but not less than every three years, to determine compliance with the established standards, using form DSS-1414 for each location. Copies of form DSS-1414 shall be sent to the county director, chairman of the county commissioners and social services boards, and the assistant director for service delivery for appropriate action. The evaluation shall be triggered by information known to the Regional Office; such as changes in program regulations or staffing patterns which would affect compliance, or complaints concerning compliance issues. A county department of social services shall be deemed to be in compliance until the Regional Director determines, after evaluation, that the agency is not in compliance.

(c) In the event present facilities cannot be brought into compliance and new space must be acquired, the county shall be allowed 12 months from the date of the non-compliance notice as a normal period of compliance.

- (1) Construction plans for new facilities shall be submitted to and require approval from the division director. Plans shall include adequate and structural provisions for expansion.
- (2) Should the county be unable to comply within 12 months, a request for an extension may be submitted to the appropriate regional director. Continuous progress toward compliance shall be demonstrated.
- (3) When renovations or additions to buildings are required, six months from the date of the non-compliance notice shall be considered a normal period of compliance. A request for extension of time may be made to the appropriate regional director. Continuous progress toward compliance shall be shown.
- (4) Deficiencies in equipment shall be corrected within 90 days from the date of the non-compliance notice. A request for extension of time may be made to the appropriate regional director. Continuous progress toward compliance shall be demonstrated.

(c) At the conclusion of an evaluation, the principal reviewer shall meet with the director of the county department to discuss the findings. Following this exit conference, the principal reviewer shall prepare a written report and transmit the report to the Regional Director. If the findings of the review indicate the county department is in compliance, the Regional Director will, within 30 days of the date of the evaluation, forward a copy of the administrative review report to the agency director, the local social services board chairman, the chairman of the local board of county commissioners and the county manager under a transmittal letter indicating the agency's compliance. If the county department is not in compliance, the following steps shall be taken within 30 days of the date of the evaluation:

(1) The Regional Director shall send a copy of the evaluation report to the county director, the local social services board chairman, the chairman of the local board of county commissioners and the county manager:

(A) citing the specific findings of non-compliance and what is required to come into compliance;

(B) notifying the agency that it has 90 days from the receipt of the report to come into compliance in these areas or to develop and submit to the division a corrective action plan. The division is responsible for providing consultation and technical assistance regarding the areas of non-compliance to the local agency upon request; and

(C) notifying the agency that all federal and state administrative funds will be withheld should the county fail to comply or submit an acceptable plan for compliance within 90 days of notification of non-compliance.

(2) By the end of the 90 day notice period, the county department shall achieve compliance or submit a corrective action plan to the division. If the corrective action plan contains provision for construction of new facilities, construction plans, which will require the approval of the division director, must also be submitted.

(3) In the event that the county department submits a corrective action plan to the division within 90 days notice period, the Regional Director shall review the corrective action plan to ensure that it addresses each specific finding of non-

compliance, and that the implementation of the corrective action plan can be expected to bring the agency into compliance. If construction plans are submitted as part of corrective action, the Regional Director will obtain the approval of the division director.

(4) Within 30 days after receipt of the plan, the Regional Director shall either approve the plan as submitted or indicate how the county department can amend the corrective action plan in order to obtain approval. After a corrective action plan has been approved, the Regional Director shall monitor the agency's progress towards compliance during the corrective action phase, and inform the agency, the local social services board chairman, the chairman of the local board of county commissioners and the county manager of its findings in writing. If the findings indicate that the agency is not making sufficient progress towards compliance in accordance with its corrective action plan, the Regional Director shall so notify the agency, the local social services board chairman and the chairman of the local board of county commissioners in writing that the agency has an additional 60 days from receipt of the notice to achieve compliance. If the agency does not achieve compliance or make sufficient progress towards compliance in accordance with its corrective action plan within the additional 60 day period, withholding shall commence in accordance with the procedures set forth in Paragraph (c) (5) of this Rule.

(5) In the event that the county department of social services fails to submit a corrective action plan within the 90-day notice period, the division director shall, within 30 days of the above referenced notification of county authorities, recommend to the secretary the withholding of all federal and state administrative funds. If the secretary concurs with the division director's recommendation, the secretary will, within 30 days of the division director's recommendation, notify the agency director, the local social services board chairman, the chairman of the local board of county commissioners and the county manager of the decision to withhold funds. The withholding of these funds shall be retroactive to the

date of the original transmittal letter signed by the Regional Director notifying the agency of non-compliance and shall continue until the requirement for a compliance plan is met. If the county department appeals the decision under the procedures outlined in Paragraph (d) of this Rule, the action to withhold funds will be deferred until the conclusion of the hearing and any subsequent appeals.

(d) A county department of social services which is not in compliance and has been notified by the secretary of the decision to withhold funds, may appeal. If an appeal is desired, the county is required under G.S. 150B-23(a), as amended by Chapter 878 of the 1987 North Carolina Session Laws, to file hearing requests for Department of Human Resources matters with the Office of Administrative Hearings. The appeal must be filed within 30 days of the receipt of the proposed action.

Authority G.S. 143B-153; 150B-23(a); 45 C.F.R. 205-170(b).

SECTION .0600 - HEARING POLICY

.0607 GOOD CAUSE NOT REQUESTING HEARING/PREScribed TIME FRAMES

(a) Except in the food stamp program, an appellant shall request a local hearing within 60 days from the date of action unless he shows good cause. If the appellant shows good cause, he may request the local hearing no later than the 90th day from the date of action.

(b) Except in the food stamp program, an appellant shall request a state hearing within 15 days from the date the local hearing decision is mailed unless he shows good cause. If the appellant shows good cause, he may request the state hearing no later than the 90th day from the date of action.

(c) Good cause for not requesting a local hearing within 60 days from the date of action and for not requesting a state hearing within 15 days from the date the local decision is mailed is defined as:

- (1) Failure of the appellant to receive the notification of action to be taken or the notification of the local hearing decision;
- (2) Extended hospitalization of the appellant or spouse, child or parent of the appellant;

- (3) Failure of a representative, acting on the appellant's behalf, to meet the time frames;
- (4) Illness which results in the appellant being incompetent or unconscious and no representative has been appointed;
- (5) Illness which results in the incapacity of the appellant.

(d) The appellant shall provide evidence to substantiate good cause. Evidence may include but is not limited to:

- (1) Doctor's statement;
- (2) Hospital bill;
- (3) Written statement from the appellant's representative;
- (4) Written statement of the appellant or other individual knowledgeable about the situation.

Authority G.S. 108A-79; 143B-153; c. 599, 1987 Session Laws.

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41A - IDENTIFYING INFORMATION: MANUALS AND FORMS: COVERAGE

.0007 WAIVER OF LICENSING RULES AND APPEALS PROCEDURES

(a) The Department of Human Resources may allow a variance to a licensing rule or rules contained in Chapter 41 to persons subject to licensure pursuant to G.S. 131D, Article 1A in accordance with the following criteria:

- (1) persons seeking a waiver must submit a written request to the department showing that another way of meeting a rule maintains the health, safety, and well-being of individuals being served at or above the level required by the rule;
- (2) no variance shall be allowed by the department to any rule based on a standard adopted by the Building Code Council and subject to the general supervision and enforcement of the Commissioner of Insurance;
- (3) no variance shall be allowed by the department to any rule governing fire safety;
- (4) no variance shall be allowed by the department to any rule based upon a standard adopted by the Health Services Commission;
- (5) the variance when allowed remains in effect for the term of the license and may be renewed if the department de-

termines that the health, safety and well-being of individuals being served are not threatened.

(b) The Department of Human Resources may deny, suspend or revoke a license at any time for failure to comply with licensing rules adopted pursuant to G.S. 131D, Article 1A or for operating in a manner that threatens the health, safety or well-being of individuals in the facility.

(1) Denial, suspension, or revocation of licensure by the Department of Human Resources shall be affected by mailing to the applicant or license holder, by certified mail, a notice setting forth the particular reasons for such action. Such denial, suspension or revocation shall become effective 30 days after the mailing receipt of the notice absent a notice as specified in (2) of this Rule.

(2) At any time prior to the effective date the applicant or license holder may request a hearing, by written notice, by certified mail, to the Department of Human Resources in which case the notice of denial, suspension or revocation shall be deemed to be suspended. In addition, at any time prior to the hearing, the Department of Human Resources may rescind the notice of denial, suspension or revocation upon being satisfied that the reasons for such action have been or will be removed. At any time prior to the effective date the applicant or license holder may petition for a determination of his legal rights, privileges, or duties. All petitions must be in writing and contain a statement of the facts prompting the request sufficient to allow for appropriate processing by the Department of Human Resources.

(3) When the Department of Human Resources receives a request for a hearing, the following procedures will apply: The petition for a hearing shall be filed with the Office of Administrative Hearings in accordance with G.S. 150B-23 and 26 NCAC 3 .0003. In accordance with G.S. 1A-1, Rule 4 (j) 4, the petition shall be served on a registered agent for service of process for the Department of Human Resources. A list of registered agents may be obtained from the Office of Legislative and Legal Affairs.

(A) The department shall send a notice of hearing to the applicant or license

holder, and to other known interested parties, which shall provide at least 10 days notice of the hearing.

(B) The hearing shall be held before such persons as shall be designated by the department. The hearing officer shall conduct the hearing in a fair and impartial manner, and the hearing officer shall have the authority to take all testimony in the case and shall thereafter prepare proposed findings of fact and a recommended order which shall be presented to the department.

(C) At the hearing, witnesses shall be sworn and evidence shall be taken from all persons desiring to present their views. All interested persons shall have an opportunity to examine and cross-examine witnesses and present other pertinent evidence.

(D) The department shall give the applicant or license holder, and other interested parties, notice of the date and time the transcript and recommendations of the hearing officer will be considered, and such notice shall be given at least 10 days in advance unless notice is waived by all interested parties.

(E) The department shall make a decision at the time the transcript and recommendations are considered, but no additional evidence or other testimony shall be received except for good cause showing the discovery of the additional pertinent evidence. At such meeting, arguments will be limited at the discretion of the department.

(F) The department shall confirm the decision, in writing, by registered mail, to the applicant or license holder.

(G) The department will not purchase transcripts of the evidence of any hearing for the applicant or license holder or any other interested parties, and such expense must be borne by each party for his own copy of the transcript.

(4) Procedures for the processing of an appeal of an adverse licensing action and for the final decision are specified in G.S. 150B, Article 3 and 10 NCAC 1B .0200.

Statutory Authority G.S. 131D, Article 1A; 143B-153; 150B-11; 150B-22; 154B-23.

CHAPTER 47 - STATE/COUNTY SPECIAL ASSISTANCE

SUBCHAPTER 47A - GENERAL PROGRAM
ADMINISTRATION

SECTION .0500 - PAYMENT PROCEDURES

.0502 PAYMENT AUTHORIZATION

(a) Special assistance shall not be authorized prior to the month of application.

(b) If SSI approval is not pending, and the worker disposes of an application after the month of application, special assistance may be authorized as much as two months prior to the month of disposition.

(c) If SSI approval has been pending, special assistance may be authorized retroactive to the month SSI was approved, if the applicant was in domiciliary care and had applied for special assistance that month.

(d) If an applicant enters domiciliary care after the first day of the month, he shall be eligible only for a partial payment for that month from the date of entry to the end of the month. The payment shall be computed without considering income, disregard, deductions or exemption.

(e) If a recipient's level of care is determined to not longer be domiciliary and a bed is not readily available under the Medicaid Program, special assistance shall continue until a bed at the appropriate level of care is located.

Statutory Authority G.S. 143B-153.

.0507 LOST: STOLEN AND FORGED CHECKS

(a) If a recipient reports that an assistance check has been lost or stolen before he has endorsed it, the county department shall have the recipient sign an affidavit that he did not receive the check. Within ten days after the check is reported lost or stolen, the county department shall request a replacement check from the state office. ~~If the check has been signed, the state shall send the endorsed check and signature samples of the recipient to the State Bureau of Investigation for handwriting analysis. If the analysis indicates that the check was forged, a replacement check shall be issued. If the analysis indicates that the recipient endorsed the check, a replacement check will not be issued.~~

(1) If the check has not been paid, the state shall issue a replacement check and issue a stop payment for the original check.

(2) If the check has been paid, the state shall send to the county a photocopy of the endorsed check and a Forgery Affidavit. The county shall compare, or shall arrange for comparison by ex-

perts in the field of document examination, the endorsement to other known signatures of the payee.

(A) If forgery is suspected, the county shall submit to the state the completed and signed Forgery Affidavit. The state shall issue a replacement check.

(B) After the county makes its analysis and a determination is made that the payee endorsed and cashed the check, it shall notify the state. The state shall not issue a replacement check.

(b) If a recipient reports that an assistance check has been lost or stolen after he has endorsed it the county department will request a replacement check of the state office. If the check has not been paid by the State Treasurer a replacement check will be issued. If the check has been paid, a replacement check will not be issued. It is the responsibility of the recipient to take legal action.

Statutory Authority G.S. 143B-153.

CHAPTER 49 - AFDC

SUBCHAPTER 49B - ELIGIBILITY
DETERMINATION

SECTION .0300 - ELIGIBILITY FACTORS

.0309 NEED

(a) ~~The payment standard and the need standards are~~ standard is set by state statute and published in the AFDC Eligibility Manual located at 325 North Salisbury Street, Raleigh, North Carolina, and each county department of social services.

(b) Special Need Allowances. The special need allowances defined in (1), (2) and (3) below shall be added to the need standard prior to determination of the actual AFDC payment.

(b) (1) Special School Needs.

(1) (A) ~~Up to twelve hundred dollars (\$1,200) twenty-four hundred dollars (\$2,400)~~ any 12 month period shall be budgeted for special school needs of a child applicant/recipient. ~~The twelve hundred dollars (\$1,200) twenty-four hundred dollars (\$2,400)~~ shall be used by the client to pay for tuition, book fees, equipment, special clothing needs, special child care services and any special cost excluding transportation.

(2) (B) ~~If a child's physical handicap prevents him from attending public schools the cost of a tutor approved by the appropriate school authority may be~~

added, but only if such inclusion is necessary because of the unavailability of other educational resources.

- (e) (2) State School for the Deaf. When a child attends a state school for the deaf, the tuition for the school for a nine month period shall be included as needed. ~~Fifty dollars (\$50.00)~~ One hundred dollars (\$100.00) shall be budgeted annually for each applicant/recipient in the assistance unit who attends a state school for the deaf.

- (3) Special Child Care and Transportation Needs - A special need allowance for child care and transportation to the child care provider for applicants/recipients who are teen-age parents, age 13 through 19, and enrolled in elementary or secondary school or in a G.E.D. program shall be included as needed.

- (A) The amount of the special need for child care shall be determined as follows by the level of care the child is receiving:

- (i) Individual Child Care Arrangement (ICCA) or babysitting - Two hundred dollars (\$200.00) per month.
- (ii) Family Day Care Home - Three hundred dollars (\$300.00) per month.
- (iii) Center approved to join the purchase of care program - Four hundred dollars (\$400.00) per month.

- (B) The amount of the transportation allowance shall be eighty dollars (\$80.00) per month.

- (C) The child care or transportation to child care allowance shall not be allowed when child care is provided by a member of the teenage parent's household unless the household member stopped his job solely to remain in the home and provide the child care.

- (D) Verification

- (i) The recipient shall provide written verification from the school that the parent of the child for whom the child care is to be budgeted is enrolled in elementary or secondary school or a G.E.D. program.

- (ii) The recipient shall provide written verification from the provider regarding the level of care the child receives. The appropriate amount from (A) in this Rule plus the transportation allowance shall be budgeted. Unless the recipient reports to the county a change as defined in (I), (II) and (III) of this Rule, this amount shall con-

tinue to be included until the next redetermination of eligibility. At the next redetermination of eligibility, the county shall again complete the above verifications and budget accordingly.

- (I) If the recipient notifies the county that the child is no longer receiving day care, the county shall delete the allowance.

- (II) If the recipient notifies the county that the child is in a different level of care, the recipient shall provide verification of this change from the provider. If appropriate, the county shall budget the new child care allowance.

- (III) If the recipient reports that the parent of the child for whom the child care allowance is budgeted is no longer in school, the county shall delete the allowance.

- (iii) The recipient shall provide verification that the household member stopped work solely to remain home and provide the child care.

Authority G.S. 108A-25; 108A-33; 143B-153; 45 C.F.R. 233; c. 738, 1987 Session Laws.

.0312 STATE WORK REQUIREMENT

(a) An AFDC applicant/recipient who is not exempt, or who is exempt but volunteers, must register with the nearest Employment Security Commission office. A non-exempt applicant/recipient must present his registration card as proof of registration at application and at each review.

(b) An AFDC applicant/recipient is exempt from registration when she is: Exemptions for state work registration shall be found in 45 C.F.R. 224.20.

- (1) a child under age 16;
- (2) a child age 16 - 17 who is a full time student or who has been accepted for enrollment as a full-time student for the next school term;
- (3) age 65 or older;
- (4) a parent or other specified relative who personally provides care for a child under six, if she personally provides care with only brief absences from the child;
- (5) ill or incapacitated;
- (6) required in the home to care for another member of the household who is ill or incapacitated;
- (7) living more than two hours round trip from the Employment Security Com-

mission office or itinerate office in his county of residence or place of employment by means of available transportation;

(8) employed 30 or more hours per week in unsubsidized employment;

(9) pregnant beginning with the sixth month.

(c) Any claim of exemption must be verified within 45 days from the date of application or 30 days from a change in situation or redetermination. Verification will be accomplished by necessary collateral contacts and information contained in the case record.

(d) A non-exempt applicant/recipient who refuses to register for work is ineligible for assistance until he registers or becomes exempt.

(e) The first time a registrant, without good cause, refuses to participate, terminates or refuses to accept employment or reduces earnings, the registrant becomes ineligible for AFDC for three calendar months. Any subsequent refusal, termination or reduction without good cause by the registrant results in his ineligibility for AFDC for six calendar months.

(f) Good Cause. Based upon evidence provided by the applicant recipient, the county director or his designee must determine good cause for refusing to participate, terminating employment, refusing to accept employment or reducing earnings. Good cause is defined as:

- (1) a court appearance;
- (2) an illness which can be substantiated by a doctor's statement;
- (3) a family crisis or a change;
- (4) a breakdown in transportation arrangements with no readily available alternate means of transportation;
- (5) a breakdown in the child care arrangement;
- (6) an assignment or job referral that does not meet the criteria for reasonable employment--that is hours and salary comparable to those in community, work is suitable to person's skills, and is not hazardous;
- (7) weather that is bad enough to keep the registrant, and other persons similarly situated, from traveling to, or participating in the required activity;
- (8) the applicant recipient is employed already;
- (9) a job referral when employment related services are not in place;

(10) refusal to accept major medical services and/or social services even when such refusal prevents participation in the program;

(11) available child care is not suited to the special needs of the child for whom it is intended;

(12) any other reason determined by the county director or his designee.

Authority G.S. 108A-29; 143B-153; 45 C.F.R. 233.10; 45 C.F.R. 233.20.

SECTION .0600 - PAYMENT PROCEDURES

.0605 LOST: STOLEN AND FORGED CHECKS

(a) If a recipient reports that a state-issued assistance check has been lost or stolen before he has endorsed it, the county department shall have the recipient sign an affidavit that he did not receive the check. Within 10 days after the check is reported lost or stolen, the county department shall request a replacement check from the state office. ~~If the check has been signed, the state shall send the endorsed check and signature samples of the recipient to the State Bureau of Investigation for handwriting analysis. If the analysis indicates that the check was forged, a replacement check shall be issued. If the analysis indicates that the recipient endorsed the check, a replacement check will not be issued.~~

(1) If the check has not been paid, the state shall issue a replacement check and issue a stop payment for the original check.

(2) If the check has been paid, the state shall send to the county a photocopy of the endorsed check and a Forgery Affidavit. The county shall compare, or shall arrange for comparison by experts in the field of document examination, the endorsement to other known signatures of the payee.

(A) If forgery is suspected, the county shall submit to the state the completed and signed Forgery Affidavit. The state shall issue a replacement check.

(B) After the county makes its analysis and a determination is made that the payee endorsed and cashed the check, it shall notify the state. The state shall not issue a replacement check.

(b) If a recipient reports that an assistance check has been lost or stolen after he has endorsed it, the county department will request a replacement check of the state office. If the check has not been paid by the State Treas-

urer, a replacement check will be issued. If the check has been paid, a replacement check will not be issued. It is the responsibility of the recipient to take legal action.

Authority G.S. 143B-153; 45 C.F.R. 233.20.

.0609 DETERMINATION OF PAYMENT AMOUNT

(a) To determine the amount of the AFDC payment, once eligibility has been established, the county shall subtract the total countable net income of the assistance unit (excluding the unemployment benefit received by the principal earner in an AFDC-UP case) from the Need Standard, including any special needs allowances, for the number in the assistance unit. The AFDC payment amount shall be 50 percent of the deficit.

(b) If the assistance unit has no countable income, the AFDC payment shall be 50 percent of the Need Standard, including any special needs allowances, for the number in the assistance unit.

Authority G.S. 143B-153; c. 738, 1987 Session Laws.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt and amend regulations cited as 10 NCAC 7A .0601 - .0605; 7F .0107; 8D .0204, .0401, .1205, .1208; 10A .1205; 10D .0702, .1008, .1624, .1628, .1638 - .1641, .2513 - .2514; 10F .0001 - .0002, .0028 - .0031, .0033 - .0035, .0039 - .0042; 10G .0801 - .0803.

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

The public hearing will be conducted at 1:30 p.m. on February 17, 1988 at the 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) 733-3134. 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 hear-

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

CHAPTER 7 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 7A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0600 - SPECIAL PROGRAM/PROJECT FUNDING

.0601 GENERAL

(a) The Epidemiology Section provides grant funds for various special projects of local, regional, or statewide significance. Such projects may include, but are not limited to:

- (1) Service delivery;
- (2) Special studies;
- (3) Public, professional, and patient education; or
- (4) Consultation and technical assistance.

(b) The initiation and annual renewal of contracts for special projects is subject to the availability of funds.

Statutory Authority G.S. 130A-5(3).

.0602 PROVIDER ELIGIBILITY

The following organizations are eligible to apply for special project funds from the Epidemiology Section:

- (1) local health departments; and
- (2) Non-profit or governmental groups such as public health, educational, and voluntary organizations.

Statutory Authority G.S. 130A-5(3).

.0603 APPLICATION FOR FUNDS

(a) Grants for special projects shall be awarded through a request for proposal (RFP) process that includes notification of all local health departments of the eligibility criteria, requirements for funding, and duration of the project period. This information shall also be available to other groups or organizations who may wish to apply. Requests for proposals may be obtained from the Epidemiology Section, Post Office Box 2091, Raleigh, North Carolina 27602.

(b) The grant proposal shall include the following:

- (1) a project plan which includes an assessment of the need for the special project, measurable project objectives, and strategies for meeting the project objectives;
- (2) a proposed budget; and

(3) an evaluation plan.

(c) In making the determination of which applications to approve for funding, each proposal will be judged on its own merits in competition with all the other proposals submitted to the section. Proposals shall be judged according to the following criteria:

- (1) the proposal demonstrates that a substantial need exists;
- (2) the proposed project makes a significant contribution in meeting the established need; and
- (3) the proposed project can be successfully completed within a reasonable period of time.

(d) The Epidemiology Section shall review all grant proposals submitted on or before the deadline for submission of proposals. The Epidemiology Section shall approve or deny a grant proposal within 60 days after the deadline for receipt of the grant proposal.

(e) A contract shall be signed with each applicant that is approved for funding. The number and type of services to be provided under the contract shall be negotiated with each contractor, approved by the Epidemiology Section, and included as an addendum to the contract. Contracts may be renewed upon expiration of the contract period when the contractor's proposal meets the criteria in (c)(1) of this Rule, the contractor has demonstrated adequate performance, and funds are available.

Statutory Authority G.S. 130A-5(3).

.0604 REPORTS

(a) The contractor shall submit periodic performance reports as specified in the contract.

(b) The contractor shall submit a final report at the close of the contract period. The report shall include an evaluation addressing progress in meeting the objectives outlined in the application.

Statutory Authority G.S. 130A-5(3).

.0605 USE OF SPECIAL PROJECT FUNDS

(a) Special Project Funds provided pursuant to these Rules shall be expended solely for the purposes for which the funds were made available in accordance with the approved application, negotiated project objectives and budget, the rules in this Section, the terms and conditions of the award, and the applicable state costs principles.

(b) A contractor that consistently fails to meet acceptable levels of performance, as determined through site visits, review of performance reports, and other appropriate and generally accepted performance standards, and has been offered consultation and technical assistance, may have special project funds reduced or discontinued. Recommendations to reduce or discontinue funding shall be reviewed and approved by the State Health Director.

Statutory Authority G.S. 130A-5(3).

SUBCHAPTER 7F - VETERINARY PUBLIC HEALTH

SECTION .0100 - VETERINARY PUBLIC HEALTH PROGRAM

.0107 APPROVED RABIES VACCINES

The following rabies vaccines are approved for use in animals in this State:

(23) Rabcine-3 (Beccham)

Statutory Authority G.S. 130A-185.

CHAPTER 8 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 8D - CRIPPLED CHILDREN: DEVELOPMENTAL DISABILITIES BRANCH

SECTION .0200 - GENERAL POLICIES

.0204 SPONSORED CLINICS

(a) Various types of sponsored clinics, with the participation of at least one rostered physician, will be conducted periodically throughout the State of North Carolina. ~~Two initial diagnostic visits per supported medical condition will be available to all children regardless of economic status.~~

Statutory Authority G.S. 130A-124.

SECTION .0400 - SERVICES

.0401 CLINIC SERVICES

(a) Children's Special Health Services shall sponsor clinics to provide care for children with a number of conditions. Any child may be referred for a diagnosis when suspected of having an accepted medical condition, regardless of family income; but those children who do not meet the financial eligibility criteria in Rule .0304 of this Subchapter shall not be supported for treatment by the program. No charges will be imposed for diagnostic services provided to children whose family income is at and below the financial eligibility scale for

program services. A child whose family's income is above the financial eligibility scale for Children's Special Health Services shall have access to diagnostic services in a program sponsored clinic in accordance with the provisions of Paragraph (b) of Rule .1208. To receive treatment services in a program sponsored clinic, a child must meet the Children's Special Health Services eligibility criteria of age, residence, medical condition and family income. A concerted effort shall be made to coordinate services received in sponsored clinics and in hospitals with primary health care providers. There will be the following kinds of sponsored clinics:

- (1) Orthopedic clinics. These clinics shall be located throughout the state, and may be held monthly or more frequently. Notwithstanding the provisions of Paragraph (a), two initial diagnostic visits shall be available to all children regardless of family income. Arrangements for treatment, such as hospitalization, appliances, and/or physical therapy, may be made at that time.

Statutory Authority G.S. 130A-124.

SECTION .1200 - CHILDREN'S SPECIAL HEALTH CONTRACT FUNDS

.1205 SCOPE OF SERVICES

(b) Outpatient clinic services shall include evaluation, treatment, follow-up and referral. Program eligible children shall be given first priority for clinic services paid through the Children's Special Health Services contract. Diagnostic services provided to over-income children through the use of a sliding fee scale may be subsidized through the contract contingent upon the availability of funds.

Statutory Authority G.S. 130A-124.

.1208 CLIENT AND THIRD PARTY FEES

(a) Children's Special Health Services eligible individuals or their families will not be billed.

(b) If a Children's Special Health Services contract clinic chooses to provide diagnostic services to children whose family income is above the Program's financial eligibility scale, the contract clinic can provide those services if a sliding fee scale is established to charge over income families except as provided in Subparagraph (a) (1) of Rule .0401. The sliding fee scale shall reflect income and family size of

clients. No charges shall be imposed for diagnostic services provided to children whose family income is at and below the program's financial eligibility scale.

~~(b)~~ (c) All Children's Special Health Services contractual agencies are required to bill all available and appropriate reimbursement sources.

- (1) All fee collections must be budgeted and expended during the fiscal year earned or within the subsequent fiscal year. Billing rates must be based consistently on established Medicaid rates outlined in the Title XIX Memorandum of Understanding between the Contractor and the division governing Medicaid reimbursement and dated July 1, 1984, and established state and program reimbursement guidelines. Fees, upon approval of the program, will be used to either expand program services or to reduce the amount of state appropriation.
- (2) All anticipated fees that have been budgeted must be reported and expended in the quarterly expenditure reports as earned.
- (3) All fees brought forward from the prior fiscal year shall be expended prior to the expenditure of state appropriations.
- (4) All fees earned in excess of the original budgeted amount cannot be budgeted and/or expended without prior written approval of the program director.

Statutory Authority G.S. 130A-124.

CHAPTER 10 - HEALTH SERVICES: ENVIRONMENTAL HEALTH

SUBCHAPTER 10A - SANITATION

SECTION .1200 - GRADE A MILK SANITATION

.1205 GENERAL - ADOPTION BY REFERENCE

(b) The 1978 Pasteurized Milk Ordinance, including all appendices and administrative procedures, recommended by the U.S. Public Health Service/Food and Drug Administration as amended through July 1, 1986 (hereinafter referred to as the "Milk Ordinance") is adopted by reference in accordance with G.S. 150B-14(c). Copies of the Milk Ordinance may be obtained from the Sanitation Branch, Division of Health Services, Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602-2091.

Statutory Authority G.S. 130A-275.

SUBCHAPTER 10D - WATER SUPPLIES

SECTION .0700 - PROTECTION OF PUBLIC WATER SUPPLIES

.0702 DEFINITIONS

- (3) "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions are available (taking cost into consideration). For purpose of setting maximum contaminant levels for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.
- (27) "Public water system"
- (b) A public water system is either a "community water system" or a "non-community water system":
- (iii) "Non-transient, non-community water system" means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.
- (28) "Point-of-entry treatment device" is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.
- (29) "Point-of-use treatment device" is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

SECTION .1000 - WATER SUPPLY DESIGN CRITERIA

.1008 LEAD FREE CONSTRUCTION

- (a) Any pipe, pipe fitting, solder or flux used after June 19, 1988 in the installation or repair of any public water system shall be lead free.
- (b) "Lead free" means that solders and flux shall not contain more than 0.2 percent lead, and pipes and pipe fittings shall not contain more than 8.0 percent lead.
- (c) This Rule shall not apply to leaded joints necessary for the repair of cast iron pipes.

(d) By June 19, 1988, each public water system shall provide notice to persons that may be affected by lead contamination of their drinking water when contamination results from the lead content in the construction materials of the public water system distribution lines or from corrosivity of the water supply sufficient to cause leaching of lead. The manner and form of the notice shall be in accordance with 40 C.F.R. 141.34 which is hereby adopted by reference in accordance with G.S. 150B-14(c).

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

SECTION .1600 - WATER QUALITY STANDARDS

.1624 ORGANIC CHEMICALS OTHER THAN THM: SAMPLING AND ANALYSIS

(e) Analysis made to determine compliance with 10 NCAC 10D .1639(a) shall be conducted as follows:

- (1) Ground-water systems shall sample at points of entry to the distribution system representative of each well. Ground-water systems must sample every three months for each entry point to the distribution system except as provided in paragraph (e)(6)(i) of this Rule. Surface water systems shall sample at points in the distribution system after any treatment application. Surface water systems must sample each source every three months except as provided in Paragraph (g)(6)(ii) of this Rule; sampling must be conducted at the same location or a more representative location each quarter. If a ground or surface system draws water from more than one source and sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions.
- (2) All community water systems and non-transient, non-community water systems serving more than 10,000 people shall analyze samples beginning no later than June 1, 1988. All community water systems and non-transient, non-community water systems serving from 3,300 to 10,000 people shall analyze samples beginning no later than January 1, 1989. All other community and non-transient, non-community water

systems shall analyze samples beginning no later than January 1, 1991.

- (3) The department or the United States Environmental Protection Agency may require confirmation samples for positive or negative results. If a confirmation sample(s) is required, then the sample result(s) should be averaged with the first sampling result and used for compliance determination in accordance with (g)(7) of this Rule. The department may delete results of obvious sampling errors from this calculation.

- (4) Analysis for vinyl chloride is required only for ground water systems that have detected one or more of the following two-carbon organic compounds: Trichloroethylene, Tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene. The analysis for vinyl chloride is required at each distribution or entry point at which one or more of the two-carbon organic compounds were found. If the first analysis does not detect vinyl chloride, the department may reduce the frequency of vinyl chloride monitoring to once every three years for that sample location or other sample locations which are more representative of the same source. Surface water systems may be required to analyze for vinyl chloride at the discretion of the department.

- (5) The department or individual public water systems may composite up to five samples for one or more public water systems. Compositing of samples is to be done in the laboratory by the procedures listed in this Subparagraph. Samples should be analyzed within 14 days of collection. If any organic contaminant listed in 10 NCAC 10D .1639(a) is detected in the original composite sample, a sample from each source that made up the composite sample must be reanalyzed individually within 14 days from sampling. The sample for reanalysis cannot be the original sample but can be a duplicate sample. If duplicates of the original samples are not available, new samples must be taken from each source used in the original composite and analyzed for

volatile organic chemicals. Reanalysis must be accomplished within 14 days of the second sample. To composite samples, the following procedure shall be applied:

- (i) To composite samples prior to GC analysis:

(A) Add 5-ml or equal larger amounts of each sample (up to 5 samples are allowed) to a 25-ml glass syringe. Special precautions must be made to maintain zero headspace in the syringe.

(B) The samples must be cooled at 4/C during this step to minimize volatilization losses.

(C) Mix well and draw out a 5-ml aliquot for analysis.

(D) Follow sample introduction, purging, and desorption steps described in the method.

(E) If less than five samples are used for compositing, a proportionately smaller syringe may be used.

- (ii) To composite samples prior to GC/MS analysis:

(A) Inject 5-ml or equal larger amounts of each sample (up to 5 samples are allowed) into a 25-ml purging device using the sample introduction technique described in the method.

(B) The total volume of the sample in the purging device must be 25 ml.

(C) Purge and desorb as described in the method.

- (6) The monitoring frequency for sampling specified in Paragraph (e)(1) of this Rule, shall be as follows:

- (i) For ground water systems:

(A) When volatile organic chemicals are not detected in the first sample (or any subsequent samples that may be taken) and the system is not vulnerable as defined in Paragraph (e)(6)(iv) of this Rule, monitoring shall be repeated every five years.

(B) When volatile organic chemicals are not detected in the first sample (or any subsequent sample that may be taken) and the system is vulnerable as defined in Paragraph (e)(6)(iv) of this Rule, monitoring must be repeated every 3 years for systems with more than 500 connections, and monitoring must be repeated every 5 years for systems with less than 500 connections.

- (C) If volatile organic chemicals are detected in the first sample (or any subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every 3 months, as required under Paragraph (e)(1) of this Rule.
- (ii) For surface water systems:
- (A) When volatile organic chemicals are not detected in the first year of quarterly sampling (or any other subsequent sample that may be taken) and the system is not vulnerable as defined in Paragraph (c)(6)(iv), monitoring is only required when the department deems it necessary.
- (B) When volatile organic chemicals are not detected in the first year of quarterly sampling (or any other subsequent sample that may be taken) and the system is vulnerable as defined in Paragraph (c)(6)(iv) of this Rule, monitoring must be repeated every 3 years for systems with more than 500 connections and monitoring must be repeated every 5 years for systems with less than 500 connections.
- (C) When volatile organic chemicals are detected in the first year of quarterly sampling (or any other subsequent sample that may be taken), regardless of vulnerability, monitoring must be repeated every 3 months as required under Paragraph (e)(1) of this Rule.
- (iii) The department may reduce the frequency of monitoring to once per year for a groundwater system or surface water system detecting volatile organic chemicals at levels consistently less than the maximum contaminant level for three consecutive years.
- (iv) Vulnerability of each public water system shall be determined by the department based upon an assessment of previous monitoring results, the number of persons served by public water system, proximity of a smaller system to a larger system, proximity to commercial or industrial use, disposal, or storage of volatile synthetic organic chemicals, and protection of the water source.
- (v) A system is deemed to be vulnerable for a period of 3 years after any positive measurement of one or more contaminants listed in either 10 NCAC 10D .1639(a) or .1638(e) except for trihalomethanes and other demonstrated disinfection by-products.
- (7) Compliance with 10 NCAC 10D .1639(a) shall be determined based on the results of running annual average of quarterly sampling for each sampling location. If one location's average is greater than the maximum contaminant level, then the system shall be deemed to be out of compliance. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, only that part of the system that exceeds any maximum contaminant level as specified in 10 NCAC 10D .1639(a) will be deemed out of compliance. The department may reduce the public notice requirement to that portion of the system which is out of compliance. If any one sample results would cause the annual average to be exceeded, then the system shall be deemed to be out of compliance immediately. For systems that only take one sample per location because no volatile organic chemicals were detected, compliance shall be based on that one sample.
- (8) Analyses made to determine compliance with this Paragraph shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 141.24(g)(10) which are hereby adopted by reference in accordance with G.S. 150B-14(c). A list of these methods is available from the Public Water Supply Branch, Environmental Health Section, Division of Health Services, P. O. Box 2091, Raleigh, NC 27602-2091.
- (9) The department may accept monitoring data collected after January 1, 1983, for purposes of compliance, if the data is consistent with the other requirements in (e) of this Rule. The department may use that data to represent the initial monitoring if the system is determined by the department not to be vulnerable under the requirements of this Rule. In addition, the results of the United States Environmental Protection Agency's Ground Water Supply Survey may be used in a similar manner for systems supplied by a single well.

(10) The department may increase required monitoring where necessary to detect variations within the system.

(11) A water supplier for a public water system supplying fewer than 150 service connections may comply with the monitoring requirements by sending a letter to the department specifying that the system is available for sampling. No samples may be sent to the department unless so requested. The letter must be sent to the Department no later than January 1, 1991.

(f) The department may determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

.1628 MONITORING OF CONSECUTIVE PUBLIC WATER SYSTEMS

(c) The department may exempt a public water system that obtains treated water from another public water system serving more than 10,000 persons from conducting compliance monitoring for the organic chemicals under 10 NCAC 10D .1639(a), provided that the system from which the water is obtained has conducted the analyses required under 10 NCAC 10D .1639(a). Exempted public water systems which disinfect are required to monitor under 10 NCAC 10D .1638.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

.1638 SPECIAL MONITORING FOR ORGANIC CHEMICALS

(a) All community and non-transient, non-community water systems shall begin monitoring for the contaminants listed in Paragraph (e) in this Rule as follows:

- (1) A system serving more than 10,000 persons shall begin monitoring no later than June 1, 1988.
- (2) A system serving from 3,300 to 10,000 persons shall begin monitoring no later than January 1, 1989.
- (3) A system serving less than 3,300 shall begin monitoring no later than January 1, 1991.

(b) Surface water systems shall sample in the distribution system representative of each water source or at entry points to the distribution system; the minimum number of sam-

ples is one year of quarterly samples per water source. Ground water systems shall sample at points of entry to the distribution system representative of each well; the minimum number of samples is one sample per entry point to the distribution system.

(c) The department may require confirmation samples for positive or negative results.

(d) Community water systems and non-transient, non-community water systems shall monitor for the following contaminants except as provided in Paragraph (e) of this Rule:

- (1) Chloroform
- (2) Bromodichloromethane
- (3) Chlorodibromomethane
- (4) Bromoform
- (5) trans-1,2-Dichloroethylene
- (6) Chlorobenzene
- (7) m-Dichlorobenzene
- (8) Dichloromethane
- (9) cis-1,2-Dichloroethylene
- (10) o-Dichlorobenzene
- (11) Dibromomethane
- (12) 1,1-Dichloropropene
- (13) Tetrachloroethylene
- (14) Toluene
- (15) p-Xylene
- (16) o-Xylene
- (17) m-Xylene
- (18) 1,1-Dichloroethane
- (19) 1,2-Dichloropropane
- (20) 1,1,2,2-Tetrachloroethane
- (21) Ethylbenzene
- (22) 1,3-Dichloropropane
- (23) Styrene
- (24) Chloromethane
- (25) Bromomethane
- (26) 1,2,3-Trichloropropane
- (27) 1,1,1,2-Tetrachloroethane
- (28) Chloroethane
- (29) 1,1,2-Trichloroethane
- (30) 2,2-Dichloropropane
- (31) o-Chlorotoluene
- (32) p-Chlorotoluene
- (33) Bromobenzene
- (34) 1,3-Dichloropropene
- (35) Ethylene dibromide (EDB)
- (36) 1,2-Dibromo-3-Chloropropane (DBCP)

(e) Community water systems and non-transient, non-community water systems shall monitor for EDB or DBCP only if the department determines they are vulnerable to contamination by either or both of these substances. For the purpose of this Paragraph, a vulnerable system means a system which is potentially contaminated by EDB and DBCP, including surface water systems where these

two compounds are applied, manufactured, stored, disposed of, or shipped upstream, and for ground-water systems in areas where the compounds are applied, manufactured, stored, disposed of, or shipped in the ground-water recharge basin, or for ground-water systems that are in proximity to underground storage tanks that contain leaded gasoline.

(f) Analysis under this Rule shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 141.40(g) which are hereby adopted by reference in accordance with G.S. 150B-14(c). A list of these methods is available from the Public Water Supply Branch, Environmental Health Section, Division of Health Services, P.O. Box 2091, Raleigh, NC 27602-2091.

(g) Public water systems may use monitoring data collected any time after January 1, 1983, provided the monitoring program was consistent with the requirements of this Rule.

(h) The department may require monitoring for the following compounds:

- (1) 1,2,4-Trimethylbenzene
- (2) 1,2,4-Trichlorobenzene
- (3) 1,2,3-Trichlorobenzene
- (4) n-Propylbenzene
- (5) n-Butylbenzene
- (6) Naphthalene
- (7) Hexachlorobutadiene
- (8) 1,3,5-Trimethylbenzene
- (9) p-Isopropyltoluene
- (10) Isopropylbenzene
- (11) Tert-butylbenzene
- (12) Sec-butylbenzene
- (13) Fluorotrichloromethane
- (14) Dichlorodifluoromethane
- (15) Bromochloromethane

(i) A water supplier for a community water system or non-transient, non-community water system serving fewer than 150 service connections may comply with this Rule by sending a letter to the department stating that its system is available for sampling.

(j) All community and non-transient, non-community water systems shall repeat the monitoring no less frequently than every five years from the dates specified in Paragraph (a) of this Rule.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

.1639 MAXIMUM CONTAMINANT LEVELS FOR ORGANIC CONTAMINANTS

(a) The following maximum contaminant levels for organic contaminants apply to com-

munity water systems and non-transient non-community water systems:

CAS No.	Contaminant	Maximum contaminant level in mg/l
71-43-2	Benzene	0.005
75-01-4	Vinyl Chloride	0.002
56-23-5	Carbon tetrachloride	0.005
107-06-2	1,2-Dichloroethane	0.005
79-01-6	Trichloroethylene	0.005
75-35-4	1,1-Dichloroethylene	0.007
71-55-6	1,1,1-Trichloroethane	0.20
106-46-7	para-Dichlorobenzene	0.075

(b) Central treatment using packed tower aeration and central treatment using granular activated carbon are identified as the best available technology for achieving compliance with the maximum contaminant levels for synthetic organic chemicals, except vinyl chloride.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

.1640 REPORTING FOR ORGANIC CHEMICALS

(a) The requirements of this Rule only apply to the contaminants listed in 10 NCAC 10D .1638.

(b) The water supplier for a community water system or non-transient, non-community water system who is required to monitor under 10 NCAC 10D .1638 shall send a copy of the results of such monitoring within 30 days of receipt and any public notice under Paragraph (d) of this Rule to the department.

(c) The department shall furnish the following information to the administrator for each sample analyzed:

- (1) Results of all analytical methods, including negatives;
- (2) Name and address of the system that supplied the sample;
- (3) Contaminant(s);
- (4) Analytical method(s) used;
- (5) Date of sample;
- (6) Date of analysis.

(d) The water supplier shall notify persons served by the system of the availability of the results of sampling by including a notice in the first set of water bills issued after the receipt of the results or written notice within three months. The notice shall identify a person and telephone number to contact for information on the monitoring results.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

.1641 POINT-OF-ENTRY AND OTHER TREATMENT DEVICES

(a) Public water systems may use point-of-entry devices to comply with maximum contaminant levels only if they meet the requirements of this Rule.

(b) The water supplier shall operate and maintain the point - of - entry treatment system.

(c) The water supplier shall develop a monitoring plan and obtain department approval of the plan before point-of-entry devices are installed for compliance. The approved plan shall provide health protection equivalent to central water treatment. "Equivalent" means that the water would meet all maximum contaminant levels in this Subchapter and would be acceptable quality similar to water distributed by a well operated central treatment plant. In addition to monitoring for volatile organic chemicals, monitoring shall include physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

(d) Effective technology must be properly applied under a plan approved by the department and the microbiological safety of the water must be maintained as follows:

- (1) Adequate certification of performance, field testing, and, if not included in the certification process a rigorous engineering design review of the point-of-entry devices shall be provided; and
- (2) The design and application of the point-of-entry devices shall consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(e) All consumers shall be protected. Every building connected to the system shall have a point-of-entry device installed, maintained, and adequately monitored. The rights and responsibilities of the public water system consumer shall be conveyed with title upon sale of property.

(f) Public water systems shall not use bottled water or point-of-use devices to achieve compliance with a maximum contam-

inant level. Bottled water or point-of-use devices may be used on a temporary basis to avoid an unreasonable risk to health.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 141.

SECTION .2500 - VARIANCES AND EXEMPTIONS

.2513 BOTTLED WATER AND POINT-OF-USE DEVICES

(a) The department may require a public water system to use bottled water or point-of-use devices as a condition for granting a variance or exemption from the requirements of 10 NCAC 10D.

(b) Public water systems that use bottled water as a condition of obtaining a variance or exemption shall meet the following requirements in either paragraph (b)(1) or (b)(2) of this Rule in addition to requirements in Paragraph (b)(3) of this Rule:

- (1) The water supplier shall develop and operate a monitoring program that provides reasonable assurances that the bottled water meets all maximum contaminant levels. The water supplier must monitor a representative sample of the bottled water for all contaminants regulated under 10 NCAC 10D .1639(a) the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the department annually; or
- (2) The public water system shall receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 C.F.R. 129.3(a) which is hereby adopted by reference in accordance with G.S. 150B-14(c); that the bottled water company has conducted monitoring in accordance with 21 C.F.R. 129.80(g)(1) through (3) which is hereby adopted by reference in accordance with G.S. 150B-14(c); and the bottled water does not exceed any maximum contaminant levels or quality limits as set out in 21 C.F.R. 103.35, 110, and 129 which are hereby adopted by reference in accordance with G.S. 150B-14(c). The public water system shall provide the certification to the department the first quarter after it supplies bottled water and annually thereafter; and

- (3) The water supplier shall provide sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.

(c) Public water systems that use point-of-use devices as a condition for receiving a variance or exemption must meet the following requirements:

- (1) The water supplier shall operate and maintain the point-of-use treatment system.
- (2) The water supplier shall develop a monitoring plan and obtain department approval for the plan before point-of-use devices are installed for compliance. The monitoring plan shall provide health protection equivalent to a monitoring plan for central water treatment.
- (3) Effective technology must be properly applied under a plan approved by the department and the microbiological safety of the water must be maintained as follows:
 - (A) Adequate certification of performance, filed testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use devices shall be provided; and
 - (B) The design and application of the point-of-use devices shall consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contractor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.
- (4) All consumers shall be protected. Every building connected to the system shall have a point-of-use device installed, maintained, and adequately monitored. The rights and responsibilities of the public water system consumer shall be conveyed with title upon sale of property.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 142.

.2514 VARIANCES FOR SYNTHETIC ORGANIC CHEMICALS

(a) Removal using packed tower aeration and removal using granular activated carbon (except for vinyl chloride) are the best available technology for achieving compliance with the

maximum contaminant levels for synthetic organic chemicals.

(b) Community water systems and non-transient, non-community water systems shall install and/or use any treatment method identified in Paragraph (a) as a condition for granting a variance except as provided in Paragraph (c). If, after the system's installation of the treatment method, the system cannot meet the maximum contaminant level, that system shall be eligible for a variance.

(c) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in Paragraph (a) would only achieve a de minimis reduction in contaminants, the department may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(d) If the department determines that a treatment method examined under Paragraph (c) of this Rule is technically feasible the department may require the system to install and/or use that treatment method in connection with a compliance schedule. The department's determination shall be based upon studies by the system and other relevant information.

Authority G.S. 130A-311 through 130A-327; P.L. 93-523; 40 C.F.R. 142.

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0001 GENERAL

(c) ~~45 Fed. Reg. 33,073 (1980) (to be codified in 40 CFR 260.1 to 260.3 (Subpart A), "General," has been adopted by reference as amended by 51 Fed. Reg. 28,682 and 40,636 (1986), in accordance with G.S. 150B-14(c).~~

(e) The "References" contained in ~~46 Fed. Reg. 35,247 (1981) (to be codified in 40 CFR 260.11 have been adopted by reference as amended by 47 Fed. Reg. 41,563 (1982); and 40 Fed. Reg. 47,391 (1984), in accordance with G.S. 150B-14(c).~~

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

.0002 DEFINITIONS

(a) The definitions contained in ~~45 Fed. Reg. 33,073 to 33,076 (1980) (to be codified in 40 CFR 260.10 (Subpart B) ; 45 Fed. Reg. 33,419 to 33,424 (1980); (to be codified in 40 CFR 270.2 ; and 45 Fed. Reg. 33,486 (1980)~~

(to be codified in 40 CFR 124.2) have been adopted by reference as amended by 45 Fed. Reg. 72,028, 76,075, 76,630, and 86,968 (1980); 46 Fed. Reg. 2,348 (1981); 47 Fed. Reg. 32,349 (1982); 48 Fed. Reg. 2,511 and 30,115 (1983); 49 Fed. Reg. 10,500 (1984); and 50 Fed. Reg. 661 and 18,374 (1985); and 51 Fed. Reg. 16,443, 25,470, and 25,471 (1986); [to be codified in 40 CFR 260.10 (Subpart B)]; 45 Fed. Reg. 76,075, 76,630, and 86,968; 46 Fed. Reg. 2,348 (1981); 47 Fed. Reg. 4,996 (1982); and 48 Fed. Reg. 14,230 to 14,231 (to be codified in 40 in accordance with G.S. 150B - 14(c).

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

.0028 RULEMAKING PETITIONS: DELISTING: EQUIV METHODS: PART 260

(b) The provisions for "Petitions for Equivalent Testing or Analytical Methods" [codified in 40 CFR 260.21 have been adopted by reference as amended by 40 Fed. Reg. 47,391 (1984). in accordance with G.S. 150B-14(c).

(c) The provisions for "Petitions to Amend Part 261 to Exclude a Waste Produced at a Particular Facility" [codified in 40 CFR 260.22 have been adopted by reference as amended by 50 Fed. Reg. 28,742 and 28,743 (1985). in accordance with G.S. 150B-14(c).

(d) The provisions for "variances from classification as a solid waste, standards and criteria for variance from classification as a solid waste, variance to be classified as a boiler, procedures for variances from classification as a solid waste or to be classified as a boiler" contained in 50 Fed. Reg. 661, 662, and 14,219 (1985) [to be codified as 40 CFR 260.30 to 260.33 (Subpart C) have been adopted by reference as amended by 50 Fed. Reg. 28,742 and 28,743 (1985) in accordance with G.S. 150B-14(c).

(e) The provisions for "additional regulation of certain hazardous waste recycling activities on a case-by-case basis, procedures for case-by-case regulation of hazardous waste recycling activities" contained in 50 Fed. Reg. 661, 662, and 663 (1985) (to be codified as 40 CFR 260.40 to 260.41 have been adopted by reference in accordance with G.S. 150B-14(c).

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

.0029 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) The general provisions contained in 45 Fed. Reg. 33,110 to 33,121 (1980) [to be codified in 40 CFR 261.1 to 261.6 (Subpart

A)] have been adopted by reference as amended by 45 Fed. Reg. 72,028, 72,037, 76,620, 76,623, 76,624, and 78,531 (1980); 46 Fed. Reg. 56,588, 56,589, 47,429, 44,972, and 44,973 (1981); 48 Fed. Reg. 2,532, 14,293, 14,294, and 30,115 (1983); 49 Fed. Reg. 23,287, and 44,980 (1984); and 50 Fed. Reg. 663, 664, 665, 1,999, 14,219, 28,743, 28,744, 49,202, 49,203, and 33,542 (1985); and 51 Fed. Reg. 10,174, 10,175, 25,472, 28,682, 40,636, and 40,637 (1986); and 52 Fed. Reg. 11,821 (1987). The general provisions contained in 40 CFR 261.1 to 261.6 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The provisions for "Residues of Hazardous Waste in Empty Containers" contained in 45 Fed. Reg. 78,529 (1980) [to be codified in 40 CFR 261.7 (Subpart A) has have been adopted by reference as amended by 47 Fed. Reg. 36,097 (1982); 48 Fed. Reg. 14,294 (1983); 50 Fed. Reg. 1,999 (1985); and 51 Fed. Reg. 40,637 (1986). in accordance with G.S. 150B-14(c).

(c) The "Criteria for Identifying the Characteristics of Hazardous Wastes and for Listing Hazardous Wastes" contained in 45 Fed. Reg. 33,121 (1980) [to be codified in 40 CFR 261.10 and 261.11 (Subpart B) have been adopted by reference in accordance with G.S. 150B-14(c).

(d) The "Characteristics of Hazardous Wastes" contained in 45 Fed. Reg. 33,121 and 33,122 (1980) [to be codified in 40 CFR 261.20 to 261.24 (Subpart C) have been adopted by reference as amended by 45 Fed. Reg. 72,032 (1980) and 46 Fed. Reg. 35,247 (1981); and 48 Fed. Reg. 14,294 (1983). in accordance with G.S. 150B-14(c).

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

.0030 STANDARDS FOR HAZARDOUS WASTE GENERATORS - PART 262

(a) The general provisions contained in 45 Fed. Reg. 33,142 and 33,143 (1980) [to be codified in 40 CFR 262.10 to 262.12 (Subpart A)] have been adopted by reference as amended by 45 Fed. Reg. 86,970 (1980) and 47 Fed. Reg. 1,251 (1982) and 48 Fed. Reg. 14,294 (1983); and 51 Fed. Reg. 40,637 (1986). The general provisions contained in 40 CFR 262.10 to 262.12 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The provisions for "Manifests" contained in 45 Fed. Reg. 33,143 (1980) [to be codified in 40 CFR 262.20 to 262.23 (Subpart

B)) have been adopted by reference as amended by 45 Fed. Reg. 86,973 (1980); and 49 Fed. Reg. 10,500 (1984); and 51 Fed. Reg. 10,175 (1986). The provisions for "Manifests" contained in 40 CFR 262.20 to 262.23 (Subpart B) have been adopted by reference in accordance with G.S. 150B-14(c).

(c) "Pre-Transport Requirements" contained in 45 Fed. Reg. 33,143, and 33,144 (1980) [to be codified in 40 CFR 262.30 to 262.34 (Subpart C)] have been adopted by reference as amended by 45 Fed. Reg. 76,626 (1980); 47 Fed. Reg. 1,251 (1982); 48 Fed. Reg. 14,294 (1983); 49 Fed. Reg. 49,571, and 49,572 (1984); and 51 Fed. Reg. 10,175, 10,176, and 25,472 (1986). "Pre-Transport Requirements" contained in 40 CFR 262.30 to 262.34 (Subpart C) have been adopted by reference in accordance with G.S. 150B-14(c).

(d) The provisions for "Recordkeeping and Reporting" contained in 45 Fed. Reg. 33,144 (1980) [to be codified as 40 CFR 262.40 to 262.44 (Subpart D)], have been adopted by reference as amended by 48 Fed. Reg. 3,981, 3,982, 14,294 (1983); 50 Fed. Reg. 28,746 (1985); and 51 Fed. Reg. 10,176 and 28,682 (1986), except that 40 CFR 262.40 is not adopted by reference. The provisions for "Recordkeeping and Reporting" contained in 40 CFR 262.40 to 262.44 (Subpart D) have been adopted by reference in accordance with G.S. 150B-14(c), except that 40 CFR 262.40 is not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 262.40 which were not adopted by reference:

"262.40 Recordkeeping.

(a) A generator must keep a copy of each manifest signed in accordance with Section 262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.

(b) A generator must keep a copy of each Biennial Report and Exception Report for a period of at least three years from the due date of the report.

(c) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with Section 262.11 for at least three years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(d) The periods or retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrator.

(e) A generator must keep records and results of inspections as required by Section 262.34 for at least three years from the date of the inspection."

(e) The provisions for "Special Conditions" contained in 45 Fed. Reg. 33,144 (1980) [to be codified in 40 CFR 262.50 and 262.58 (Subpart E)] have been adopted by reference as amended by 46 Fed. Reg. 78,529 (1981) and 48 Fed. Reg. 14,294, 13,027, and 13,028 (1983); 49 Fed. Reg. 10,500 (1984); 50 Fed. Reg. 28,746 (1985); and 51 Fed. Reg. 28,682 to 28,684 (1986). The provisions for "Special Conditions" contained in 40 CFR 262.50 and 262.58 (Subpart E) have been adopted by reference in accordance with G.S. 150B-14(c).

(f) "Imports of Hazardous Waste" provisions contained in 51 Fed. Reg. 28,684 and 28,685 (1986) [to be codified in 40 CFR 262.60 to 262.69 (Subpart F)] have been adopted by reference in accordance with G.S. 150B-14(c).

(g) "Farmers" provisions contained in 51 Fed. Reg. 28,685 (1986) [to be codified in 40 CFR 262.70 to 262.79 (Subpart G)] have been adopted by reference in accordance with G.S. 150B-14(c).

(h) The appendix contained in 45 Fed. Reg. 33,145 to 33,148 (1980) has been adopted by reference as amended by 48 Fed. Reg. 3,982 (1983) and 49 Fed. Reg. 10,500 to 10,506 (1984); and 50 Fed. Reg. 28,744, 28,745, 28,746 (1985); and 51 Fed. Reg. 28,685, 35,192 to 35,194 (1986). The appendix contained in 40 CFR 262 has been adopted by reference in accordance with G.S. 150B-14(c).

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

.0031 STANDARDS FOR HAZARDOUS WASTE TRANSPORTERS - PART 263

(a) The general provisions contained in 45 Fed. Reg. 33,151 (1980) [to be codified in 40 CFR 263.10 and 263.11 (Subpart A)] have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The provisions for transfer facility requirements contained in 45 Fed. Reg. 86,968 (1980) [to be codified in 40 CFR 263.12 (Subpart A)] have been adopted by reference as amended by 48 Fed. Reg. 14,294 (1983) and

51 Fed. Reg. 40,637 (1986); in accordance with G.S. 150B-14(c).

(c) The provisions for "Compliance With the Manifest System and Recordkeeping" contained in 45 Fed. Reg. 33,151 and 33,152 (1980) [to be codified in 40 CFR 263.20 to 263.22 (Subpart B)] have been adopted by reference as amended by 45 Fed. Reg. 86,973, and 86,974 (1980); and 51 Fed. Reg. 10,176 and 28,685 (1986); in accordance with G.S. 150B-14(c).

(d) The provisions for "Hazardous Waste Discharges" contained in 45 Fed. Reg. 33,152 (1980) [to be codified in 40 CFR 263.30 and 263.31 (Subpart C)] have been adopted by reference in accordance with G.S. 150B-14(c).

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

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

(b) "General Facility Standards" contained in 45 Fed. Reg. 33,234 to 33,236 (1980) [to be codified in 40 CFR 265.10 to 265.18 (Subpart B)] have been adopted by reference as amended by 48 Fed. Reg. 14,295 (1983); and 50 Fed. Reg. 18,374 and 28,749 (1985); and 51 Fed. Reg. 25,478, 25,479 and 40,637 (1986); in accordance with G.S. 150B-14(c).

(j) The provisions for "Tanks" contained in 45 Fed. Reg. 33,244 and 33,245 (1980) [to be codified in 40 CFR 265.190 to 265.201 (Subpart J)] have been adopted by reference as amended by 46 Fed. Reg. 2,896 and 35,249 (1981); and 51 Fed. Reg. 25,478 to 25,485 and 25,479 to 25,481 (1986); except that 40 CFR 265.194 is not adopted by reference; in accordance with G.S. 150B-14(c).

(1) The following shall be substituted for the provisions of 40 CFR 265.194 which were not adopted by reference:

"265.194 Inspections:

(a) the owner or operator of a tank must inspect, where present:

(1) discharge control equipment (e.g., waste feed cut-off systems, by-pass systems, and drainage systems); at least once each operating day, to ensure that it is in good working order;

(2) data gathered from monitoring equipment (e.g., pressure and temperature gauges); at least once each operating day, to ensure that the tank is being operated according to its design;

(3) the level of waste in the tank, at least once each operating day, to en-

sure compliance with Section 265.192(e);

(4) the construction materials of the tank, at least weekly, to detect corrosion or leaking of fixtures or seams; and

(5) the construction materials of, and the area immediately surrounding discharge confinement structures (e.g., dikes); at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation);

(b) a log of inspections must be kept for at least three years from the date of the inspection.

[Comment: As required by Section 265.15(c), the owner or operator must remedy any deterioration or malfunction he finds."

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

.0034 INTERIM STATUS STANDARDS FOR PERMITTING - PART 270

(a) The following provisions for permitting requirements contained in 48 Fed. Reg. 14,228 to 14,233, 30,113, and 30,114 (1983) [to be codified in 40 CFR 270 (Subpart A, General Information)] have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); 49 Fed. Reg. 47,391 (1984); 50 Fed. Reg. 18,375 (1985); and 51 Fed. Reg. 10,176 (1986); in accordance with G.S. 150B-14(c).

(1) 40 CFR 270.1, Purpose and Scope of these Regulations;

(2) 40 CFR 270.2, Definitions;

(3) 40 CFR 270.3, Consideration Under Federal Law;

(4) 40 CFR 270.4, Effect of a Permit;

(5) 40 CFR 270.5, Non-compliance and Program Reporting by the Director;

(6) 40 CFR 270.6, References.

(c) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,241 to 14,243 and 30,114 (1983) to be added [to be codified in 40 CFR 270 (Subpart C, Permit Conditions)] have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); 50 Fed. Reg. 28,752 (1985); and 51 Fed. Reg. 25,486 and 40,653 (1986); in accordance with G.S. 150B-14(c).

(1) 40 CFR 270.30, Conditions Applicable to all Permits;

(2) 40 CFR 270.31, Requirements for Recording and Reporting of Monitoring Results;

(3) 40 CFR 270.32, Establishing Permit Conditions; and

- (4) 40 CFR 270.33, Schedules of Compliance.

(d) The following provisions for additional permitting requirements contained in ~~48 Fed. Reg. 11,243 to 11,245 and 30,114 (1983) to be codified in~~ 40 CFR 270 (Subpart D, Changes to Permit) have been adopted by reference as ~~amended by 50 Fed. Reg. 28,752 (1985); and 51 Fed. Reg. 16,458, 16,459 and 40,653 (1986).~~ in accordance with G.S. 150B-14(c).

- (1) 40 CFR 270.40, Transfer of Permits;
- (2) 40 CFR 270.41, Major Modification or Revocation and Reissuance of Permits;
- (3) 40 CFR 270.42, Minor Modifications of Permits; and
- (4) 40 CFR 270.43, Termination of Permits.

(e) The following provisions for additional permitting requirements contained in ~~48 Fed. Reg. 11,245 (1983) to be added to be codified in~~ 40 CFR 270 (Subpart E, Expiration and Continuation of Permits) have been adopted by reference as ~~amended by 48 Fed. Reg. 39,622 (1983); and 50 Fed. Reg. 28,752 (1985).~~ in accordance with G.S. 150B-14(c).

- (1) 40 CFR 270.50, Duration of Permits; and
- (2) 40 CFR 270.51, Continuation of Expiring Permits.

(f) The following provisions for additional permitting requirements contained in ~~48 Fed. Reg. 11,245 to 11,248 and 30,114 (1983) to be added to be codified in~~ 40 CFR 270 (Subpart F, Special Forms of Permits) have been adopted by reference as ~~amended by 50 Fed. Reg. 28,752 and 28,753 (1985).~~ in accordance with G.S. 150B-14(c).

- (1) 40 CFR 270.60, Permit by Rule;
- (2) 40 CFR 270.61, Emergency Permits;
- (3) 40 CFR 270.62, Hazardous Waste Incinerator Permits;
- (4) 40 CFR 270.63, Permits for Land Treatment Demonstrations using Field Test or Laboratory Analysis;
- (5) 40 CFR 270.65 Research and development and demonstration permits;

(g) The following provisions for additional permitting requirements contained in ~~48 Fed. Reg. 11,248 (1983) to be codified in~~ 40 CFR 270 (Subpart G, Interim Status) have been adopted by reference as ~~amended by 49 Fed. Reg. 17,718 (1984); 50 Fed. Reg. 28,753 (1985); and 51 Fed. Reg. 16,459, and 25,486 (1986).~~ in accordance with G.S. 150B-14(c). However, the date "November 8, 1985" contained in 40 CFR 270.73(c) shall be deleted and replaced with the date "January 1, 1986".

- (1) 40 CFR 270.70, Qualifying for Interim Status;
- (2) 40 CFR 270.71, Operation during Interim Status;
- (3) 40 CFR 270.72, Changes during Interim Status; and
- (4) 40 CFR 270.73, Termination of Interim Status.

(h) Permitting requirements concerning operating record of other facilities.

- (1) An applicant applying for a permit for a new hazardous waste facility shall submit a disclosure statement to the department as a part of the application for a permit or any time thereafter specified by the department. The disclosure statement shall be supported by an affidavit attesting to the truth and completeness of the facts asserted in the statement and shall include:

(A) A brief description of the form of the business (e.g. partnership, sole proprietorship, corporation, association, or other);

(B) The name and address of any hazardous waste facility constructed or operated after October 21, 1976 by the applicant or any parent or subsidiary corporation if the applicant is a corporation;

(C) A list identifying any legal action taken against any facility identified in (h)(1)(B) of this Rule involving:

(i) any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection;

(ii) any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; and

(iii) any pending administrative or judicial proceeding of the type described in this Part.

(D) The identification of each action described in (h)(1)(C) of this Rule shall include the name and location of the facility that the action concerns, the agency or court that heard or is hearing the matter, the title, docket or case number, and the status of the proceeding.

(2) In addition to the information set forth in Subparagraph (h)(1) of this Rule, the department may require from any applicant such additional information as it deems necessary to satisfy the requirements of G.S. 130A-291 and 130A-294. Such information may include, but shall not be limited to:

(A) The names, addresses, and titles of all officers, directors, or partners of the applicant and of any parent or subsidiary corporation if the applicant is a corporation;

(B) The name and address of any company in the field of hazardous waste management in which the applicant business or any of its officers, directors, or partners, hold an equity interest and the name of the officer, director, or partner holding such interest;

(C) A copy of any administrative ruling or order and of any judicial determination of liability or conviction described in (h)(1)(C) of this Rule, and a description of any pending administrative or judicial proceeding in that item.

(3) The department may waive the requirement to submit any part or parts of the disclosure statement if it finds that submission of such information is not necessary to satisfy the requirements of G.S. 130A-291 and 130A-294.

Statutory Authority G.S. 130A-294(c); 130A-295 (a) (1) (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)]~~ in accordance with G.S. 150B-14(c).

(1) 40 CFR 124.1, Purpose and Scope;

(2) 40 CFR 124.2, Definitions (as modified in Rule .0002 of this Subchapter);

(3) 40 CFR 124.3, Application for a Permit;

(4) 40 CFR 124.5, Modification, Revocation and Re-issuance, or Termination of Permits;

(5) 40 CFR 124.6, Draft Permits;

(6) 40 CFR 124.7, Statement of Basis;

(7) 40 CFR 124.8, Fact Sheet;

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

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

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

(11) 40 CFR 124.12, Public Hearings;

(12) 40 CFR 124.13, Obligation to Raise Issues and Provide Information During the Public Comment Period;

(13) 40 CFR 124.14, Reopening of the Public Comment Period;

(14) 40 CFR 124.15, Issuance and Effective Date of Permit;

(15) 40 CFR 124.16, Stays of Contested Permit Conditions;

(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

(19) 40 CFR 124.20 Computation of Time.

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

.0039 RECYCLABLE MATERIALS - PART 266

(b) The following provisions for "Hazardous Waste Burned for Energy Recovery" contained in ~~50 Fed. Reg. 667 (1985) [to be codified in 40 CFR 266.30 to 266.36 (Subpart D) have been adopted by reference as amended by 50 Fed. Reg. 14,220, 28,751, 33,543, 49,204, and 49,205 (1985); and 52 Fed. Reg. 11,821 (1987)]~~ in accordance with G.S. 150B-14(c).

(c) The following provision for "Used Oil Burned for Energy Recovery" contained in ~~50 Fed. Reg. 49,205, 49,206, and 49,207 (1985) [to be codified in 40 CFR 266.40 to 266.44 (Subpart E) have been adopted by reference as amended in 52 Fed. Reg. 11,822 (1987)]~~ in accordance with G.S. 150B-14(c).

(d) The following provision for Recyclable Materials Utilized for Precious Metal Recovery contained in ~~50 Fed. Reg. 667 (1985) [to be codified in 40 CFR 266.70 (Subpart F) have been adopted by reference in accordance with G.S. 150B-14(c)]~~.

(e) The following provisions for Spent Lead-Acid Batteries being reclaimed contained in ~~50 Fed. Reg. 667 and 668 (1985) [to be codified in 40 CFR 266.80 (Subpart G) have been adopted by reference as amended by 50 Fed. Reg. 33,543 (1985)]~~ in accordance with G.S. 150B-14(c).

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

.0040 PUBLIC INFORMATION - PART 2

(a) The following provision concerning requests for information ~~codified~~ in 40 CFR 2.100 to 2.120 (Subpart A) have been adopted by reference in accordance with G.S. 150B-14(c).

(b) The following provision concerning confidentiality of business information ~~codified~~ in 40 CFR 2.201 to 2.309 (Subpart B) have been adopted by reference in accordance with G.S. 150B-14(c).

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

.0041 REQUIREMENTS: HAZARDOUS WASTE PROGRAM - PART 271

The following provisions for the "sharing of information" ~~to be codified~~ in 40 CFR 271.17 have been adopted by reference as amended by 50 Fed. Reg. 28,754 (1985) and 54 Fed. Reg. 40,176 and 25,486 (1986), in accordance with G.S. 150B-14(c).

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

.0042 LAND DISPOSAL RESTRICTIONS - PART 268

(a) The "General" provisions contained in ~~54 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 in accordance with G.S. 150B-14(c).

(b) The "Prohibitions on Land Disposal" provisions contained in ~~54 Fed. Reg. 40,641 to 40,642 (1986)~~ to be codified in 40 CFR 268.30 to 268.34 268.32 (Subpart C) have been adopted by reference in accordance with G.S. 150B-14(c).

(c) The "Treatment Standards" provisions contained in ~~54 Fed. Reg. 40,642 (1986)~~ to be codified in 40 CFR 268.40 to 268.44 (Subpart D) have been adopted by reference in accordance with G.S. 150B-14(c).

(d) The "Prohibitions on Storage" provisions contained in ~~54 Fed. Reg. 40,642 and 40,643 (1986)~~ to be codified in 40 CFR 268.50 (Subpart E) have been adopted by reference in accordance with G.S. 150B-14(c).

(e) Appendices I and ~~II~~ III contained in ~~54 Fed. Reg. 40,643 to 40,653 (1986)~~ 40 CFR 268 have been adopted by reference in accordance with G.S. 150B-14(c).

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

SUBCHAPTER 10G - SOLID WASTE MANAGEMENT

SECTION .0800 - INACTIVE HAZARDOUS SUBSTANCES AND WASTE DISPOSAL SITES

.0801 NOTIFICATION REQUIREMENTS

(a) Each owner, operator, or responsible party shall submit, on a form provided by the Division of Health Services, to the division relevant site data known and readily available for each inactive hazardous substance or waste disposal site. Relevant site data includes, but is not limited to, the following:

- (1) Site name and location;
- (2) Type of operation;
- (3) Length of operation;
- (4) Environmental permits;
- (5) Known or suspected releases of hazardous substances or wastes;
- (6) Characteristics of hazardous substances or wastes used or deposited on-site;
- (7) Hazardous substance or waste disposal and storage methods;
- (8) Hazardous substance or waste quantities;
- (9) Accessibility of the site to public access;
- (10) Remedial actions which have been previously undertaken or are currently being undertaken;
- (11) Monitoring data; and
- (12) Other relevant data.

(b) Notification is required by March 30, 1988 except in the case of sites discovered after March 30, 1988 in which event notification is required not later than 90 days after discovery thereof.

Statutory Authority G.S. 130A-310 through 130-310.12.

.0802 PRIORITIZATION SYSTEM

(a) The division shall review and evaluate site data for all inactive hazardous substance and waste disposal sites. If a hazardous substance or waste is measured at levels above background, then evidence of the presence of hazardous substances and wastes exists. Evidence of a hazardous substance or waste must be confirmed with analytical laboratory data.

(b) The division will prioritize all such sites where evidence of hazardous substance or waste is confirmed by analytical data. The division will prioritize sites based on the potential for:

- (1) Groundwater migration;
- (2) Surface water migration;
- (3) Air migration; and
- (4) Direct contact.

A priority score for inactive hazardous substance and waste disposal sites will be determined by the division.

(c) If a removal or cleanup action has been undertaken at the site, the site evaluation in Paragraph (b) of this Rule will be based on current site conditions.

(d) The division will review and evaluate site data, but will not prioritize those sites eligible for remedial action under CERCLA/SARA or where a responsible party, who has submitted a notification of a site pursuant to G.S. 130A-310.1 later enters into an agreement with the division to take remedial action pursuant to G.S. 130A-310.3 or where a voluntary cleanup plan has been approved by the division.

(e) The division may adjust the order of the priority list of sites based on site conditions causing actual damage or imminent danger to the public health or the environment.

Statutory Authority G.S. 130A-310 through 130A-310.12.

.0803 NOTICE OF REMEDIAL ACTION PLAN

(a) The public notice and summary required by G.S. 130A-310.4 for a proposed remedial action plan shall include the following:

- (1) the name and address of the Division of Health Services;
- (2) a brief statement explaining that the division is responsible for reviewing and approving the remedial action plan;
- (3) the name, address, and phone number of a contact person in the division from whom interested parties may obtain additional information regarding the remedial action plan;
- (4) a brief description of the site location and problems at the site which resulted in the site requiring remedial action;
- (5) a brief description of the corrective action proposed for the site and other alternatives considered in developing the remedial action plan;
- (6) references to applicable statutory or regulatory authority;
- (7) a brief description of any agreements reached by responsible parties to implement the remedial action plan; and
- (8) the location of copies of the proposed remedial action plan available for public inspection.

(b) Written comments on proposed remedial action plans shall be sent to the Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602.

(c) If the Secretary determines that, in addition to the notice in Paragraph (a), a public hearing should be held on a proposed remedial action plan, a public hearing notice shall be issued that includes the following:

- (1) date, time, and location of the public hearing;
- (2) a brief description of the purpose of the hearing;
- (3) references to the dates of previous public notices or hearings on the remedial action plan; and
- (4) the procedures for making written or oral comments about the remedial action plan.

(d) The division shall establish a mailing list to notify interested persons of the development of proposed remedial action plans and of any public meetings or hearings scheduled concerning proposed plans. Interested persons may request such notice by contacting the Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602.

Statutory Authority G.S. 130A-310 through 130A-310.12.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Water Treatment Facility Operators Board of Certification intends to amend regulation cited as 10 NCAC 10E .0105.

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

The public hearing will be conducted at 9:00 a.m. on March 8, 1988 at Jane S. McKimmon Center, N.C. State University, Western Blvd., Raleigh, N.C.

Comment Procedures: Any person requiring information may contact: Mr. John C. McFadyen, P.O. Box 2091, Raleigh, N.C., 27602, telephone (919) 733-0379. Written comments may be submitted to the above address 30 days prior to the public hearing. Written and oral comments may also be presented at the public hearing. Notice of an oral presentation must be given to the above address at least 3 days prior to the public hearing.

SUBCHAPTER 10E - WATER TREATMENT FACILITY OPERATORS

SECTION .0100 - GENERAL POLICIES

.0105 DEFINITIONS

- (1) "Acceptable Experience" means the active, daily, on-site performance of operational duties, including water facility laboratory, at a water treatment facility; a minimum of 50 percent of the experience requirement must consist of these duties. This 50 percent minimum experience may be 50 percent on-site duties for 100 percent of the time period requirements or 100 percent on-site duties for 50 percent of the time period requirements. The other 50 percent may be in related fields such as water facility laboratory, wastewater operator, wastewater laboratory, or water pumping stations, or water system design and engineering. Related experience must be justified to the board.

Statutory Authority G.S. 90A-21(c).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26D .0010; 26G .0302; repeal regulations cited as 10 NCAC 26G .0506; .0601 - .0602.

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

The public hearing will be conducted at 1:30 p.m. on February 15, 1988 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning these amendments and repeals must be submitted by February 15, 1988 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 these rules is available upon written request from the same address.

CHAPTER 26 - MEDICAL SERVICES

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT, DURATION, AND SCOPE

.0010 COORDINATION WITH TITLE XVIII

- (+) The entire range of benefits under Part B of Title XVIII to medicare -- eligible persons

shall be provided through a buy-in agreement with the Secretary of Health ~~Education and Welfare~~, and Human Services. This agreement shall cover all persons eligible under the state's approved Title XIX plan.

- (b) ~~The state agency shall not provide services under Part B of Title XVIII which exceed those provided under the state's plan.~~

Statutory Authority G.S. 108A-25(b).

SUBCHAPTER 26G - PROGRAM INTEGRITY

SECTION .0300 - PROVIDER ABUSE

.0302 INVESTIGATION

- (c) The division shall review the findings, conclusions, and recommendations and make a tentative decision for disposition of the case from among the following administrative actions:

- (1) ~~To impose administrative sanctions other than suspension or termination from the Medicaid program.~~
- (2) ~~(1) In lieu of seeking suspension or termination to~~ To place provider on probation with terms and conditions for continued participation in the program.
- (3) ~~(2) To recover in full any improper provider payments.~~
- (4) ~~(3) To negotiate a financial settlement with the provider.~~
- (5) ~~(4) To impose remedial measures to include a monitoring program of the provider's Medicaid practice terminating with a "follow-up" review to ensure corrective measures have been introduced.~~
- (6) ~~(5) To issue a warning letter notifying the provider that he must not continue his aberrant practices or he will be subject to further division actions.~~
- (7) ~~(6) To recommend suspension or termination and refer the case for hearing per contested case hearing 150B to determine whether a suspension or termination is warranted under pertinent federal and state statutes and regulations.~~

Authority G.S. 108A-25(b); 42 C.F.R. 455.14; 42 C.F.R. 455.15.

SECTION .0500 - PEER REVIEW

.0506 INVESTIGATIVE CONFERENCE (REPEALED)

Authority G.S. 108A-25(b); 42 C.F.R. Part 455; 42 C.F.R. Part 456.

SECTION .0600 - HEARINGS CONCERNING
QUESTIONS OF SUSPENSION
OR TERMINATION

.0601 AUTHORITY AND PURPOSE
(REPEALED)

.0602 ORGANIZATION AND FUNCTION
(REPEALED)

Statutory Authority G.S. 108A-25(b);
150B-11; 42 C.F.R. Part 431; 42 C.F.R. 455.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Youth Services intends to amend regulation cited as 10 NCAC 44D .0102 (f) and (g).

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

The public hearing will be conducted at 10:00 a.m. on February 15, 1988 at First Floor Conference Room, Dobbin Building, 705 Palmer Drive, Raleigh, N.C.

Comment Procedures: Any interested person may present his/her comments either in writing three days prior to or at the hearing or orally at the hearing for a maximum of ten minutes. Any person may request information by writing or calling Jennifer Martin, Office of Legal Affairs, 325 North Salisbury Street, Raleigh, North Carolina (919) 733-6920. In addition, a fiscal impact statement on this rule amendment is available upon written request from the same address.

CHAPTER 44 - DIVISION OF YOUTH
SERVICES

SUBCHAPTER 44D - COMMUNITY BASED
FUND

SECTION .0100 - COMMUNITY BASED
FUND

.0102 PROCESS FOR COUNTY ELIGIBILITY

(f) Effective July 1, 1988 CBA funds may not be used for any portion of a teaching position in any public school system in North Carolina.

(g) Effective July 1, 1988 CBA funds may not be used to pay for any of the operating

costs of any school based program that is mandated as part of the normal school curriculum within any public school system in North Carolina.

Statutory Authority G.S. 7A-289.14; 143B-10.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Private Protective Services Board intends to adopt the regulation cited as 12 NCAC 7D .0111; and amend regulations cited as 12 NCAC 7D .0104; .0701; and .0801.

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

The public hearing will be conducted at 12:00 noon on February 19, 1988 at McKimmon Center, Western Boulevard, Raleigh, N.C.

Comment Procedures: File all written comments by February 10, 1988 with Jim Kirk, Administrator, P.O. Box 29500, Raleigh, N.C. 27626.

SUBCHAPTER 7D - PRIVATE PROTECTION
SERVICES BOARD

SECTION .0100 - ORGANIZATION AND
GENERAL PROVISIONS

.0104 DEFINITIONS

In addition to the definitions under G.S. Chapter 74C, the following definitions shall apply throughout this Subchapter:

- (1) "Applicant" means any person, firm or corporation applying to the board for a license, trainee permit, registration or firearms trainer certificate.
- (2) "Armed Private Security Officer" means an individual employed, full time or part time, by a contract security company or a proprietary security organization:
 - (a) who at any time wears, carries, or possesses a firearm in the performance of his duties; and
 - (b) whose principal duty is that of:
 - (i) an armed security guard, officer, patrol, or watchman;
 - (ii) an armed armored car service guard;
 - (iii) a private detective; or
 - (iv) an armed courier service guard.

- (3) "Board" means the Private Protective Services Board established by G.S. Chapter 74C.
- (4) "Branch Manager or Operator" means the individual endowed with the responsibility and liability for a branch office.
- (5) "Branch Office" means a separate but dependent part of a central organization engaged in the business of providing private protective services established for the purpose of extending the activities of the central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office.
- (6) "Chairman" means the Chairman of the Private Protective Services Board.
- (7) "Contract Security Company" means any person, firm, association, or corporation engaging in a private protective services business as defined in G.S. 74C-3 which provides said services on a contractual basis for a fee or other valuable consideration to any other person, firm, association, or corporation.
- (8) "Direct Supervision" means personal, face to face contact and direction of the trainee's activities on a frequent and reasonable basis.
- (9) "Investigative Capacity" means any law enforcement agency position for which the duties include conducting investigations and interviews, completing reports, and testifying in courts or administrative hearings.
- (10) "Law Enforcement Officer" means a sworn peace officer who has the power of arrest, and who is an employee of the United States, any state, or any political subdivision of a state.
- (11) "Licensee" means any person licensed to perform private protective services in North Carolina in accordance with G.S. Chapter 74C.
- (12) "Proprietary Security Organization" means any person, firm, association, corporation or department thereof:
 - (a) which employs any of the following:
 - (i) watchmen,
 - (ii) security guards or officers,
 - (iii) patrol personnel,
 - (iv) armored car personnel, or
 - (v) couriers; and
 - (b) which employs these persons regularly and exclusively as an employee in connection with the business affairs of such employer.
- (13) "Qualifying Agent" means the individual licensee who is responsible for the private protective services business.
- (14) "Restored" means that an individual is no longer in need of psychiatric care as determined by a physician.
- (15) "Temporary unarmed security guard" means one who is hired for a period of 30 days or less within a calendar year and who is designated as a temporary security guard at the start of employment.
- (16) "Agency head" means the Chairman of the Board.

Statutory Authority G.S. 74C-5; 74C-11.

.0111 RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

The administrative procedures for rulemaking and hearings, codified as Title 26, Subchapters 2 and 3 of the North Carolina Administrative Code, effective August 1, 1986, are hereby adopted by reference to apply to actions of the Private Protective Services Board. Pursuant to G.S. 150B-14(c) this reference shall automatically include any later amendments and editions to Title 26 Subchapters 2 and 3 of the North Carolina Administrative Code.

Statutory Authority G.S. 74C-5; 74C-11.

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

.0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding ~~60~~ 48 months; and
- (4) the applicant's non-refundable registration fee.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the

application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the board.

Statutory Authority G.S. 74C-5; 74C-11.

**SECTION .0800 - SECURITY OFFICER
REGISTRATION (ARMED)**

**.0801 APPLICATION FOR ARMED SECURITY
OFFICER REGISTRATION**

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) statements of the result of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding ~~60~~ 48 months;
- (4) the applicant's non-refundable registration fee; and
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 N.C.A.C. 7D .0807.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application in the individual's personnel file in the employer's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the board.

(d) Applications submitted without firearms certificates shall not serve as temporary registration cards unless the contract security company or proprietary security organization has obtained prior approval from the administrator and provides satisfactory

proof that the applicant has received prior firearms training.

(e) The provisions of (a), (b), and (c) of this Rule shall also apply to any employee whose employment is terminated within 30 days of employment.

Statutory Authority G.S. 74C-5; 74C-11.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Sheriffs' Education and Training Standards Commission intends to adopt regulations cited as 12 NCAC 10B .0101 - .0105; .0201 - .0203; .0301 - .0308; .0401 - .0408; .0501 - .0509; .0601 - .0607; .0701 - .0707; .0801 - .0803; .0901 - .0908; .1001 - .1006; .1101 - .1105; .1200 - .1900; .2001 - .2004; and repeal regulations cited as 12 NCAC 10A .0101 - .0105; .0201 - .0208; .0301 - .0302; .0401 - .0408; .0501 - .0503; .0601 - .0606; .0701 - .0705; .0801 - .0807; .0901 - .0903; .1001 - .1007; .1101 - .1104; .1201; .1301 - .1308; .1401 - .1408; .1501; .1601 - .1606.

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

The public hearing will be conducted at 9:00 a.m. on February 25, 1988 at Hyatt Winston-Salem At Benton Convention Center, P.O. Box 599, 300 West Fifth Street, Winston-Salem, North Carolina 27102 (Telephone No. 919-725-1234).

Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule Making Hearing. Written statements not presented at the hearing should be directed to Georgia H. Lea, Director, Sheriffs' Standards Division. The proposed rules are available for public inspection and copies may be obtained at the following address: Sheriffs' Standards Division, North Carolina Department of Justice, 1 West Morgan Street, Room 30, Court of Appeals Building, P.O. Drawer 629, Raleigh, North Carolina 27602.

**CHAPTER 10 - N.C. SHERIFFS' EDUCATION
AND TRAINING STANDARDS COMMISSION**

**SUBCHAPTER 10A - N.C. SHERIFFS'
EDUCATION AND TRAINING STANDARDS
(REPEALED)**

SECTION .0100 - COMMISSION
ORGANIZATION AND PROCEDURES

- .0101 LOCATION
- .0102 PURPOSE
- .0103 DEFINITIONS
- .0104 JUSTICE OFFICERS' STANDARDS
DIVISION
- .0105 RULE-MAKING AND ADMINISTRATIVE
HEARING PROCEDURES

*Statutory Authority G.S. 17E-4; 17E-2; 17E-6;
150B-11; 150B-14.*

SECTION .0200 - MINIMUM STANDARDS
FOR EMPLOYMENT AS A DEPUTY
SHERIFF

- .0201 MINIMUM STANDARDS FOR DEPUTY
SHERIFFS
- .0202 DOCUMENTATION OF EDUCATIONAL
REQUIREMENT

Statutory Authority G.S. 17E-4; 17E-7.

- .0203 OCCUPATIONAL APTITUDE (ESC)
TEST REQUIREMENT

Statutory Authority G.S. 17E-7.

- .0204 FINGERPRINT RECORD CHECK
- .0205 MEDICAL EXAMINATION
- .0206 BACKGROUND INVESTIGATION
- .0207 EMPLOYMENT INTERVIEW
- .0208 CRIMINAL HISTORY RECORD

Statutory Authority G.S. 17E-7.

SECTION .0300 - MINIMUM STANDARDS
FOR JUSTICE OFFICER BASIC TRAINING

- .0301 PURPOSE

Statutory Authority G.S. 17E-4(a).

- .0302 JUSTICE OFFICER TRAINING

Statutory Authority G.S. 17E-4(a).

SECTION .0400 - CERTIFICATION OF
DEPUTY SHERIFFS

- .0401 CERTIFICATION OF SHERIFFS'
DEPARTMENT PERSONNEL
- .0402 PROBATIONARY PERIOD
- .0403 PROBATIONARY CERTIFICATION
- .0404 GENERAL CERTIFICATION
- .0405 REPORT OF SEPARATION
- .0406 LATERAL TRANSFER
- .0407 VERIFICATION OF RECORDS TO
STANDARDS DIVISION
- .0408 DEPARTMENT RETENTION OF

CERTIFICATION RECORDS

Statutory Authority G.S. 17E-4; 17E-7.

SECTION .0500 - RESPONSIBILITIES OF THE
JUSTICE OFFICERS' STANDARDS DIVISION

- .0501 ADMINISTRATION OF PROGRAMS
- .0502 DEVELOPMENT OF PROGRAMS
- .0503 DIVULGING PERSONNEL
INFORMATION

Statutory Authority G.S. 17E-6.

SECTION .0600 - JUSTICE OFFICERS'
PROFESSIONAL CERTIFICATE PROGRAM

- .0601 PURPOSE
- .0602 GENERAL PROVISIONS
- .0603 BASIC LAW ENFORCEMENT
CERTIFICATE
- .0604 INTERMEDIATE LAW ENFORCEMENT
CERTIFICATE
- .0605 ADVANCED LAW ENFORCEMENT
CERTIFICATE
- .0606 HOW TO APPLY

Statutory Authority G.S. 17E-4.

SECTION .0700 - JUSTICE OFFICERS'
SERVICE AWARD PROGRAM

- .0701 PURPOSE
- .0702 GENERAL PROVISIONS
- .0703 INTERMEDIATE SERVICE AWARD
- .0704 ADVANCED SERVICE AWARD
- .0705 HOW TO APPLY

Statutory Authority G.S. 17E-4.

SECTION .0800 - MINIMUM STANDARDS
FOR JUSTICE OFFICER SCHOOLS AND
TRAINING PROGRAMS OR COURSES OF
INSTRUCTION

- .0801 PURPOSE

Statutory Authority G.S. 17E-4.

- .0802 ADMINISTRATION OF JUSTICE
OFFICER SCHOOLS

Statutory Authority G.S. 17E-4.

- .0803 ADMINISTRATION OF JAILER
CERTIFICATION COURSE
- .0804 RESPONSIBILITIES/SCHOOL
DIRECTOR/JAILER CERT COURSE
- .0805 CERTIFICATION: SCHOOL DIRECTORS
/JAILER CERT COURSE
- .0806 TERMS AND CONDITIONS OF SCHOOL
DIRECTOR CERTIFICATION
- .0807 SUSPENSION: REVOCATION: DENIAL:

SCHOOL DIRECTOR CERT

Statutory Authority G.S. 17E-4.

**SECTION .0900 - ACCREDITATION OF
JUSTICE OFFICER SCHOOLS AND
TRAINING COURSES**

- .0901 ACCREDITATION/JUSTICE OFFICER
SCHOOLS/TRAINING COURSES**
- .0902 ACCREDITATION: DELIVERY/JAIL
CERTIFICATION COURSE**
- .0903 REPORTS: TRAINING COURSE
PRESENTATION AND COMPLETION**

Statutory Authority G.S. 17E-4; 17E-7.

**SECTION .1000 - MINIMUM STANDARDS
FOR COMPLETION OF BASIC TRAINING**

- .1001 TIMES REQUIREMENT FOR
COMPLETION OF TRAINING**

Statutory Authority G.S. 17E-4; 17E-7.

- .1002 WAIVER OF COMPLETION OF
TRAINING**
- .1003 EVALUATION FOR TRAINING WAIVER**
- .1004 TRAINEE ATTENDANCE**
- .1005 COMPLETION OF BASIC TRAINING:
LAW ENFORCEMENT COURSE**
- .1006 COMPREHENSIVE WRITTEN
EXAMINATION: BASIC RECRUIT
TRAINING**
- .1007 SATISFACTION OF MINIMUM
TRAINING REQUIREMENTS**

Statutory Authority G.S. 17E-4; 17E-7.

**SECTION .1100 - MINIMUM STANDARDS
FOR JUSTICE OFFICER INSTRUCTORS**

- .1101 CERTIFICATION OF INSTRUCTORS**

Statutory Authority G.S. 17E-4.

- .1102 CERTIFICATION: INSTRUCTORS FOR
JAILER TRAINING COURSES**
- .1103 GENERAL JAIL INSTRUCTOR
CERTIFICATION**
- .1104 TERMS: CONDITIONS: GENERAL JAIL
INSTRUCTOR CERTIFICATION**

Statutory Authority G.S. 17E-4.

**SECTION .1200 - MINIMUM STANDARDS
FOR ACCREDITATION ASSOCIATE OF
APPLIED SCIENCE DEGREE PROGRAMS
INCORPORATING BASIC LAW
ENFORCEMENT**

- .1201 ACCREDITATION/DEGREE PROGS
INCORPORATING BASIC LAW ENFORCE**

Statutory Authority G.S. 17E-4.

**SECTION .1300 - MINIMUM STANDARDS
FOR EMPLOYMENT AS A JAILER**

- .1301 MINIMUM STANDARDS FOR JAILERS**
- .1302 DOCUMENTATION OF EDUCATIONAL
REQUIREMENT**

Statutory Authority G.S. 17E-4; 17E-7.

- .1303 OCCUPATIONAL APTITUDE (ESC) TEST
REQUIREMENT**

Statutory Authority G.S. 17E-7.

- .1304 FINGERPRINT RECORD CHECK**
- .1305 MEDICAL EXAMINATION**
- .1306 BACKGROUND INVESTIGATION**
- .1307 EMPLOYMENT INTERVIEW**
- .1308 CRIMINAL HISTORY RECORD**

Statutory Authority G.S. 17E-7.

**SECTION .1400 - CERTIFICATION OF
JAILERS**

- .1401 CERTIFICATION OF SHERIFFS'
DEPARTMENT JAILERS**
- .1402 PROBATIONARY PERIOD**
- .1403 PROBATIONARY CERTIFICATION**
- .1404 GENERAL CERTIFICATION**
- .1405 REPORT OF SEPARATION**
- .1406 LATERAL TRANSFER**
- .1407 VERIFICATION OF RECORDS TO
STANDARDS DIVISION**
- .1408 DEPARTMENT RETENTION OF
CERTIFICATION RECORDS**

Statutory Authority G.S. 17E-4; 17E-7.

**SECTION .1500 - MINIMUM STANDARDS
FOR SHERIFFS' DEPARTMENT JAILER
TRAINING**

- .1501 JUSTICE OFFICER JAILER TRAINING**

Statutory Authority G.S. 17E-4(a).

**SECTION .1600 - MINIMUM STANDARDS
FOR COMPLETION OF JAILER TRAINING**

- .1601 TIME REQUIREMENT FOR
COMPLETION OF JAILER TRAINING**

Statutory Authority G.S. 17E-4.

- .1602 EVALUATION FOR TRAINING WAIVER**
- .1603 TRAINEE ATTENDANCE**
- .1604 COMPLETION OF JAILER TRAINING**
- .1605 COMPREHENSIVE WRITTEN
EXAMINATION: JAILER TRAINING**

Statutory Authority G.S. 17E-4; 17E-7.

**.1606 SATISFACTION OF MINIMUM
TRAINING REQUIREMENTS**

Statutory Authority G.S. 17E-4; 17E-7.

**SUBCHAPTER 10B - N.C. SHERIFFS'
EDUCATION AND TRAINING STANDARDS
COMMISSION**

**SECTION .0100 - COMMISSION
ORGANIZATION AND PROCEDURES**

.0101 LOCATION

The N.C. Sheriffs' Education and Training Standards Commission is established within the Department of Justice and is located in the Court of Appeals Building, corner of Morgan and Fayetteville Streets in Raleigh, N. C. The mailing address is:

North Carolina Sheriffs' Education and
Training Standards Commission
Post Office Drawer 629
Raleigh, North Carolina 27602
Telephone (919) 733-9236

Statutory Authority G.S. 17E.

.0102 PURPOSE

The purpose of the commission is not only to continually raise the level of competence within the sheriffs' departments, but to recognize and deal with the particular education and training needs of sheriffs and their deputies and jailers by:

- (1) Establishing minimum standards for employment and retention;
- (2) Establishing minimum standards for education and training;
- (3) Promoting the planning and development of systematic career development programs by providing and encouraging advanced or specialized training, education and certification;
- (4) Planning and promoting the development and improvement of a comprehensive system of education and training in the administration of law enforcement;
- (5) Conducting and stimulating research and planning by public and private agencies, designed to improve education and training in the administration of law enforcement;
- (6) Studying the recruitment, selection, education and training of sheriffs' department personnel and recommending improvements in such methods; and

- (7) Maintaining liaison among local, state and federal agencies with respect to North Carolina Sheriffs' Education and Training.

Statutory Authority G.S. 17E-4.

.0103 DEFINITION

In addition to the definitions set forth in G.S. 17E-2, the following definitions apply throughout this chapter, unless the context clearly requires otherwise:

- (1) "Department Head" means the chief administrator of any criminal justice agency. Department head includes the sheriff or a designee formally appointed in writing by the department head.
- (2) "Division" means the Sheriffs' Standards Division.
- (3) "Director" means the Director of the Sheriffs' Standards Division of the North Carolina Department of Justice.
- (4) "High School" means a school accredited as a high school by:
 - (a) the department of Board of Education of the state in which the high school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which the high school is located.
- (5) "Enrolled" means that an individual is currently actively participating in an ongoing formal presentation of a commission-accredited basic training course which has not been concluded on the day probationary certification expires.
- (6) "Lateral Transfer" means certification of a justice officer when the justice officer has previously held general or grandfather certification and has been separated by an agency or transferred to another agency and the justice officer has been separated from a justice officer position for no more than one year.

Statutory Authority G.S. 17E-7.

.0104 SHERIFFS' STANDARDS DIVISION

The Sheriffs' Standards Division of the North Carolina Department of Justice shall administer such programs as are assigned to it by the commission including the standards set forth in these Rules. The division shall present to the commission for its adoption administrative procedures for those programs of certification and accreditation and may create appropriate forms for application for and administration of those programs.

Statutory Authority G.S. 17E-6.

**.0105 ADMINISTRATIVE HEARING
PROCEDURES**

The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby adopted by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such adoptions by reference shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c). Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code and that 26 NCAC 3 .0001(2); .0002(a) (1); .0003(b); .0025; and .0026 shall not apply.

Statutory Authority G.S. 150B-14 (a) (4); 150B-38 (h).

**SECTION .0200 - RESPONSIBILITIES OF
THE SHERIFFS' STANDARDS DIVISION**

.0201 ADMINISTRATION OF PROGRAMS

(a) The Division shall administer all programs of the Commission regarding certification and implementation of standards.

(b) The administrative duties of the Division include:

- (1) preparing and distributing a compilation of these Rules to persons, agencies, and institutions subject thereto;
- (2) creating and distributing forms to aid application for certification and reporting of programs conducted under these Rules;
- (3) developing and administering comprehensive examinations to provide a basis for the decision to certify Justice Officers;
- (4) monitoring and evaluating the activities of persons, agencies, and institutions subject to these Rules;
- (5) providing technical assistance to agencies and institutions regarding their substantive and procedural responsibilities under these Rules;
- (6) investigating and reporting to the Commission violations of and deviations from these Rules by any person, agency, or institution;

- (7) maintaining records of application, qualification, and program reports filed with the Commission under these Rules;
- (8) collecting information relevant to the programs of the Commission from persons, agencies, and institutions subject to these Rules;
- (9) compiling and maintaining the official records of Commission meetings and acts;
- (10) transmitting notice of Commission actions to all persons, agencies, and institutions affected by Commission action;
- (11) divulging to authorized requesters information in the personnel and program files of the Commission.

Statutory Authority G.S. 17E-6.

.0202 DEVELOPMENT OF PROGRAMS

The Division shall assist the Commission in developing and evaluating programs for the improvement of North Carolina Sheriffs' departments by:

- (1) Compiling data, performing research, and developing reports concerning the needs of all sheriffs' departments;
- (2) Presenting to the Commission recommendations for the development of new programs and the revision of existing programs;
- (3) Disseminating information about Commission programs to concerned agencies and persons; and
- (4) Collecting comments about Commission programs contributed by agencies and the public.

Statutory Authority G.S. 17E-6.

**.0203 DIVULGING PERSONNEL
INFORMATION**

Information maintained in the Division's files concerning a Justice Officer may be inspected or disclosed only as provided by law.

Statutory Authority G.S. 17E-6.

**SECTION .0300 - MINIMUM STANDARDS
FOR EMPLOYMENT AS A JUSTICE
OFFICER**

**.0301 MINIMUM STANDARDS FOR JUSTICE
OFFICERS**

Every Justice Officer certified as a deputy sheriff or jailer in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 21 years of age;

- (3) be a high school graduate, or the equivalent (GED);
- (4) have been fingerprinted by the employing agency;
- (5) have had a medical examination by a licensed physician;
- (6) be of good moral character;
- (7) have a thorough background investigation conducted by the employing agency, to include a personal interview prior to employment;
- (8) not have been convicted of a crime or crimes as specified in Rule .0307.

Statutory Authority G.S. 17E-7.

.0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT

(a) Each applicant shall furnish documentary evidence of high school graduation to the employing agency. Documentary evidence consists of diplomas from recognized public schools or approved private schools which meet approval guidelines of the North Carolina Department of Public Instruction or a comparable out of state agency.

(b) High School diplomas earned through correspondence courses are not recognized toward these minimum educational requirements.

(c) Documentary evidence of completion of the General Educational Development Test (GED) shall be satisfied by a certified copy of GED test results showing a total score of not less than 225 points, and a minimum score on any single test of 35 points.

(d) A certified copy of a military GED diploma is acceptable.

Statutory Authority G.S. 17E-4.

.0303 FINGERPRINT RECORD CHECK

(a) Each applicant for certification shall be fingerprinted twice using forms specified by the division. Both fingerprint cards shall be forwarded to the State Bureau of Investigation (SBI) for fingerprint and Criminal History records check against state and federal files. Upon receipt from the SBI, the employing agency shall retain the returned fingerprint card and the results of the fingerprint and criminal history checks in the applicant's personnel file. Upon receipt from the SBI the division shall retain the other returned fingerprint card and the results of the fingerprint and criminal history records check.

(b) Each applicant shall provide to the employing agency a certified copy of a check

of the applicant's Criminal History record from the Clerk of Court or City-County Identification Bureau in each county where the applicant has resided within the preceding six months. The employing agency shall perform a criminal history records check of the agency's own files for each applicant. A certified copy of the results of all required criminal history records checks shall be forwarded with the applicant's Report of Appointment form (F-4) or (F-4A) to the division. Additionally, a photocopy of the results of all required criminal history records checks shall be retained by the agency in the applicant's personnel file.

(c) Certifications issued prior to the receipt by the division of the fingerprint and criminal history records check of state and federal files, as conducted by the SBI, are conditional. Such conditional certifications shall automatically be terminated by the commission upon receipt from the SBI of a fingerprint or criminal history records check that indicates that the officer has been convicted of an offense as specified in Rule .0307.

Statutory Authority G.S. 17E-7.

.0304 MEDICAL EXAMINATION

(a) Each applicant shall complete the Commission's Medical History Statement Form (F-1) and shall be examined by a physician or surgeon licensed in North Carolina to help determine his/her fitness in carrying out the physical requirements of the position of deputy sheriff or jailer. The examining physician shall record the results of the examination on the examination report form (F-2). The physical examination shall be conducted and the Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be completed within 120 days prior to whichever of the following occurs first:

- (1) the applicant beginning the Basic Law Enforcement Training Course; or
- (2) the applicant applying to the commission for certification.

(b) Although not presently required by these Rules, it is recommended by the commission that each candidate for the position of justice officer be examined by a licensed psychiatrist or clinical psychologist, or be administered a psychological evaluation test battery, prior to employment, to determine his/her mental and emotional suitability to perform the duties of justice officer.

Statutory Authority G.S. 17E-7.

.0305 BACKGROUND INVESTIGATION

(a) Prior to the background investigation done by the employing agency, the applicant shall complete the Commission's Personal History Statement (F-3) to provide a basis for the investigation. The Personal History Statement (F-3) submitted to the division shall be completed no more than 120 days prior to:

- (1) the applicant beginning the Basic Law Enforcement Training Course; or
- (2) the applicant applying to the commission for certification.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant applying to the commission for certification, the Personal History Statement (F-3) shall be updated or a new Personal History Statement (F-3) must be completed.

(c) The employing agency, prior to employment, shall examine the applicant's character traits and habits relevant to his/her performance as a justice officer and shall determine whether the applicant is of good moral character. The investigator shall summarize the results of the investigation on the form supplied by the division which shall be signed and dated by the investigator.

Statutory Authority G.S. 17E-7.

.0306 EMPLOYMENT INTERVIEW

(a) Prior to employment, the employing agency shall conduct an interview of the applicant to determine the applicant's abilities and potential for success as a justice officer.

(b) The sheriff may conduct the interview personally, or he may delegate the responsibility to a qualified staff member or panel.

Statutory Authority G.S. 17E-7.

.0307 CRIMINAL HISTORY RECORD

Every justice officer employed in North Carolina shall not have been convicted by a local, state, federal or military court of:

- (1) a felony, unless pardoned by the Governor; or
- (2) a crime for which the punishment could have been imprisonment for more than two years; or
- (3) an act, or any series of acts which violate the laws of the State of North Carolina and which, in the opinion of the sheriff, will affect his/her ability to act or carry out the office and duties of a justice officer.

Statutory Authority G.S. 17E-7.

.0308 MISREPRESENTATION OF INFORMATION

When any person is found to have knowingly and willfully obtained, or attempted to obtain certification by deceit, fraud, or misrepresentation, or when any person is found to have aided another in obtaining or attempting to obtain certification by means of deceit, fraud or misrepresentation, the commission shall, for both the principal and the person aiding the principal, permanently revoke or deny certification. This Rule shall also apply to obtaining or attempting to obtain in-service firearms requalification as required by Section .2000.

Statutory Authority G.S. 17E-7.

SECTION .0400 - CERTIFICATION OF JUSTICE OFFICERS

.0401 CERTIFICATION OF SHERIFFS' DEPARTMENT PERSONNEL

Every person employed or appointed as a justice officer by a sheriff's department shall meet the certification requirements of this Section .0400. Justice officers meeting the requirements as specified in this Chapter may be certified as either a deputy sheriff, a jailer, or both.

Statutory Authority G.S. 17E-4; 17E-7.

.0402 PROBATIONARY CERTIFICATION

All justice officers, except those transferred or reinstated pursuant to Rule .0405, shall serve a probationary certification period of one year. For certification as a deputy sheriff the probationary period begins on the date the officer took the Oath of Office. For certification as a jailer, the probationary period begins on the date the officer was appointed as a jailer.

Statutory Authority G.S. 17E-4; 17E-7.

.0403 PROBATIONARY CERTIFICATION REQUIREMENT

(a) For certification as a deputy sheriff, a Report of Appointment Deputy Sheriff (F-4) must be submitted to the division. For certification as a jailer, a Report of Appointment Jailer (F-4A) must be submitted to the division. For certification as both a deputy sheriff and a jailer, both forms (F-4 and F-4A) must be submitted to the division. Report of Appointment forms must be submitted to the division by the sheriff's department no later than ten days after the deputy sheriff has taken the

Oath of Office or the jailer has been appointed. The division shall forward the justice officer's certification to the sheriff's department.

(b) The division shall issue a probationary certification as a deputy sheriff to a person who has previously served as an elected or appointed sheriff, if the person:

- (1) applies to the commission within one year of ceasing to serve as an elected or appointed sheriff; and
- (2) meets all the probationary certification requirements at the time of application; and
- (3) has either:
 - (A) previously obtained general certification with either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission and was so certified and in good standing at the time of his election or appointment as sheriff; or
 - (B) while serving as an elected or appointed sheriff, did successfully complete a commission-accredited basic law enforcement training course which was then currently accredited by the commission at the time the officer completed the course; or
 - (C) while probationally certified with either the North Carolina Sheriffs' Education and Training Standards Commission or the North Carolina Criminal Justice Education and Training Standards Commission, did successfully complete a commission-accredited basic law enforcement training course which was then currently approved by the commission (under which the officer was probationally certified) at the time the officer completed the course.

Statutory Authority G.S. 17E-4; 17E-7.

.0404 GENERAL CERTIFICATION

(a) The Commission shall grant an officer general certification if evidence is received by the division that the officer has successfully completed the required training within the probationary period, and that the officer has met all other requirements for general certification.

(b) General certification is continuous from the date of issuance if:

- (1) The certified officer remains continuously employed or appointed as an

officer in good standing with an agency and the certification has not been terminated for cause; or

- (2) The certified officer, having separated in good standing from an agency, is reemployed or reappointed as a justice officer within one year, and the certification has not been terminated for cause.

Statutory Authority G.S. 17E-4; 17E-7.

.0405 REPORT OF SEPARATION

An agency separating a person from employment or appointment as a justice officer shall, not later than ten days after separation, forward to the division a completed Report of Separation (F-5).

Statutory Authority G.S. 17E-4.

.0406 LATERAL TRANSFER/ REINSTATEMENTS

(a) An officer with general or grandfather certification who:

- (1) is currently certified; or
- (2) has been separated but has not been out of service for more than one year, may be appointed by an agency and certified upon compliance with this Rule .0406.

(b) In order for an officer to be certified pursuant to this Rule .0406 there must be:

- (1) verification by the employing agency of the officer's certification status with the division;
- (2) compliance with the requirements for fingerprints and criminal history records checks as specified in Rule .0303;
- (3) compliance with the requirement for Medical History Statement (F-1) and Medical Examination Report (F-2) specified in Rule .0304;
- (4) compliance with the Report of Appointment form requirement of Rule .0403 (a); and
- (5) submitted to the division, a copy of the Oath of Office for applicants requesting certification as a deputy sheriff.

Statutory Authority G.S. 17E-4; 17E-7.

.0407 VERIFICATION OF RECORDS TO DIVISION

Prior to the certification of each justice officer, for the purpose of verifying compliance with these Rules, the employing agency shall submit to the division, along with the Report of Appointment (F-4) and/or (F-4A), copies of the following documents:

- (1) the applicant's high school diploma or equivalent (GED);
- (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (3) the applicant's Medical History Statement (F-1);
- (4) the applicant's Medical Examination Report (F-2);
- (5) the applicant's Personal History Statement (F-3); and
- (6) a summary of the applicant's background investigation.

Statutory Authority G.S. 17E-4; 17E-7.

.0408 EMPLOYING AGENCY RETENTION OF CERTIFICATION RECORDS

Each employing agency shall place in the appropriate justice officer's personnel file the official notification of either probationary or general certification. Such files shall be available for examination at any reasonable time by representatives of the commission for the purpose of verifying compliance with these Rules. Each personnel file shall also contain:

- (1) a copy of the applicant's Report of Appointment (F-4) and/or (F-4A);
- (2) the applicant's high school diploma or equivalent (GED);
- (3) a certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- (4) the results of the applicant's fingerprint records check and the criminal history records check;
- (5) the applicant's Medical History Statement (F-1);
- (6) the applicant's Medical Examination Report (F-2);
- (7) the applicant's Personal History Statement (F-3);
- (8) a summary of the applicant's background investigation.

Statutory Authority G.S. 17E-4.

SECTION .0500 - MINIMUM STANDARDS OF TRAINING FOR DEPUTY SHERIFFS

.0501 PURPOSE

This Section establishes the current minimum standard by which deputy sheriffs shall receive basic recruit law enforcement training. These Rules ensure the continued standard of training followed previously by all law enforcement officers across the state.

Statutory Authority G.S. 17E-4(a).

.0502 BASIC RECRUIT LAW ENFORCEMENT TRAINING COURSE FOR DEPUTIES

(a) The commission hereby adopts as its required minimum basic recruit law enforcement training course 425 hours of instruction to include the following identified topic areas and minimum instructional hours for each area:

(1) Course Orientation	2 hours
(2) Constitutional Law	4 hours
(3) Laws of Arrest, Search and Seizure	16 hours
(4) Mechanics of Arrest; Arrest Procedure	8 hours
(5) Law Enforcement Communications and Information Systems	4 hours
(6) Elements of Criminal Law	24 hours
(7) Defensive Tactics	16 hours
(8) Juvenile Laws and Procedures	8 hours
(9) Emergency Medical Services	24 hours
(10) Firearms	40 hours
(11) Patrol Techniques	16 hours
(12) Crime Prevention Techniques	4 hours
(13) Field Notetaking and Report Writing	12 hours
(14) Mechanics of Arrest: Vehicle Stops	6 hours
(15) Mechanics of Arrest: Custody Procedures	2 hours
(16) Mechanics of Arrest: Processing Arrestee	4 hours
(17) Crisis Management	10 hours
(18) Deviant Behavior	10 hours
(19) Civil Disorders	12 hours
(20) Criminal Investigation	28 hours
(21) Interviews: Field and In-Custody	8 hours
(22) Controlled Substances	6 hours
(23) ABC Laws and Procedures	4 hours
(24) Electrical and Hazardous Material Emergencies	6 hours
(25) Motor Vehicle Law	20 hours
(26) Techniques of Traffic Law Enforcement	6 hours
(27) Law Enforcement Driver Training	16 hours
(28) Preparing For Court and Testifying in Court	12 hours
(29) Dealing with Victims and the Public	8 hours
(30) Civil Process	24 hours
(31) Supplemental Custody Procedures	8 hours
(32) Physical Fitness Training	43 hours
(33) Testing	14 hours
TOTAL HOURS	425 hours

(b) The "Basic Recruit Law Enforcement Training Manual" as published by the North Carolina Justice Academy is hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c), to apply as basic curriculum for this basic recruit law enforcement training course.

(c) Consistent with the curriculum development policy of the commission, the commission shall designate the developer of the Basic Recruit Law Enforcement Training Course curricula and such designation shall be deemed by the commission as approval for the developer to conduct pilot Basic Recruit Law Enforcement Training Courses. Individuals who successfully complete such a pilot Basic Law Enforcement Training Course offering shall be deemed to have successfully complied with and satisfied the minimum training requirement.

Statutory Authority G.S. 17E-4(a).

.0503 TIME REQUIREMENT FOR COMPLETION OF BASIC RECRUIT LAW ENFORCEMENT TRAINING COURSE

(a) Each deputy sheriff holding temporary or probationary certification shall satisfactorily complete a commission-accredited basic training course. The deputy shall complete such course within one year from the date of his/her Oath of Office. Any deputy sheriff who does not comply with this Rule or other training provisions of this Chapter shall not be authorized to exercise the powers of a deputy sheriff and shall not be authorized to exercise the power of arrest. If, however, an officer has enrolled in a commission-accredited basic law enforcement training program that concludes later than the end of the officer's probationary period, the commission may extend, for good cause shown, the probationary period for a period not to exceed 12 months.

(b) Persons having completed a commission-accredited basic law enforcement training program and not having been duly appointed as a sworn deputy sheriff within one year of completion of the basic law enforcement training course shall complete a subsequent commission-accredited basic recruit training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0402.

(c) Persons certified on a probationary basis pursuant to Rule .0403(b) shall be exempt from this Rule .0503.

Statutory Authority G.S. 17E-4; 17E-7.

.0504 WAIVER OF COMPLETION OF TRAINING

(a) The commission may waive a deputy sheriff's completion of the commission-accredited law enforcement training course upon receiving documentary evidence from the employing agency that the deputy has satisfactorily completed equivalent training. All such deputies, however, shall serve a one year period of probation.

(b) Training received in states with laws governing or regulating law enforcement training shall, if subject to such review, have been approved or certified by the appropriate agency of the state in which the training was received.

(c) The commission may prescribe as a condition of certification, supplementary or remedial training deemed necessary to equate previous training with current standards.

(d) The commission may require satisfactory performance on a commission-approved written examination as proof of equivalent training; however, such examination is in addition to the required equivalent training and not in lieu of said training.

Statutory Authority G.S. 17E-4; 17E-7.

.0505 EVALUATION FOR TRAINING WAIVER

(a) The division staff shall evaluate each deputy's training and experience to determine if equivalent training has been satisfactorily completed as specified in Rule .0504(a). Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following rules shall be used by division staff in evaluating a deputy's training and experience to determine eligibility for a waiver of training.

(1) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited basic training program and who have been separated from a sworn law enforcement position for more than one year

shall complete a subsequent commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (2) Persons who separated from a sworn law enforcement position during their probationary period after having completed a commission-accredited basic training program and who have been separated from a sworn law enforcement position for one year or less shall serve a new 12 month probationary period, but need not complete an additional training program.
- (3) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees:
 - (A) shall have a minimum of two years full-time sworn law enforcement experience;
 - (B) shall not have a break in service exceeding one year; and
 - (C) shall have successfully completed the basic recruit law enforcement training course accredited by the state from which he/she is transferring. Out-of-state transferees meeting these requirements shall successfully complete a commission-accredited basic training program which includes the following topics of North Carolina law and procedure and successfully pass the State Comprehensive Examination in its entirety within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(i) Laws of Arrest, Search and Seizure	16 hours
(ii) Elements of Criminal Law	24 hours
(iii) Juvenile Laws and Procedures	8 hours
(iv) Controlled Substances	6 hours
(v) ABC Laws and Procedures	4 hours
(vi) Motor Vehicle Laws	20 hours
(vii) Civil Process	24 hours
(viii) Supplemental Custody Procedures	8 hours
(ix) Firearms (Qualification Only)	
TOTAL HOURS	110 hours
- (4) Persons previously holding Grandfather law enforcement certification in accordance with G.S. 17C-10(a) or G.S. 17E-7(a) who have been separated from

a sworn law enforcement position for more than one year and who have not previously completed a minimum basic law enforcement training program accredited by the North Carolina Criminal Justice Education and Training Standards Commission and/or the North Carolina Sheriffs' Education and Training Standards Commission shall be required to complete a commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (5) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than one year but no more than two years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Juvenile Law and Procedures	8 hours
(B) Firearms	40 hours
(C) Patrol Techniques	16 hours
(D) Crisis Management	10 hours
(E) Deviant Behavior	10 hours
(F) Criminal Investigations	28 hours
(G) Electrical and Hazardous Material Emergencies	6 hours
(H) Law Enforcement Driver Training	16 hours
(I) Civil Process	24 hours
(J) Supplemental Custody Procedures	8 hours
TOTAL HOURS	166 hours
- (6) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have been separated from a sworn law enforcement position for more than two years

shall be required to complete a commission-accredited basic training program in its entirety regardless of training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (7) Persons who have completed a minimum 240-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Laws of Arrest, Search and Seizure	16 hours
(B) Elements of Criminal Law	24 hours
(C) Juvenile Laws and Procedures	8 hours
(D) Deviant Behavior	10 hours
(E) Controlled Substances	6 hours
(F) ABC Laws and Procedures	4 hours
(G) Motor Vehicle Laws	20 hours
(H) Civil Process	24 hours
(I) Supplemental Custody Procedures	8 hours
(J) Firearms (Qualification Only)	

TOTAL HOURS 120 hours

- (8) Persons who have completed a minimum 240-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and who have been separated from a sworn law enforcement position for more than three years shall be required to complete a commission-accredited basic training program in its entirety regardless of prior training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

- (9) Persons who have completed a minimum 381 hour basic law enforcement training course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and ending July 1, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(A) Laws of Arrest, Search and Seizure	16 hours
(B) Elements of Criminal Law	24 hours
(C) Juvenile Laws and Procedures	8 hours
(D) Deviant Behavior	10 hours
(E) Controlled Substances	6 hours
(F) ABC Laws and Procedures	4 hours
(G) Motor Vehicle Laws	20 hours
(H) Civil Process	24 hours
(I) Supplemental Custody Procedures	8 hours
(J) Firearms (Qualification Only)	

TOTAL HOURS 120 hours

- (10) Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a minimum 369-hour basic training program accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and ending July 1, 1988 and who have been separated from a sworn law enforcement position for no more than one year shall be required to complete the following enumerated topics of a commission-accredited basic training program and successfully pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of their Oath of Office as prescribed in 12 NCAC 10B .0503(a).

(A) Civil Process	24 hours
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PROPOSED RULES

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| <p>(B) Supplemental Custody Procedures 8 hours</p> <p>TOTAL HOURS 32 hours</p> <p>(11) Persons who have completed a minimum 369-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Commission under guidelines beginning October 1, 1984 and ending July 1, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).</p> <p>(A) Laws of Arrest, Search and Seizure 16 hours</p> <p>(B) Elements of Criminal Law 24 hours</p> <p>(C) Juvenile Laws and Procedures 8 hours</p> <p>(D) Deviant Behavior 10 hours</p> <p>(E) Controlled Substances 6 hours</p> <p>(F) ABC Laws and Procedures 4 hours</p> <p>(G) Motor Vehicle Laws 20 hours</p> <p>(H) Civil Process 24 hours</p> <p>(I) Supplemental Custody Procedures 8 hours</p> <p>(J) Firearms (Qualification Only)</p> <p>TOTAL HOURS 120 hours</p> <p>(12) Persons who have completed a minimum 425-hour basic law enforcement training course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning July 1, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).</p> <p>(A) Laws of Arrest, Search and Seizure 16 hours</p> <p>(B) Elements of Criminal Law 24 hours</p> <p>(C) Juvenile Laws and Procedures 8 hours</p> <p>(D) Deviant Behavior 10 hours</p> <p>(E) Controlled Substances 6 hours</p> <p>(F) ABC Laws and Procedures 4 hours</p> <p>(G) Motor Vehicle Laws 20 hours</p> <p>(H) Civil Process 24 hours</p> | <p>(I) Supplemental Custody Procedures 8 hours</p> <p>(J) Firearms (Qualification Only)</p> <p>TOTAL HOURS 120 hours</p> <p>(13) Persons transferring to a sheriff's department from another law enforcement agency who hold certification issued by the North Carolina Criminal Justice Education and Training Standards Commission and who have previously completed a commission-accredited 412-hour basic training program accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1988 and who have been separated from a sworn law enforcement position for no more than one year shall be required to complete the following enumerated topics of a commission-accredited basic training course and successfully pass that portion of the State Comprehensive Examination which deals with those subjects within 12 months of the date of their Oath of Office as prescribed in 12 NCAC 10B .0503(a).</p> <p>(A) Civil Process 24 hours</p> <p>(B) Supplemental Custody Procedures 8 hours</p> <p>TOTAL HOURS 32 hours</p> <p>(14) Persons who have previously completed a minimum 412-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1988 and who have been separated from a sworn law enforcement position for over one year but no more than three years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 months probationary period as prescribed in 12 NCAC 10B .0503(a).</p> <p>(A) Laws of Arrest, Search and Seizure 16 hours</p> <p>(B) Elements of Criminal Law 24 hours</p> <p>(C) Juvenile Laws and Procedures 8 hours</p> <p>(D) Deviant Behavior 10 hours</p> <p>(E) Controlled Substances 6 hours</p> <p>(F) ABC Laws and Procedures 4 hours</p> <p>(G) Motor Vehicle Laws 20 hours</p> <p>(H) Civil Process 24 hours</p> |
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- | | |
|-------------------------------------|------------------|
| (I) Supplemental Custody Procedures | 8 hours |
| (J) Firearms (Qualification Only) | _____ |
| TOTAL HOURS | 120 hours |

- (15) Persons who have completed training as a federal law enforcement officer and are appointed as a sworn law enforcement officer in North Carolina shall be required to complete a commission-accredited basic training program in its entirety regardless of previous federal training and experience and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (16) Persons with part-time experience who have been separated from a sworn law enforcement position for more than one year shall be required to complete a commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).
- (17) Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0503(a).

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire "Basic Recruit Training--Law Enforcement" course would be impractical, the director is authorized to exercise his/her discretion in determining the amount of training those persons shall complete during their probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

.0506 TRAINEE ATTENDANCE

(a) Each trainee enrolled in an accredited "Basic Recruit Training--Law Enforcement" course shall attend all class sessions. The sheriff shall be responsible for the trainee's regular attendance at criminal justice training courses in which the trainee is enrolled.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class ses-

sions. However, in no case may excused absences exceed ten percent of the total class hours for the course offering.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under Rule 12 NCAC 10B .0507.

(d) A trainee shall not be eligible for administration of the State Comprehensive Examination nor certification for successful course completion if the cumulative total of class absences, with accepted make-up work, exceeds ten percent of the total class hours of the accredited course offering and should be expediently terminated from further course participation by the school director at the time of such occurrence.

(e) A school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.

(f) Where a trainee is enrolled in a program as required in 12 NCAC 10B .0502, attendance shall be 100 percent in order to receive successful course completion.

Statutory Authority G.S. 17E-4; 17E-7.

.0507 COMPLETION OF BASIC RECRUIT TRAINING--LAW ENFORCEMENT COURSE

(a) Each delivery of an accredited "Basic Recruit Training--Law Enforcement" course is considered to be a unit. Each trainee shall attend and satisfactorily complete the full course during a scheduled delivery. The director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the trainee provides evidence that:

- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "Basic Recruit Training--Law Enforcement" course but through extended absence occasioned by illness, accident, emergency, or other good cause was absent for more than ten percent of the total class hours of the course offering; or
- (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the

school director could not schedule appropriate make-up work during the current course offering as specified in Rule 12 NCAC 10B .0506(c) due to valid reasons; or

- (3) The trainee participated in an offering of the "Basic Recruit Training--Law Enforcement" course but had an identified deficiency in essential knowledge or skill in either one, two or three, but no more than three, of the specific topic areas incorporated in course content as prescribed under Rule 12 NCAC 10B .0502(a).

(b) An authorization of limited enrollment in a subsequent course delivery may not be issued by the director unless in addition to the evidence required by Paragraph (a) of this Rule:

- (1) The sheriff of the agency employing the trainee submits a written request to the director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished within the period of the trainee's probationary certification; and

- (2) The school director of the previous course offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

(c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Basic Recruit Training--Law Enforcement" course commencing within 120 calendar days from the last date of trainee participation in prior course delivery, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

- (1) The trainee need only attend and satisfactorily complete those portions of the course which were missed or were identified by the school director as areas of trainee deficiency in the prior course participation.

- (2) Following proper enrollment in the subsequent course offering, scheduled class attendance, and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the commission and possible certification of successful course completion.

(d) A trainee who is deficient in four or more subject-matter or topical areas at the conclusion of the course delivery shall complete a subsequent program in its entirety within the trainee's probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

**.0508 COMPREHENSIVE WRITTEN
EXAMINATION --BASIC RECRUIT
TRAINING COURSE**

(a) At the conclusion of a school's offering of the "Basic Recruit Training--Law Enforcement" course, an authorized representative of the commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas as prescribed in 12 NCAC 10B .0502(a).

(c) The commission's representative shall submit to the school director within five days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the commission's comprehensive written examination may request the director to authorize a re-examination of the trainee.

- (1) The trainee's Request of Re-examination shall be made in writing on the commission's form within 90 days after the original examination and shall be received by the division before the expiration of the trainee's probationary certification as a deputy sheriff.

- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's "Basic Recruit Training--Law Enforcement" course.

- (3) A trainee shall have only one opportunity for re-examination and shall satis-

factorily complete the subsequent examination in its entirety.

- (4) The trainee will be assigned in writing by the division place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent basic training course in its entirety before further examination may be permitted.

Statutory Authority G.S. 17E-4; 17E-7.

.0509 SATISFACTION OF MINIMUM TRAINING REQUIREMENTS

In order to satisfy the minimum training requirements for certification as a law enforcement officer, a trainee shall:

- (1) achieve a score of 70 percent correct answers on the commission - administered comprehensive written examination;
- (2) demonstrate successful completion of an accredited offering of the "Basic Recruit Training--Law Enforcement" course as shown by the certification of the school director;
- (3) demonstrate proficiency in all motor-skill and performance subjects by achieving a minimum passing grade as specifically established in each of the topical areas in the commission's adopted "Basic Law Enforcement Training Manual"; and
- (4) obtain the recommendation of the trainee's school director that the trainee possesses at least the minimum degree of general attributes, knowledge, and skill to function as an inexperienced deputy sheriff.

Statutory Authority G.S. 17E-4; 17E-7.

SECTION .0600 - MINIMUM STANDARDS OF TRAINING FOR JAILERS

.0601 JAILER TRAINING COURSE

(a) This Section establishes the current minimum standard by which sheriffs' department personnel shall receive jailer training. These Rules will serve to raise the level of jailer training heretofore available to law enforcement officers across the state. The jailer training course shall consist of a minimum of 120 hours of instruction designed to provide the trainee with the skills and knowledge necessary to perform those tasks considered es-

sential to the administration and operation of a confinement facility.

(b) Each jailer training course shall include the following identified topic areas and approximate minimum instructional hours for each area:

(1) Orientation/Pretest	1 hour
(2) Civil Liability in the Jail	10 hours
(3) The American Jail: Its Origin and Development	1 hour
(4) Legal Rights and Responsibilities Within the Corrections Environment	12 hours
(5) Processing Inmates: Booking, Intake, Classification and Release Procedures	8 hours
(6) Transportation of Inmates	4 hours
(7) Written Communication	3 hours
(8) Introduction to the Minimum Standards for the Operation of Local Confinement Facilities in North Carolina	3 hours
(9) Role Concepts, Attitudes and Interpersonal Communication	2 hours
(10) Disciplinary Procedures in the Jail	2 hours
(11) Key and Tool Control	1 hour
(12) Hostage Incidents in the Jail	2 hour
(13) Stress	3 hours
(14) Recreation and Visiting	2 hours
(15) Medical Care in the Jail	4 hours
(16) Patrol and Emergency Procedures	3 hours
(17) Suicide and Jails	3 hours
(18) Homosexuality and Jails	1 hour
(19) Supervision of Inmates	6 hours
(20) Psychological Disorders: Psychotic and Neurotic Personality	4 hours
(21) Contraband/Searches	6 hours
(22) Handling Fire Emergencies: Chemistry and Evacuation	4 hours
(23) Handling Fire Emergencies: Classification and Extinguishing	4 hours
(24) Controlling Disruptive People	16 hours
(25) Practicals	3 hours
(26) CPR	8 hours
(27) First Aid	3 hours
(28) Communicable Diseases	3 hours
(29) Review	3 hours
(30) Exam	3 hours

TOTAL HOURS 120 hours

Note: An officer enrolled in a Jailer Training Course who is currently certified in CPR (Cardiopulmonary Resuscitation) shall be exempt from that block of instruction and subsequent examination. The officer must furnish proof of current certification to the school director at the time of enrollment. All other trainees must successfully complete CPR, and

become certified, during and as part of the Jailer Certification Course.

Statutory Authority G.S. 17E-4(a).

.0602 TIME REQUIREMENT FOR COMPLETION OF COURSE

(a) Each individual employed by a sheriff's department as a jailer holding probationary certification shall satisfactorily complete a commission-accredited jailer training course. The individual shall complete such course within one year from the date of his original appointment as a jailer as determined by the date of the probationary certification. Any individual employed as a jailer who does not comply with this Rule or other training provisions of this Chapter shall not be authorized to exercise the powers of a jailer. If, however, an individual has enrolled in a commission-accredited jailer course that concludes later than the end of the individual's probationary period, the commission may extend, for good cause shown, the probationary period for a period not to exceed six months.

(b) Persons having completed a commission-accredited jailer training course and not having been duly appointed as a jailer within one year of completion of the course shall complete a subsequent commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).

Statutory Authority G.S. 17E-4.

.0603 EVALUATION FOR TRAINING WAIVER

(a) The following rules shall be used by division staff in evaluating a jailer's training and experience to determine eligibility for a waiver of training:

- (1) Persons who have separated from a jailer position during the probationary period after having completed a commission-accredited jailer training course and who have been separated from a jailer position for more than one year shall complete a subsequent commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as described in 12 NCAC 10B .0602(a).
- (2) Persons who separated from a jailer position during their probationary pe-

riod after having completed a commission-accredited jailer training course and who have been separated from a jailer position for one year or less shall serve a new 12 month probationary period, but need not complete an additional jailer training course.

- (3) Persons holding General Jailer Certification who have completed a commission-accredited jailer training course and who have been separated from a jailer position for more than one year shall complete a subsequent commission-accredited jailer training course in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (4) Persons holding General Jailer Certification who have completed a commission-accredited jailer training course and who have been separated from a jailer position for one year or less shall serve a new 12 month probationary period, but need not complete an additional jailer training course.
- (5) Persons holding Grandfather Jailer Certification who separate from a jailer position and remain separated from a jailer position for more than one year shall be required to complete a commission-accredited jailer training program in its entirety and successfully pass the State Comprehensive Examination within the 12 month probationary period as prescribed in 12 NCAC 10B .0602(a).
- (6) Persons transferring to a sheriff's department from another law enforcement agency who hold a jailer certification issued by the North Carolina Criminal Justice Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. The division staff shall determine the amount of training required of these applicants.

(b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire Jailer Training Course would be impractical, the director is authorized to exercise his/her discretion in determining the amount of training those persons shall complete during their probationary period.

Statutory Authority G.S. 17E-4; 17E-7.

.0604 TRAINEE ATTENDANCE

(a) Each trainee enrolled in an accredited "Jailer Training Course" shall attend all class sessions. The sheriff shall be responsible for the trainee's regular attendance at all sessions of the jailer training course.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed ten percent of the total class hours for the course offering.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under 12 NCAC 10B .0605.

(d) A trainee shall not be eligible for administration of the State Comprehensive Examination nor certification for successful course completion if the cumulative total of class absences, with accepted make-up work, exceeds ten percent of the total class hours of the accredited course offering and should be expediently terminated from further course participation by the school director at the time of such occurrence.

(e) The school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.

(f) Where a trainee is enrolled in a program as required in 12 NCAC 10B .0601, attendance shall be 100 percent in order to receive a successful course completion.

Statutory Authority G.S. 17E-4; 17E-7.

.0605 COMPLETION OF JAILER TRAINING COURSE

(a) Each delivery of an accredited "Jailer Training" course is considered to be a unit. Each trainee shall attend and satisfactorily complete a full course during a scheduled delivery. The director may issue prior written authorization for a specified trainee's limited enrollment in a subsequent delivery of the same course where the trainee provides evidence that:

- (1) The trainee attended and satisfactorily completed specified class hours and topics of the "Jailer Training" course

but through extended absence occasioned by illness, accident, emergency, or other good cause was absent for more than ten percent of the total class hours of the course offering; or

- (2) The trainee was granted excused absences by the school director that did not exceed ten percent of the total class hours for the course offering and the school director could not schedule appropriate make-up work during the current course offering as specified in 12 NCAC 10B .0604(c) due to valid reasons.

(b) An authorization of limited enrollment in a subsequent course delivery may not be used by the director unless in addition to the evidence required by Paragraph (a) of this Rule:

- (1) The sheriff of the agency employing the trainee submits a written request to the director, justifying the limited enrollment and certifying that the trainee's participation shall be accomplished within the period of the trainee's probationary certification; and
- (2) The school director of the previous school offering submits to the director a certification of the particular topics and class hours attended and satisfactorily completed by the trainee during the original enrollment.

(c) An authorization of limited enrollment in a subsequent course delivery permits the trainee to attend an offering of the "Jailer Training" course, but only if the trainee's enrollment with active course participation can be accomplished within the period of the trainee's probationary certification:

- (1) The trainee need only attend and satisfactorily complete those portions of the course which were missed or identified by the school director as areas of trainee deficiency in the proper course participation.
- (2) Following proper enrollment in the subsequent course offering, scheduled class attendance and active participation with satisfactory achievement in the course, the trainee would be eligible for administration of the State Comprehensive Examination by the commission and possible certification of successful course completion.

Statutory Authority G.S. 17E-4; 17E-7.

.0606 COMPREHENSIVE WRITTEN

**EXAMINATION - JAILER
TRAINING COURSE**

(a) At the conclusion of a school's offering of the Jailer Training Course, an authorized representative of the commission shall administer a comprehensive written examination to each trainee who has satisfactorily completed all of the course work. A trainee cannot be administered the comprehensive written examination until such time as all course work is successfully completed.

(b) The examination shall be an objective test consisting of multiple-choice, true-false, or similar questions covering the topic areas as described in 12 NCAC 10B .0601(b).

(c) The commission's representative shall submit to the school director within ten days of the administration of the examination a report of the results of the test for each trainee examined.

(d) A trainee shall successfully complete the comprehensive written examination if he/she achieves a minimum of 70 percent correct answers.

(e) A trainee who has fully participated in a scheduled delivery of an accredited training course and has demonstrated satisfactory competence in each motor-skill or performance area of the course curriculum but has failed to achieve the minimum score of 70 percent on the commission's comprehensive written examination may request the director to authorize a re-examination of the trainee.

- (1) A trainee's Request for Re-examination shall be made in writing on the commission's form within 90 days after the original examination and shall be received by the division before the expiration of the trainee's probationary certification as a jailer.
- (2) The trainee's request for re-examination shall include the favorable recommendation of the school director who administered the trainee's Jailer Training Course.
- (3) A trainee shall have only one opportunity for re-examination and shall satisfactorily complete the subsequent examination in its entirety.
- (4) A trainee will be assigned in writing by the division a place, time, and date for re-examination.
- (5) Should the trainee on re-examination not achieve the prescribed minimum score of 70 on the examination, the trainee may not be recommended for certification and must enroll and complete a subsequent course in its entirety

before further examination may be permitted.

Statutory Authority G.S. 17E-4; 17E-7.

**.0607 SATISFACTION OF MINIMUM
TRAINING REQUIREMENTS**

In order to satisfy the minimum training requirements for certification as a jailer, a trainee shall:

- (1) achieve a score of 70 percent correct answers on the commission-administered comprehensive written examination;
- (2) demonstrate successful completion of an accredited offering of the Jailer Training Course as shown by the certification of the school director; and
- (3) obtain the recommendation of the trainee's school director that the trainee possesses at least the minimum degree of general attributes, knowledge, and skill to function as an inexperienced jailer.

Statutory Authority G.S. 17E-4; 17E-7.

**SECTION .0700 - MINIMUM STANDARDS
FOR JUSTICE OFFICER SCHOOLS AND
TRAINING PROGRAMS OR COURSES OF
INSTRUCTION**

.0701 PURPOSE

This Section establishes the minimum standards for the schools from which sheriffs' department personnel shall receive training. These Rules will serve to define the areas of responsibility for the institutions and personnel associated with and responsible for the delivery of said training programs.

Statutory Authority G.S. 17E-4.

**.0702 ADMINISTRATION OF JUSTICE
OFFICER SCHOOLS**

The rules covering the administration of Criminal Justice Schools and training programs or courses of instruction, codified as Title 12, Subchapter 9B, Section .0200 of the North Carolina Administrative Code, effective and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission are hereby adopted by reference and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c) to apply to actions of the North Carolina Sheriffs' Education And Training Standards Commission with the exception of the Jailer Certification Course.

Statutory Authority G.S. 17E-4.

.0703 ADMINISTRATION OF JAILER TRAINING COURSE

(a) The executive officer or officers of the institution or agency sponsoring a Jailer Training Course shall have primary responsibility for implementation of these rules and standards and for administration of the school.

(b) The executive officers shall designate a compensated staff member who is certified by the commission who may apply to be the school director. The school director shall have administrative responsibility for planning scheduling, presenting, coordinating, reporting, and generally managing each sponsored jailer training course.

(c) The executive officers of the institution or agency sponsoring the Jailer Training Course shall:

- (1) acquire and allocate sufficient financial resources to provide commission-certified instructors and to meet other necessary program expenses;
- (2) provide adequate secretarial, clerical, and other supportive staff assistance as required by the school director;
- (3) provide or make available suitable facilities, equipment, materials, and supplies for comprehensive and qualitative course delivery, specifically including the following:
 - (A) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all attending trainees;
 - (B) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training;
 - (C) a library for trainees' use covering the subject matter areas relevant to the training course, maintained in current status and having sufficient copies for convenient trainee access;
 - (D) Where required by course content, provide or make available facilities, equipment, and supplies to provide training in physical and motor-skill exercises such as handling disruptive people, CPR, handling fire emergencies and cell searches.

Statutory Authority G.S. 17E-4.

.0704 RESPONSIBILITIES: SCHOOL DIRECTORS

(a) In planning, developing, coordinating, and delivering each commission accredited Jailer Training Course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the commission.
 - (A) The Jailer Certification Training Course shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
 - (B) In the event of exceptional or emergency circumstances, the director may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule qualified instructors who are properly certified by the commission. The selecting and scheduling of instructors is subject to special requirements as follows:
 - (A) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery except as set forth in (2)(B).
 - (B) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is qualified to instruct more than 35 percent of the total hours of the curriculum, the director of the division may grant written approval for the expansion of the individual instructional limitation.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to established commission standards and to minimize repetition and duplication of subject matter.
- (5) Shall permanently maintain records of all Jailer Training Courses sponsored or delivered by the school, reflecting:
 - (A) Course title;
 - (B) Delivery hours of course;
 - (C) Course delivery dates;
 - (D) Names and addresses of instructors utilized within designated subject-matter areas;

- (E) A roster of enrolled trainees, showing class attendance and designating whether each trainee's course participation was successful or unsuccessful;
 - (F) Copies of all rules, regulations and guidelines developed by the school director;
 - (G) Documentation of any changes in the initial course outline, including substitution of instructors; and
 - (H) Documentation of make-up work achieved by each individual trainee, including test scores and methods.
- (6) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas.
- (7) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
- (A) Effective course delivery;
 - (B) Establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) Regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.

A copy of such rules, regulations and requirements shall be submitted to the director as an attachment to the Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.

- (8) If appropriate, recommend housing and dining facilities for trainees.
- (9) Not less than 30 days before commencing delivery of the course, submit to the commission a Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following attachments:
- (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for Professional Lecturer Certification.
 - (C) The director shall review the submitted Pre-Delivery Report together with all attachments to ensure that the school is in compliance with all com-

mission mandated rules and regulations; if school's rules are found to be in violation, the director shall notify the school director of deficiency, and approval will be withheld until all matters are in compliance with the commission's rules.

- (10) Administer the course delivery in accordance with commission-approved procedures, guidelines, and standards and ensure that the training offered is as effective as possible.
- (11) Monitor the presentations of all probationary instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission-approved forms and forwarded to the commission. Based on this evaluation the school director shall have the added responsibility for recommending approval or denial of requests for General Jail Instructor Certification, Limited Lecturer Certification or Professional Lecturer Certification.
- (12) Monitor the presentations of all other instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. Instructor evaluations shall be prepared on commission-approved forms in accordance with commission standards. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the commission upon request.
- (13) Administer or designate a qualified person to administer appropriate tests as determined necessary at various intervals during course delivery.
- (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
- (15) During a delivery of the Jailer Certification Training Course, make available to authorized representatives of the commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.

- (16) Not more than ten days after receiving from the commission's representative the Report of Examination Scores, the school director shall submit to the commission a Post-Delivery Report of Training Course Presentation (Form 7-B).

Statutory Authority G.S. 17E-4.

.0705 CERTIFICATION: SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a school director in the delivery or presentation of a commission-accredited jailer training course shall be and continuously remain certified by the commission as a school director.

(b) To qualify for certification as school director of the Jailer Training Course:

- (1) Submit a written request for the issuance of such certification executed by the executive officer of the institution or agency currently accredited, or which may be seeking accreditation, by the commission to make presentation of accredited training programs and for whom the applicant will be the designated school director.
- (2) Be currently certified as a criminal justice instructor by the North Carolina Criminal Justice Education and Training Standards Commission; and
- (3) Document successful participation in a special program presented by the North Carolina Justice Academy for purposes of familiarization and supplementation relevant to delivery of the Jailer Training Course.
- (4) Attend or must have attended the most current offering of the school director's conference as presented by the commission staff and staff of the North Carolina Criminal Justice Education and Training Standards Commission and Standards Division.

Statutory Authority G.S. 17E-4.

.0706 TERMS AND CONDITIONS OF SCHOOL DIRECTOR CERTIFICATION

(a) The term of certification as a school director is two years from the date the commission issues the certification unless earlier terminated by action of the commission. Upon application the certification may subsequently be renewed by the commission for two-year periods. The application for renewal

shall contain documentation meeting the requirements of Rule .0705(b)(1).

(b) To retain certification as a school director, the school director shall:

- (1) Adequately perform the duties and responsibilities of a school director as specifically required in Rule .0704.
- (2) Maintain an updated copy of the "Jailer Training Instructor Notebook" assigned to each accredited school.

Statutory Authority G.S. 17E-4.

.0707 SUSPENSION: REVOCATION: OR DENIAL SCHOOL DIRECTOR CERT

The commission may deny, suspend, or revoke certification of a school director when the commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules and procedures of the commission or otherwise demonstrates incompetence.

Statutory Authority G.S. 17E-4.

SECTION .0800 - ACCREDITATION OF JUSTICE OFFICER SCHOOLS AND TRAINING COURSES

.0801 ACCREDITATION: JUSTICE OFFICER SCHOOLS/TRAINING COURSES

The rules covering the accreditation of Criminal Justice Schools and training courses, codified as Title 12, Subchapter 9C, Section .0400 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission, are hereby adopted by reference and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c), to apply to actions of the commission with the exception of the Jail Instructor, Jail Schools and Training Courses.

Statutory Authority G.S. 17E-4.

.0802 ACCREDITATION: DELIVERY/JAILER TRAINING COURSE

(a) An institution or agency to be accredited to deliver a Jailer Training Course must submit a Form F-7 requesting school accreditation.

(b) School accreditation shall remain effective until surrendered, suspended, or revoked.

(c) The commission may suspend or revoke the accreditation of a school when it finds

that the school has failed to meet or to continuously maintain any requirement, standard or procedure for school accreditation as required by Rule .0703(c).

Statutory Authority G.S. 17E-4.

.0803 REPORTS OF JAILER TRAINING COURSE PRESENTATION AND COMPLETION

Each presentation of the Jailer Training Course shall be reported to the commission as follows:

- (1) After acquiring accreditation for the course and before commencing each delivery of the course, the school director shall notify the commission of the school's intent to offer the training course by submitting a Pre-Delivery Report of Training Course Presentation (Form F-7A); and
- (2) Upon completing delivery of the accredited course, and not more than ten days after receiving from the commission's representative the Report of Examination Scores, the school director shall notify the commission regarding the progress and achievement of each enrolled trainee by submitting a Post-Delivery Report of Training Course Presentation (Form F-7B).

Statutory Authority G.S. 17E-4; 17E-7.

SECTION .0900 - MINIMUM STANDARDS FOR JUSTICE OFFICER INSTRUCTORS

.0901 CERTIFICATION OF INSTRUCTORS FOR BASIC LAW ENFORCEMENT TRAINING

The rules covering the certification of instructors, codified as Title 12, Subchapter 9B, Section .0300 of the North Carolina Administrative Code, and previously adopted by the North Carolina Criminal Justice Education And Training Standards Commission, are hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matters as authorized by G.S. 150B-14(c), to apply to actions of the North Carolina Sheriffs' Education And Training Standards Commission with the exception of instructors for the Jailer Certification Training Course.

Statutory Authority G.S. 17E-4.

.0902 CERTIFICATION: INSTRUCTORS FOR

JAILER TRAINING COURSE

(a) Any person participating in a commission-accredited jailer training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the commission as an instructor. A waiver may be granted by the director upon receipt of a written application to teach in a designated school.

(b) The commission shall certify jailer training course instructors under the following categories: General Jailer Instructor Certification; Professional Lecturer Certification; or Limited Lecturer Certification as outlined in Rules .0903, .0905 and .0907 of this Section.

Statutory Authority G.S. 17E-4.

.0903 GENERAL JAIL INSTRUCTOR CERTIFICATION

An applicant for General Jailer Instructor Certification shall meet the following requirements:

- (1) present documentary evidence demonstrating that the applicant:
 - (a) has attended and successfully completed the North Carolina Sheriffs' Education and Training Standards Commission-approved Jail Training Course; or holds a valid certification as a jailer or correctional officer or demonstrates prior experience as an instructor in the jail or correctional field;
 - (b) has at least two years of experience as a jailer, correctional officer or instructor in the field of jails or correction;
 - (c) holds General Instructor certification issued by the North Carolina Criminal Justice Education and Standards Commission.
- (2) Persons holding only General Jail Instructor Certification may teach any block of instruction in the commission-mandated course with the exception of those outlined in Rules .0905(c) and .0907(a)(1) through (6).

Statutory Authority G.S. 17E-4.

.0904 TERMS AND CONDITIONS OF GENERAL JAIL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a General Jail Instructor shall, for the first 12 months of certification, be in a probationary status. The General Jail Instructor Certification, proba-

tionary status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor will be awarded full General Jail Instructor Certification at the end of the probationary period if the instructor submits to the commission:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor satisfactorily taught a minimum of four hours in a commission-accredited jailer training course during his/her probationary year; or
- (2) a favorable written evaluation by a commission member or staff member based on an on-site classroom evaluation of the probationary instructor in a commission-accredited jailer training course. Such evaluation will be certified on a commission-approved Instructor Evaluation Form. In addition, instructors evaluated by a commission or staff member must also teach a minimum of four hours in a commission-accredited Jailer Training Course during his/her probationary year.

(c) General Jailer Instructor Certification is continuous so long as the instructor submits to the commission every two years:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor satisfactorily taught a minimum of four hours in a commission-accredited jailer training course during the previous two year period. The date General Instructor Certification is originally issued is the anniversary date from which each two year period is figured; or
- (2) a favorable written evaluation by a commission member or staff member based on a minimum four hour, on-site classroom observation of the instructor in a commission-accredited Jailer Training Course.

(d) If an instructor does not teach a minimum of four hours during each two year period following the awarding of his General Jailer Instructor Certification, his/her certification automatically expires, and the instructor must then apply for probationary instructor certification status and must meet all applicable requirements.

Statutory Authority G.S. 17E-4.

.0905 PROFESSIONAL LECTURER CERTIFICATION

(a) The commission may issue Professional Lecturer Certification to a person in a formally recognized profession, i.e., medicine, law, psychology, who by virtue of their formal academic degree(s) have developed special expertise.

(b) To be eligible for such certification an applicant shall present documentary evidence demonstrating that the applicant has:

- (1) graduated from an accredited law school, medical school or other school accredited for conferring degrees in formally recognized professions acceptable to the commission;
- (2) obtain the endorsement of a commission recognized school director who shall:
 - (A) recommend the applicant for certification as a professional lecturer; and
 - (B) describe the applicant's expected participation, topical areas, duties and responsibilities.

(c) Only licensed attorneys-at-law holding Professional Lecturer Certification may teach the following topics:

- (1) Civil Liability in the Jail;
- (2) Legal Rights and Responsibilities Within the Corrections Environment.

Statutory Authority G.S. 17E-4.

.0906 TERMS AND CONDITIONS OF PROFESSIONAL LECTURER CERT

Certification as a professional lecturer shall remain effective for 24 months from the date of issuance. The lecturer shall apply for recertification at or before the end of the 24 month period.

Statutory Authority G.S. 17E-4.

.0907 LIMITED LECTURER CERTIFICATION

(a) The commission may issue a Limited Lecturer Certification to an applicant who has developed specific or special skills by virtue of specific or special training. Only persons holding Limited Lecturer Certification in their area of expertise may teach the following topic areas:

- (1) CPR;
- (2) Controlling Disruptive People;
- (3) Handling Fire Emergencies: Chemistry and Evacuation;
- (4) Handling Fire Emergencies: Classification and Extinguishing;

- (5) Medical Care in the Jail;
- (6) Psychological Disorders: Psychotic and Neurotic Personality;
- (7) Transportation of Inmates;
- (8) Stress;
- (9) Written Communication.

(b) To be eligible for a Limited Lecturer Certificate for topic areas set forth in Rule .0907(a), the applicant must meet the qualifications as follows:

- (1) CPR: Certified Instructor with the American Red Cross or American Heart Association;
- (2) Controlling Disruptive People; a Specialized Defensive Tactics Instruction, certified with the North Carolina Criminal Justice Education and Training Standards Commission;
- (3) Handling Fire Emergencies; Chemistry and Evaluation; Certified Fire Instructor;
- (4) Handling Fire Emergencies; Classification and Extinguishing; Certified Fire Instructor;
- (5) Medical Care in a Jail: A Licensed Physician, A Family Nurse Practitioner, LPN, or RN;
- (6) Psychological Disorders; Psychotic and Neurotic Personality; a licensed Psychiatrist; Psychologist; RN, or person holding a degree in counseling or therapy;
- (7) Transportation of Inmates; A certified instructor with the North Carolina Criminal Justice Education and Training Standards Commission with a minimum of two years of related or relevant experience;
- (8) Stress; A certified instructor with the North Carolina Criminal Justice Education and Training Standards Commission with a minimum of two years of related or relevant experience;
- (9) Written Communication; a certified instructor with the North Carolina Criminal Justice Education and Training Standards Commission with a minimum of two years of related or relevant experience; or a person with a four year degree with a major in English.

Statutory Authority: G.S. 17E-4.

.0908 TERMS AND CONDITIONS OF A LIMITED LECTURER CERTIFICATION

(a) An applicant meeting the requirements for certification as a Limited Lecturer shall, for the first 12 months of certification,

be in a probationary status. The Limited Lecturer Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor will be eligible for full Limited Lecturer status at the end of the probationary period if the instructor, through application, submits to the commission:

- (1) a favorable recommendation from a school director accompanied by certification on a commission-approved Instructor Evaluation Form that the instructor taught at least four hours in each of the topics for which Limited Lecturer Certification, Probationary Status was granted. Such instruction must have occurred in a commission-accredited jailer training course during the probationary period. The results of the student evaluation must be considered by the school director when determining the recommendation; or
- (2) a favorable written evaluation by a commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a commission-accredited jailer training course. Such evaluation must be certified on a commission-approved Instructor Evaluation Form completed for each of the topics where the probationary instructor taught a minimum of four hours (three hours each for topics of stress and written communications) and for which Limited Lecturer Certification was granted.

(c) The term of certification as a Limited Lecturer is two years from the date the commission issues the certification. The certification may subsequently be renewed by the commission for two-year periods. The application for renewal shall contain, in addition to the requirements listed in Rule .0907(b), documentary evidence that the applicant has remained active in the instructional process during the previous two-year period. Such documentary evidence shall include, at a minimum, the following:

- (1) proof that the applicant has, within the two-year period preceding application for renewal, instructed at least four hours (three hours each for topics of Stress and Written Communications) in each of the topics for which Limited Lecturer Certification was granted in a commission-accredited jailer training course.

- (2) a favorable written recommendation from a school director that the applicant successfully taught at least four hours (three hours each for topics of Stress and Written Communications) in each of the topics for which Limited Lecturer Certification was granted within the two-year period of Limited Lecturer Certification.

(d) Upon application for recertification, such applicants shall be required to meet the minimum requirements of this Section.

(c) The use of guest participants in a delivery of the Jailer Training Course is permissible. However, such guest participants are subject to the direct on-site supervision of a commission-certified instructor and must be authorized by the school director. A guest participant shall only be used to complement the primary certified instructor of the topic area and shall in no way replace the primary instructor.

Statutory Authority G.S. 17E-4.

SECTION .1000 - PROFESSIONAL CERTIFICATE PROGRAM FOR DEPUTY SHERIFFS

.1001 PURPOSE

In order to recognize the level of competence of deputy sheriffs serving the sheriffs' departments of North Carolina, to foster increased interest in college education and professional law enforcement training programs and to attract highly qualified individuals into a law enforcement career, the North Carolina Sheriffs' Education and Training Standards Commission establishes the Deputy Sheriffs' Professional Certificate Program. This program is a method by which dedicated deputy sheriffs may receive local, state-wide and nation-wide recognition for education, professional training and on-the-job experience.

Statutory Authority G.S. 17E-4.

.1002 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the professional awards, a deputy sheriff shall first meet the following preliminary qualifications:

- (1) The deputy sheriff shall hold a valid General or Grandfather Certification. An officer serving under a probationary certification is not eligible for consideration.

- (2) The deputy sheriff shall be familiar with and subscribe to the Law Enforcement Code of Ethics.

- (3) The deputy sheriff shall be a full-time, sworn, paid member of a North Carolina Sheriff's Department, as certified in writing by the sheriff.

- (4) Full-time, paid employees of a North Carolina Sheriff's Department who have successfully completed a commission-accredited basic law enforcement training course and have previously held general law enforcement officer certification but are presently, by virtue of promotion or transfer, serving in non-sworn positions not subject to certification are eligible to participate in the professional certificate program. Eligibility for this exception requires continuous employment with the sheriff's department from the date of promotion or transfer from a sworn, certified position to the date of application for a professional certificate.

- (5) Only training and/or experience gained in an officer's area of expertise will be eligible for application to this program.

(b) Certificates are awarded based upon a formula which combines formal education, law enforcement training, and actual experience as a law enforcement officer. These professional certificates are appropriate for full-time, sworn deputy sheriffs. Points are computed in the following manner:

- (1) Each semester hour of college credit shall equal one point and each quarter hour shall equal two-thirds of a point;
- (2) Twenty classroom hours of commission-approved law enforcement training shall equal one point;
- (3) Only experience as a full-time, sworn, paid member of a law enforcement agency or equivalent experience shall be acceptable for consideration.

Statutory Authority G.S. 17E-4.

.1003 BASIC LAW ENFORCEMENT CERTIFICATE

In addition to the qualifications set forth in Rule .1002, an applicant for the Basic Law Enforcement Certificate shall have no less than one year of service, and shall have completed an accredited basic law enforcement training course or the equivalent as determined by the commission.

Statutory Authority G.S. 17E-4.

.1004 INTERMEDIATE LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate who completed a minimum 160-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 or who completed a minimum 240-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered between October 1, 1978 and continuing through September 30, 1984, shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience.

Educational Degrees		AA/AS	AB/BS		
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Years of Law Enforcement Experience	8	6	4	4	2
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Minimum Law Enforcement Training Points	-	-	-	15	14
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Minimum Total Education and Training Points	30	60	90	15	14
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(b) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate who completed a minimum 381-hour basic law enforcement training course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and continuing through July 1, 1988, shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement experience:

Educational Degrees		AA/AS	AB/BS		
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Years of Law Enforcement

Experience	8	6	4	4	2
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Minimum Law Enforcement Training Points	-	-	-	22	21
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Minimum Total Education and Training Points	37	67	97	22	21
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(c) In addition to the qualifications as set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate who completed a minimum 369-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and continuing through July 1, 1988 shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience.

Educational Degrees		AA/AS	AB/BS		
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Years of Law Enforcement Experience	8	6	4	4	2
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Minimum Law Enforcement Training Points	-	-	-	22	21
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Minimum Total Education and Training Points	37	67	97	22	21
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(d) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate who completed a minimum 425-hour basic law enforcement training course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning July 1, 1988 shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience.

Educational Degrees		AA/AS	AB/BS		
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Years of Law

Enforcement Experience	8	6	4	4	2
Minimum Law Enforcement Training Points	-	-	-	24	23
Minimum Total Education and Training Points	39	69	99	24	23

(e) In addition to the qualifications set forth in Rule .1002, applicants for the Intermediate Law Enforcement Certificate who completed a minimum 412-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1988 shall possess or be eligible to possess the Basic Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement training experience:

Educational Degrees	AA AS AB BS				
Years of Law Enforcement Experience	8	6	4	4	2
Minimum Law Enforcement Training Points	-	-	-	24	23
Minimum Total Education and Training Points	39	69	99	24	23

(f) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.

.1005 ADVANCED LAW ENFORCEMENT CERTIFICATE

(a) In addition to the qualifications set forth in Rule .1002, persons who completed a minimum 160-hour basic law enforcement

training course accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 or who completed a minimum 240-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered between October 1, 1978 and continuing through September 30, 1984 shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience:

Educational Degrees	AA/AS AB/BS			
Years of Law Enforcement Experience	12	9	9	6
Minimum Law Enforcement Training Points	-	-	24	18
Minimum Total Education and Training Points	60	90	24	18
GRAD./PRO.				
	4			
	14			
	14			

(b) In addition to the qualifications set forth in Rule .1002, persons who completed a minimum 381-hour basic law enforcement training course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and continuing through July 1, 1988 shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement experience.

Educational Degrees	AA/AS AB/BS			
Years of Law				

PROPOSED RULES

Enforcement Experience	12	9	9	6
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Minimum Law Enforcement Training Points	-	-	31	25
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Minimum Total Education and Training Points	67	97	31	25
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(c) In addition to the qualifications as set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate who completed a minimum 369-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and continuing through July 1, 1988 shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience.

Educational Degrees AA/AS AB/BS

Years of Law Enforcement Experience	12	9	9	6
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Minimum Law Enforcement Training Points	-	-	31	25
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Minimum Total Education and Training Points	67	97	31	25
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(d) In addition to the qualifications as set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate who completed a minimum 425-hour basic law enforcement training course accredited by the North Carolina Sheriffs' Education and Training Standards Commission under guidelines administered beginning July 1, 1988 shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degrees, law enforcement training points and years of law enforcement experience.

Educational Degrees AA/AS AB/BS

Years of Law Enforcement Experience	12	9	9	6
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Minimum Law Enforcement Training Points	-	-	33	27
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Minimum Total Education and Training Points	69	99	33	27
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(e) In addition to the qualifications set forth in Rule .1002, applicants for the Advanced Law Enforcement Certificate who completed a minimum 412-hour basic law enforcement training course accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning July 1, 1988 shall possess or be eligible to possess the Intermediate Law Enforcement Certificate and shall have acquired the following combination of educational points or degree, law enforcement training points and years of law enforcement experience.

Educational Degrees AA/AS AB/BS

Years of Law Enforcement Experience	12	9	9	6
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Minimum Law Enforcement Training Points	-	-	33	27
Minimum Total Education and Training Points	69	99	33	27
	GRAD. PRO.			
	4			
	23			
	33			

(f) Educational points claimed shall have been earned at a technical institute, technical college, community college, junior college, college or university accredited as such by the Department of Education of the state in which the institution is located, the appropriate recognized accrediting body or the state university of the state in which the institution is located.

Statutory Authority G.S. 17E-4.

.1106 HOW TO APPLY

(a) All applicants for an award of the basic, intermediate or advanced certificates shall complete an "Application: Professional Certificate Service Award", (F-6).

(b) Documentation of education and training shall be provided by copies of transcripts, diplomas, Report of Training Course Completion, agency training records, or other verifying documents attached to the application.

(c) Documentation of "full-time, paid employment" shall be provided by a certified letter from the department's personnel payroll division verifying such employment.

(d) The applicant shall submit the "Application: Professional Certificate Service Award", (F-6) to his sheriff who shall attach his recommendation and forward the application to the commission. Certificates will be issued to the sheriff for award to the applicant.

Statutory Authority G.S. 17E-4.

SECTION .1100 - JUSTICE OFFICERS' SERVICE AWARD PROGRAM

.1101 PURPOSE

In order to recognize Justice Officers' loyal and competent service to a particular

sheriff's department, and also to the State of North Carolina, the commission establishes the Justice Officers' Service Award Program. This program is a method by which dedicated officers may receive local, state-wide and nation-wide recognition for their loyal and competent law enforcement service.

Statutory Authority G.S. 17E-4.

.1102 GENERAL PROVISIONS

(a) In order to be eligible for one or more of the service awards, a Justice Officer shall first meet the following preliminary qualifications:

- (1) Justice officer shall hold a valid general or grandfather certification. An officer serving under a probationary certification is not eligible for consideration.
- (2) The justice officer shall be familiar with and subscribe to the Law Enforcement Code of Ethics.
- (3) The justice officer shall be a full-time certified, paid member of a North Carolina Sheriff's Department, as certified in writing by the sheriff.
- (4) Also, full-time, paid employees of a North Carolina Sheriff's Department who have previously held certification, but are presently, by virtue of promotion or transfer, serving in positions not subject to certification are eligible to participate in the service award program. Eligibility for this exception requires continuous employment with a sheriff's department from the date of promotion or transfer from a certified position to the date of application for a service award.

(b) Only experience as a full-time, certified, paid member of a law enforcement agency or experience as an elected or appointed sheriff shall be acceptable for consideration.

Statutory Authority G.S. 17E-4.

.1103 INTERMEDIATE SERVICE AWARD

In addition to the qualifications set forth in Rule .1102 an applicant must have served a minimum of 15 years as a full-time, certified justice officer.

Statutory Authority G.S. 17E-4.

.1104 ADVANCED SERVICE AWARD

In addition to the qualifications set forth in Rule .1102 an applicant must have served a

minimum of 20 years as a full-time, certified justice officer.

Statutory Authority G.S. 17E-4.

.1105 HOW TO APPLY

(a) All applicants for either the Intermediate Service Award or the Advanced Service Award shall complete an "Application: Professional Certificate/Service Award," (F-6).

(b) Documentation of the applicant's length of service shall be provided by certified copies of past Oaths of Office, by certified letters of verification of full-time employment from present and/or former employers (law enforcement agencies), or other verifying documents attached to the application.

(c) The applicant shall submit the application to his sheriff who shall attach his recommendation and forward the application to the division. The Service Award will be issued to the sheriff for presentation to the applicant.

Statutory Authority G.S. 17E-4.

**SECTION .1200 - SECTION .1900 RESERVED
FOR FUTURE CODIFICATION**

**SECTION .2000 - IN-SERVICE TRAINING
FOR OFFICERS**

**.2001 IN-SERVICE FIREARMS
REQUALIFICATION FOR DEPUTY
SHERIFFS**

(a) The commission shall require all deputy sheriffs authorized to carry a firearm, to qualify with their duty weapon a minimum of once each year on a commission-approved day and night course using service ammunition.

(b) Sworn personnel who are issued or who have access to a shotgun shall be required to qualify once each year on a commission-approved shotgun day and night course using service ammunition.

(c) Sworn personnel who carry off-duty weapons will be required to qualify with their off-duty weapons a minimum of once each year on a commission-approved day and night course with each weapon the officer carries off-duty using service ammunition.

Statutory Authority G.S. 17E-4; 17E-7.

**.2002 MINIMUM REQUIREMENTS FOR
IN-SERVICE FIREARMS
REQUALIFICATION**

(a) In order to qualify for commission approval the in-service firearms requalification program shall include at a minimum the man-

dated course of fire as specified by the North Carolina Sheriffs' Education and Training Standards Commission and:

(b) Topical areas to be included but not limited to are:

- (1) Operation and Maintenance of Handgun;
- (2) Basic Marksmanship;
- (3) Range Safety;
- (4) A minimum of one hour of formal instruction on Departmental Rules, Regulations and Use of Force.

(c) The commission recommends that students be tested on the departmental rules and use of force.

(d) The Specialized Firearms Instructor notebook published by the North Carolina Justice Academy is hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c), as the approved source for the above mandated topical areas.

(e) Any course of fire proposed to be used by the sheriff's department must be submitted to the commission for approval and certification that it is in compliance with this Rule .2002.

Statutory Authority G.S. 17E-4; 17E-7.

**.2003 TERMS AND CONDITIONS OF
IN-SERVICE FIREARMS
REQUALIFICATION**

(a) The commission shall require each sworn officer authorized to carry a weapon to obtain a qualification score of 70 percent accuracy twice in three attempts with weapons as set forth in Rule .2001. If the student qualifies in the first two attempts, it is not necessary to qualify the third time.

(b) Students who do not qualify pursuant to Rule .2003(a) must immediately surrender their weapons to the sheriff and shall have 30 days in which to obtain the qualification score required by Rule .2003.

(c) Failure to qualify within the 30 day time period allowed in Rule .2003(b) will result in the suspension of the officer's certification by the commission, unless or until documentary evidence is received by the commission from the employing agency verifying that the officer has complied with requirements pursuant to Rules .2001 and .2003.

Statutory Authority G.S. 17E-4; 17E-7.

.2004 ADMINISTRATION OF IN-SERVICE

FIREARMS REQUALIFICATION

(a) Only Specialized Firearms Instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission may teach in the In-Service Firearms Requalification Program.

(b) All documentation of individual students' performance and course data are to be recorded on the "BLET Firearms Qualification Record" form 10:07B in the "Specialized Firearms Instructor Notebook", published by the North Carolina Justice Academy which is hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c).

(c) The "BLET Firearms Qualification Record" is to be completed on each student by the Specialized Firearms Instructor and forwarded to the sheriff. If a student fails to qualify, the sheriff is to be notified, and it will be the sheriff's duty to have the officer surrender his/her weapon pursuant to Rule .2003 and to notify the commission in writing within five days of the deputy's failure to qualify.

(d) A copy of the "BLET Firearms Qualification Record" shall be placed in each officer's personnel file. Such files shall be available for examination at any reasonable time by representatives of the commission for the purpose of verifying compliance with these Rules.

Statutory Authority G.S. 17E-4; 17E-7.

TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-12 that the Alcohol Law Enforcement Division intends to amend the regulation cited as 14A NCAC 8B .0101.

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

The public hearing will be conducted at 10:00 a.m. on February 15, 1988 at The Library, Archdale Building, Raleigh, NC.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in written or oral form. Written statements not presented at the public hearing may be directed prior to February 15, 1988 to the Administrative Procedures Coordinator, Second Floor, Archdale

Building, 512 N. Salisbury Street, Raleigh or P.O. Box 27687, Raleigh, NC 27611-7687.

CHAPTER 8 - ALCOHOL LAW ENFORCEMENT

SUBCHAPTER 8B - PERSONNEL REGULATIONS

SECTION .0100 - EMPLOYMENT REGULATIONS

.0101 ALE MANUAL ADOPTION BY REFERENCE

(a) The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety adopts by reference the portions of the ALE Manual, Personnel Regulations 8B .0100-.0400, effective ~~May 1, 1987~~ May 1, 1988.

(b) Copies of the manual may be inspected in the Office of Administrative Hearings, Raleigh, North Carolina or the ALE Division Office, Ground Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Statutory Authority G.S. 18B-500; 143B-10; 150B-11; 150B-14.

Notice is hereby given in accordance with G.S. 150B-12 that the Highway Patrol Division intends to amend regulations cited as 14A NCAC 9B .0101; 14A NCAC 9H .0701 and repeal 14A NCAC 9H .0702.

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

The public hearing will be conducted at 10:30 a.m. on February 15, 1988 at The Library, 2nd Floor, Archdale Building, Raleigh, NC.

Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in written or oral form. Written statements not presented at the public hearing may be directed prior to February 15, 1988 to the Administrative Procedures Coordinator, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh or P.O. Box 27687, Raleigh, NC 27611-7687.

CHAPTER 9 - STATE HIGHWAY PATROL

SUBCHAPTER 9B - PERSONNEL REGULATIONS

SECTION .0100 - EMPLOYMENT
REGULATIONS

.0101 HIGHWAY PATROL MANUAL
ADOPTION BY REFERENCE

(a) The State Highway Patrol Division of the Department of Crime Control and Public Safety adopts by reference the portions of the Highway Patrol Manual, Personnel Regulations 9B .0100-.0400, effective ~~October 1, 1987~~ May 1, 1988.

(b) Copies of the Manual may be inspected in the Office of Administrative Hearings, Raleigh, North Carolina or the Highway Patrol Headquarters, First Floor Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 126-16; 143B-10; 150B-11; 150B-14.

SUBCHAPTER 911 - ENFORCEMENT
REGULATIONS

SECTION .0700 - USE OF PHYSICAL FORCE:
FIREARMS

.0701 USE OF FORCE

Members shall use physical force in arrest and custody situations in strict conformance with the United States Constitution and the Constitution and laws of North Carolina as stated in G.S. 15A-401. General Statute 15A-401(d)(1) provides: "(d) Use of Force in Arrest. (1) Subject to the provisions of subdivision (2) [see Regulation .0702 of this Section for the text of Subsection (2)], a law enforcement officer is justified in using force upon another person when and to the extent that he reasonably believes it necessary: (a) To prevent the escape from custody or to effect an arrest of a person who he reasonably believes has committed a criminal offense, unless he knows that the arrest is unauthorized; or (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape."

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-401.

.0702 LIMITATIONS ON THE USE OF DEADLY
PHYSICAL FORCE (REPEALED)

Statutory Authority G.S. 20-184; 20-185; 20-187; 20-188; 15A-401.

TITLE 15 - NATURAL RESOURCES AND
COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management (Environmental Management Commission) intends to amend the regulation cited as 15 NCAC 2B .0309.

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

The public hearing will be conducted at 7:30 p.m. on February 25, 1988 at Dixon Auditorium, Elkin High School, 304 Elk Spur Street, Elkin, North Carolina 28621.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged.

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER
STANDARDS; MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM
CLASSIFICATIONS

.0309 YADKIN-PEE DEE RIVER BASIN

(c) The Yadkin-Pee Dee River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) February 12, 1979;
- (2) March 1, 1983;
- (3) August 1, 1985;
- (4) February 1, 1986;
- (5) July 1, 1988.

(d) The Schedule of Classifications and Water Quality Standards for the Yadkin-Pee Dee River Basin has been amended effective July 1, 1988 as follows:

- (1) Mitchell River [Index No. 12-62-(1)] from source to mouth of Christian Creek (North Fork Mitchell River) including all tributaries has been reclassified from Class B Tr to Class B Tr ORW.

- (2) Mitchell River [Index No. 12-62-(7)] from mouth of Christian Creek (North Fork Mitchell River) to Surry County SR 1315 including all tributaries has been reclassified from Class C Tr to C Tr ORW, except Christian Creek and Robertson Creek which will be reclassified from Class B Tr to Class B Tr ORW.
- (3) Mitchell River [Index No. 12-62-(12)] from Surry County SR 1315 to mouth of South Fork Mitchell River including all tributaries from Class C to Class C ORW.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management (Environmental Management Commission) intends to amend the regulation cited as 15 NCAC 2B .0315.

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

The public hearing will be conducted at 7:30 p.m. on February 17, 1988 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury St., Raleigh, North Carolina 27611.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged.

CILAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0315 NEUSE RIVER BASIN

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1988.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III and B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Environmental Management (Environmental Management Commission) intends to amend the regulation cited as 15 NCAC 2B .0316.

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

The public hearing will be conducted at 7:30 p.m. on February 24, 1988 at Commission's Auditorium, Pitt County Office Building, 1717 West 5th Street, Greenville, North Carolina 27834.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within 30 days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged.

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER
STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM
CLASSIFICATIONS

.0316 TAR-PAMLICO RIVER BASIN

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) July 1, 1988.

(d) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective July 1, 1988 as follows:

- (1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulations cited as 15 NCAC 2D .0101; .0103; .0302; .0304; .0403; .0501; .0524; .0525; .0528; .0529; .0530; .0531; .0532; .0604; .0606; .0608; .0913; .0916; .0939; .0940; 2H .0601; .0603; .0607; adopt regulations cited as 15 NCAC 2D .0104; .0409; and repeal the regulation cited as 15 NCAC 2D .0610.

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

The public hearing will be conducted at 2:00 p.m. on February 15, 1988 at Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. Persons desiring to comment on the

proposals are requested to give written notice thereof on or before the hearing date. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The record of proceedings will remain open for 30 days following the hearing to receive additional written statements. To be included, the statement must be received by the department within 30 days.

Additional information concerning the hearing or the proposals may be obtained by contacting:

*Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 27687
Raleigh, North Carolina 27611-7687
(919) 733-3340*

CHAPTER 2 - ENVIRONMENTAL
MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION
CONTROL REQUIREMENTS

SECTION .0100 - DEFINITIONS AND
REFERENCES

.0101 DEFINITIONS

- (18) "Total Suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne can be quantitatively expressed in micrograms per cubic meter, as measured by methods specified in this Subchapter.
- (25) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by methods specified in this Subchapter.
- (26) "Air pollutant" means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any other air contaminant.
- (27) "Construction" means any physical change, including fabrication, erection, installation, or demolition, of a facility, source, or air pollution control equipment.
- (28) "Facility" means all of the pollutant emitting activities that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control.
- (29) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.

(30) "Permitted" means any source subject to a permit under this Subchapter or Section 15 NCAC 211 .0600.

(31) "Source" means any stationary article, machine, process equipment, or other contrivance or any tank-truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.

Statutory Authority G.S. 143-215.3 (a) (1); 143-213.

.0103 COPIES OF REFERENCED FEDERAL REGULATIONS

(a) Copies of applicable Code of Federal Regulations sections referred to in this Subchapter are available for public inspection at Department of Natural Resources and Community Development regional offices. They are:

- (6) Washington Regional Office, 4502 North Market Street, Post Office Box 1507, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;

Statutory Authority G.S. 150B-14.

.0104 ADOPTION BY REFERENCE UPDATES

The Code of Federal Regulations adopted by reference in this Subchapter shall automatically include any later amendments thereto as allowed by G.S. 150B-14(c). However, new types of sources in 40 CFR Part 60 and 61 for which new source performance standards or national emission standards for hazardous air pollutants have been promulgated by EPA are not automatically included in these Regulations. These new types of sources shall be adopted as part of Regulation .0524 or .0525 of this Section using rule making procedures.

Statutory Authority G.S. 150B-14.

SECTION .0300 - AIR POLLUTION EMERGENCIES

.0302 EPISODE CRITERIA

Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the director determines that the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a threat to the health of the public. In making this determination, the director shall be guided by the following criteria:

- (2) Alert. The alert level is that concentration of pollutants at which first stage control actions are to begin. The director shall proclaim an alert when any of the following levels is reached at any monitoring site:

(g) PM10--350 ug/m³; 24-hour average; and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

- (3) Warning. The warning level indicates that air quality is continuing to degrade and that additional abatement actions are necessary. The director shall proclaim a warning when any one of the following levels is reached at any monitoring site:

(g) PM10--420 ug/m³; 24-hour average; and meteorological conditions are such that pollutant concentrations can be expected to remain at these levels for 12 or more hours or increase or, in the case of ozone, the situation is likely to reoccur within the next 24 hours unless control actions are taken.

- (4) Emergency. The emergency level indicates that air quality is continuing to degrade to a level that should never be reached and that the most stringent control actions are necessary. The Secretary of the Department of Natural Resources and Community Development with the concurrence of the Governor shall declare an emergency when any one of the following levels is reached at any monitoring site:

(f) nitrogen dioxide -- 3000 ug/m³ (1.6 p.p.m.), one-hour average; 750 ug/m³ (0.4 p.p.m.), 24-hour average;

(g) PM10--500 ug/m³; 24-hour average.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.3 (a) (11).

.0304 PREPLANNED ABATEMENT PROGRAM

(a) Any person who is responsible for the operation of a source of air pollution that is described in Regulations .0305, .0306, or .0307 of this Section, or that emits 100 tons per year or more of any one pollutant shall prepare a plan to reduce the emissions of air pollutants into the outdoor atmosphere during periods of an air pollution episode. The plan shall be consistent with good industrial practices and safe operating procedures. ~~The plan shall be~~

submitted by April 20, 1972, to the commission for review and approval.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.3 (a) (11).

SECTION .0400 - AMBIENT AIR QUALITY STANDARDS

.0403 TOTAL SUSPENDED PARTICULATES

(a) The ambient air quality standards for total suspended particulate matter are:

- (1) 75 micrograms per cubic meter annual geometric mean,
- (2) 150 micrograms per cubic meter maximum 24-hour concentration not to be exceeded more than once per year.

(b) Sampling and analysis shall be in accordance with procedures in Appendix B of 40 C.F.R Part 50 or equivalent methods established under 40 CFR Part 53.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3).

.0409 PARTICULATE MATTER

(a) The ambient air quality standards for particulate matter are:

- (1) 150 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), 24-hour average concentration; and
- (2) 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), annual arithmetic mean.

These standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu\text{g}/\text{m}^3$ is equal to or less than one or when the expected annual arithmetic mean concentration is less than or equal to 50 $\mu\text{g}/\text{m}^3$, as determined in accordance with Appendix K of 40 CFR Part 50.

(b) For the purpose of determining attainment of the standards in Paragraph (a) of this Regulation, particulate matter shall be measured as PM10 (particles with an aerodynamic diameter less than or equal to a nominal ten micrometers) by:

- (1) a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53; or
- (2) an equivalent method designated in accordance with 40 CFR Part 53.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3).

SECTION .0500 - EMISSION CONTROL STANDARDS

.0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in Regulations .0524, .0525, and .0604 of this Subchapter:

(16) Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

(A) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.

(B) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.

Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{avg} = E_S \frac{S(A + B)}{A R} + E_N \left(\frac{R}{R} - \frac{S}{A R} \right)$$

E_{avg} equals the average emission rate in pounds per million Btu for daily operating time. E_S equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing. E_N equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing. A equals hours of soot blowing during sample(s). B equals hours without soot blowing during sample(s) containing soot blowing. R equals average hours of operation per 24 hours. S equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the director or his designee may approve an alternate method of prorating.

(17) Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.

(18) Upon prior approval by the director or his delegate, test procedures different from those described in this Regulation may be used. Furthermore, the director or his delegate has the option to prescribe alternate test procedures on an

individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the director or his delegate has the authority to prescribe or approve methods on an individual basis.

(g) ~~The version of the methods referred to in Paragraph (c) of this Regulation is that which appeared in the Code of Federal Regulations as of November 4, 1986.~~

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (5); 143-215.68.

.0524 NEW SOURCE PERFORMANCE STANDARDS

(a) Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

- (1) fossil fuel-fired steam generators (40 CFR 60.1 to 60.49, Subpart D);
- (2) incinerators (40 CFR 60.1 to 60.39 and 60.50 to 60.59, Subpart E);
- (3) portland cement plants (40 CFR 60.1 to 60.39 and 60.60 to 60.69, Subpart F);
- (4) nitric acid plants (40 CFR 60.1 to 60.39 and 60.70 to 60.79, Subpart G);
- (5) sulfuric acid plants (40 CFR 60.1 to 60.39 and 60.80 to 60.89, Subpart H);
- (6) asphalt concrete plants (40 CFR 60.1 to 60.39 and 60.90 to 60.99, Subpart I);
- (7) petroleum refineries (40 CFR 60.1 to 60.39 and 60.100 to 60.109, Subpart J);
- (8) storage vessels for petroleum liquids (40 CFR 60.1 to 60.39 and 60.110 to 60.119, Subpart K);
- (9) secondary lead smelters (40 CFR 60.1 to 60.39 and 60.120 to 60.129);
- (10) secondary brass and bronze ingot production plants (40 CFR 60.1 to 60.39 and 60.130 to 60.139, Subpart M);
- (11) iron and steel plants (40 CFR 60.1 to 60.39 and 60.140 to 60.149, Subpart N);

- (12) sewage treatment plants (40 CFR 60.1 to 60.39 and 60.150 to 60.159, Subpart O);
- (13) phosphate fertilizer industry: wet process phosphoric acid plants (40 CFR 60.1 to 60.39 and 60.200 to 60.209, Subpart T);
- (14) phosphate fertilizer industry: superphosphoric acid plants (40 CFR 60.1 to 60.39 and 60.210 to 60.219, Subpart U);
- (15) phosphate fertilizer industry: diammonium phosphate plants (40 CFR 60.1 to 60.39 and 60.220 to 60.229, Subpart V);
- (16) phosphate fertilizer industry: triple superphosphate plants (40 CFR 60.1 to 60.39 and 60.230 to 60.239, Subpart W);
- (17) phosphate fertilizer industry: granular triple superphosphate storage facilities (40 CFR 60.1 to 60.39 and 60.240 to 60.249, Subpart X);
- (18) steel industry: electric arc furnaces (40 CFR 60.1 to 60.39 and 60.270 to 60.279, Subpart AA);
- (19) coal preparation plants (40 CFR 60.1 to 60.39 and 60.250 to 60.259, Subpart Y);
- (20) primary copper smelters (40 CFR 60.1 to 60.39 and 60.160 to 60.169, Subpart P);
- (21) primary zinc smelters (40 CFR 60.1 to 60.39 and 60.170 to 60.179, Subpart Q);
- (22) primary lead smelters (40 CFR 60.1 to 60.39 and 60.180 to 60.189, Subpart R);
- (23) primary aluminum reduction plants (40 CFR 60.1 to 60.39 and 60.190 to 60.199, Subpart S);
- (24) ferroalloy production facilities (40 CFR 60.1 to 60.39 and 60.260 to 60.269, Subpart Z);
- (25) kraft pulp mills (40 CFR 60.1 to 60.39 and 60.280 to 60.289, Subpart BB);
- (26) grain elevators (40 CFR 60.1 to 60.39 and 60.300 to 60.309, Subpart DD);
- (27) lime manufacturing plants (40 CFR 60.1 to 60.39 and 60.340 to 60.349, Subpart IIII);
- (28) stationary gas turbines (40 CFR 60.1 to 60.39 and 60.330 to 60.339, Subpart GG);
- (29) electric utility steam generating units (40 CFR 60.1 to 60.39 and 40 CFR 60.40a to 60.49a, Subpart Da);

- (30) storage vessels for petroleum liquids, post May 18, 1978 (40 CFR 60.1 to 60.39 and 40 CFR 60.110a to 60.119a, Subpart Ka);
 - (31) glass manufacturing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.290 to 60.299, Subpart CC);
 - (32) lead-acid battery manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.370 to 60.379, Subpart KK);
 - (33) automobile and light duty truck surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.390 to 60.399, Subpart MM);
 - (34) phosphate rock plants (40 CFR 60.1 to 60.39 and 40 CFR 60.400 to 60.499, Subpart NN);
 - (35) ammonium sulfate manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.420 to 60.429, Subpart PP);
 - (36) surface coating of metal furniture (40 CFR 60.1 to 60.39 and 40 CFR 60.310 to 60.319, Subpart EE);
 - (37) graphic arts industry: publication rotogravure printing (40 CFR 60.1 to 60.39 and 40 CFR 60.430 to 60.439, Subpart QQ);
 - (38) industrial surface coating: large appliances (40 CFR 60.1 to 60.39 and 40 CFR 60.450 to 60.459, Subpart SS);
 - (39) metal coil surface coating (40 CFR 60.1 to 60.39 and 40 CFR 60.460 to 60.469, Subpart TT);
 - (40) beverage can surface coating industry (40 CFR 60.1 to 60.39 and 40 CFR 60.490 to 60.499, Subpart WW);
 - (41) asphalt processing and asphalt roofing manufacture (40 CFR 60.1 to 60.39 and 40 CFR 60.470 to 60.479, Subpart UU);
 - (42) bulk gasoline terminals (40 CFR 60.1 to 60.39 and 40 CFR 60.500 to 60.509, Subpart XX);
 - (43) metallic mineral processing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.380 to 60.389, Subpart LL);
 - (44) pressure sensitive tape and label surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.440 to 60.449, Subpart RR);
 - (45) equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.480 to 60.489, Subpart VV);
 - (46) equipment leaks of VOC in petroleum refineries (40 CFR 60.1 to 60.39 and 40 CFR 60.590 to 60.599, Subpart GG);
 - (47) synthetic fiber production facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.600 to 60.609, Subpart IIIH);
 - (48) flexible vinyl and urethane coating and printing (40 CFR 60.1 to 60.39 and 40 CFR 60.580 to 60.589, Subpart FFF);
 - (49) petroleum dry cleaners (40 CFR 60.1 to 60.39 and 60.620 to 60.629, Subpart JJ);
 - (50) onshore natural gas processing plants: equipment leaks of volatile organic compounds (40 CFR 60.1 to 60.39 and 60.630 to 60.639, Subpart KKK);
 - (51) wool fiberglass insulation manufacturing (40 CFR 60.1 to 60.39 and 60.680 to 60.689, Subpart PPP);
 - (52) nonmetallic mineral processing plants (40 CFR 60.1 to 60.39 and 60.670 to 60.679, Subpart OOO);
 - (53) steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983 (40 CFR 60.1 to 60.39 and 60.270a to 60.279a, Subpart AAa);
 - (54) onshore natural gas processing: SO₂ emissions (40 CFR 60.1 to 60.39 and 60.640 to 60.649, Subpart LLL);
 - (55) basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983: (40 CFR 60.1 to 60.39 and 60.140a to 60.149a, Subpart Na);
 - (56) industrial-commercial-institutional steam generating units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b, Subpart Db);
 - (57) volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110b to 60.119b, Subpart Kb);
 - (58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB).
- (e) ~~The version of the new source performance standard listed in Paragraph (a) of this Regulation is that which appeared in the Code of Federal Regulations as of February 14, 1987.~~

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0525 NATIONAL EMISSION STANDARDS
FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable regulation in this Section or Section .0900 of this Subchapter which would be in conflict therewith:

- (1) asbestos (40 CFR 61.140 to 61.156, Subpart M),
- (2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C),
- (3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D),
- (4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E),
- (5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F),
- (6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J),
- (7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V),
- (8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N),
- (9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O),
- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.189, Subpart P),

(e) The version of the national emission standards for hazardous air pollutants in Paragraph (a) of this Regulation is that which appeared in the Code of Federal Regulations as of November 1, 1986.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0528 TOTAL REDUCED SULFUR FROM KRAFT PULP MILLS

(c) Emissions of total reduced sulfur from any kraft pulp mill subject to this Regulation shall not exceed:

- (8) 0.032 pounds per ton of black liquid liquor solids (dry weight) from any smelt dissolving tank.

(f) The owner or operator of any source of total reduced sulfur subject to this Regulation proposing to install and operate total reduced sulfur emission control equipment and/or to replace process equipment to comply with this Regulation shall adhere to the increments of progress contained in the following schedules:

(1) For Recovery Furnaces

- (A) Final plans for the emission control system and/or process equipment shall be submitted before June 1, 1982.
- (B) Contracts for the emission control system and/or process equipment shall be awarded or orders shall be issued for purchase of component parts to accomplish emission control before June 1, 1982.
- (C) Initiation of on-site construction or installation of the emission control and/or process equipment shall begin before December 1, 1983.
- (D) On-site construction or installation of the emission control and/or process equipment shall be completed before June 1, 1985.
- (E) Final compliance shall be achieved before December 1, 1985.

(2) For Digester Systems, Multiple-Effect Evaporator Systems, Condensate Stripping Systems, and Smelt Dissolving Tanks

- (A) Final plans for the emission control system and/or process equipment shall be submitted before December 1, 1980.
- (B) Contracts for the emission control system and/or process equipment shall be awarded or orders shall be issued for purchase of component parts to accomplish emission control before June 1, 1981.
- (C) Initiation of on-site construction or installation of the emission control and/or process equipment shall begin before October 1, 1981.
- (D) On-site construction or installation of the emission control and/or process equipment shall be completed before June 1, 1982.
- (E) Final compliance shall be achieved before September 1, 1982.

(3) For Lime Kilns

- (A) Final plans for the emission control system and/or process equipment shall be submitted before December 1, 1981.

(B) Contracts for the emission control system and/or process equipment shall be awarded or orders shall be issued for purchase of component parts to accomplish emission control before June 1, 1982.

(C) Initiation of on-site construction or installation of the emission control and/or process equipment shall be completed before December 1, 1982.

(D) On-site construction or installation of the emission control and/or process equipment shall be completed before December 1, 1983.

(E) Final compliance shall be achieved before April 1, 1984.

The owner or operator shall certify to the director within five days after the deadline for each increment of progress whether the required increment of progress has been met.

(g) If the owner or operator of any source of total reduced sulfur subject to this Regulation determines that one or more of the schedules given in Paragraph (f) of this Regulation is infeasible, he may submit to the director an alternate compliance schedule. The director shall accept and promulgate such alternate compliance schedule, if:

(1) For Recovery Furnaces

(A) The alternate compliance schedules are submitted before June 1, 1982.

(B) The alternate compliance schedules contain the same increments of progress as the schedule given in Subparagraph (f)(1) of this Regulation.

(C) The alternate compliance schedules provide for final compliance by June 1, 1986.

(2) For Digester Systems, Multiple Effect Evaporator Systems, Condensate Stripping Systems, and Smelt Dissolving Tanks

(A) The alternate compliance schedules are submitted before December 1, 1980.

(B) The alternate compliance schedules contain the same increments of progress as the schedule given in Subparagraph (f)(2) of this Regulation.

(C) The alternate compliance schedules provide for final compliance by December 1, 1982.

(3) For Lime Kilns

(A) The alternate compliance schedules are submitted before December 1, 1981.

(B) The alternate compliance schedules contain the same increments of progress as the schedule given in Subparagraph (f)(3) of this Regulation.

(C) The alternate compliance schedules provide for final compliance by September 1, 1984.

The owner or operator shall certify to the director within five days after the deadline for each increment of progress whether the required increment of progress has been met. Any schedule approved under this Paragraph may be revoked if the source does not meet the increment of progress stipulated in its alternate compliance schedule.

(h) The owner or operator of sources of total reduced sulfur subject to this Regulation may submit to the director a set of alternate compliance schedules for sources covered by this Regulation. The sum of the emissions of total reduced sulfur from the sources covered by this Regulation shall be no more at any time under the alternate compliance schedule than the sum of the emissions allowed by Paragraph (f) or (g) of this Regulation. The director shall approve this set of alternate compliance schedules if this condition is met and if the alternate compliance schedules contain the same increment of progress as in Paragraph (f) of this Regulation with alternate dates. The owner or operator shall certify to the director within five days after the deadline for each increment of progress whether the required increment of progress has been met. Any schedule approved under this Paragraph may be revoked if the source does not meet the increment of progress stipulated in its alternate compliance schedule.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0529 FLUORIDE EMISSIONS FROM PRIMARY ALUMINUM REDUCTION PLANTS

(a) For the purpose of this Regulation, the following definitions apply:

(1) "Fluoride" means elemental fluorine and all fluoride compounds as measured by the methods specified in Regulation .0501(d) (89) of this Section or by equivalent or alternative methods approved by the director or his delegate.

(e) The owner or operator of any primary aluminum reduction plant subject to this Regulation proposing to install and operate control equipment and/or to replace process equipment to comply with this Regulation shall adhere to the increments of progress contained in the following schedule:

(1) The final plans for the emission control system and/or process equipment and

a compliance schedule shall be submitted before February 1, 1982;

(2) The compliance schedule shall contain the following increments of progress:

(A) a date by which contracts for the emission control system and/or process equipment shall be awarded or orders shall be issued for purchase of component parts;

(B) a date by which on-site construction or installation of the emission control and/or process equipment shall begin;

(C) a date by which on-site construction or installation of the emission control and/or process equipment shall be completed;

(3) Final compliance shall be achieved by June 1, 1983; and

(4) If the director requires a test to demonstrate that compliance has been achieved, the test shall be conducted and final test report submitted within six months after the stated date of final compliance.

The owner or operator shall certify to the director within five days after the deadline for each increment of progress whether the required increment of progress has been met.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Regulation is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166. 40 CFR 51.166 and other referenced Code of Federal Regulations as used in this Regulation refer to those federal regulations in effect on March 1, 1987.

(g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and by extension in 40 CFR 51.166(j) through (o). The transition provisions allowed by 40 CFR 51.166(c) (10) are hereby adopted under this Regulation. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Regulation, except as otherwise provided in this Regulation. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Regulation. Whenever

the portions of 40 CFR 51.166 referenced in this Paragraph provide that the state plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Regulation. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the director as specified in 40 CFR 51.166(n)(2).

(h) Paragraphs (b a) and (eb) of Regulation 15 NCAC 2H .0601 are not applicable to any source to which this Regulation applies. Sources to which this Regulation applies shall apply for a permit, as required in Paragraph (a) of Regulation 15 NCAC 2H .0601.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (3); 143-215.107 (a) (5); 143-215.107 (a) (7); 143-215.108 (b).

.0531 SOURCES IN NONATTAINMENT AREAS

(d) Paragraphs (b a) and (eb) of Regulation 15 NCAC 2H .0601 are not applicable to any source to which this Regulation applies. The source must apply for a permit, as required in Paragraph (a) of Regulation 15 NCAC 2H .0601.

(j) The version of the referenced Code of Federal Regulations in this Regulation is that as of March 1, 1987.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (5); 143-215.108 (b).

.0532 SOURCES CONTRIBUTING TO AN AMBIENT VIOLATION

(c) The Regulation is not applicable to:

(5) a new or modified source whose impact will increase not more than:

(G) 0.5 mg/m³ of carbon monoxide on an 8-hour basis, or

(I) 1.0 ug/m³ of PM10 on an annual basis, or

(J) 5 ug/m³ of PM10 on a 24-hour basis, at any locality that does not meet a national ambient air quality standard.

(d) Paragraphs (b a) and (eb) of Regulation 15 NCAC 2H .0601 are not applicable to any source to which this Regulation applies. These The sources shall apply for a permit, as required in Paragraph (a) of Regulation 15 NCAC 2H .0601.

(g) The version of the referenced Code of Federal Regulations in this Regulation is that as of March 1, 1987.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (5); 143-215.108 (b).

**SECTION .0600 - AIR POLLUTANTS:
MONITORING: REPORTING**

**.0604 SOURCES COVERED BY
IMPLEMENTATION PLAN
REQUIREMENTS**

(b) A source which has purchased an emission monitoring system prior to September 11, 1974, is exempt from having to meet the test procedures described in 40 CFR Part 60 Appendix B until April 18, 1982, if the system was approved under the then regulation number 8 which was recodified as Section .0600 of Subchapter 2D of Title 15 of the North Carolina Administrative Code, effective February 1, 1976. A monitoring scheme which uses significant manual operations, for example, a periodic grab sampling and analysis scheme, is not considered to be an emission monitoring system as described in this Paragraph.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68.

**.0606 OTHER COAL OR RESIDUAL OIL
BURNERS**

(a) The owner or operator of any fuel burning unit shall determine sulfur dioxide emissions into the ambient air if the unit:

(4) is required to be monitored based on its annual average capacity factor as determined from the three most recent calendar year reports to the Federal Power Commission or as otherwise demonstrated to the director by the owner or operator, as follows:

(E) Once the unit is not being monitored in accordance with Subparagraphs (a)(4)(B), (eC), or (D) of this Regulation, it need not be monitored until its most recent three-calendar-year average capacity factor exceeds 35 percent.

If units required to be monitored have a common exhaust or if units required to be monitored have a common exhaust with units not required to be monitored, then the common exhaust may be monitored, and the emissions need not be apportioned among the units with the common exhaust.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68.

.0608 PROGRAM SCHEDULE

(b) All persons required to report emissions by Regulation .0605 or .0606 of this Section shall by October 16, 1976, (November 1, 1973, for affected facilities which were required to be monitored under the then regulation number 8 which was recodified as Section .0600 of Subchapter 2D of Title 15 of the North Carolina Administrative Code, effective February 1, 1976) submit to the division of environmental management for review and approval a program for complying with such requirements. The program shall include a statement concerning:

- (1) the qualifications of the personnel who will be doing the sampling and sample analysis,
- (2) the date by which the first report will be submitted, and
- (3) a description of the procedures and equipment for sampling and sample analysis.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68.

.0610 DELEGATION (REPEALED)

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.3 (a) (4).

**SECTION .0900 - VOLATILE ORGANIC
COMPOUNDS**

**.0913 DETERMINATION OF VOLATILE
CONTENT OF SURFACE COATINGS**

(e) The version of the test methods referred to in this Regulation is that which appeared in the Code of Federal Regulations as of May 20, 1984.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

**.0916 DETERMINATION: VOC EMISSIONS
FROM BULK GASOLINE TERMINALS**

(a) In accordance with Regulation .0912 of this Section, the emissions of volatile organic compounds from bulk gasoline terminals shall be determined by the procedures set forth in 40 CFR 60.503.

(b) The version of the test method referred to in this Regulation is that which appeared in the Code of Federal Regulations as of May 20, 1984.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0939 DETERMINATION OF VOLATILE

ORGANIC COMPOUND EMISSIONS

(c) The version of the test methods referred to in this Regulation is that which appeared in the Code of Federal Regulations as of October 1, 1984.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

.0940 DETERMINATION OF LEAK TIGHTNESS AND VAPOR LEAKS

(c) The version of the test methods referred to in this Regulation is that which appeared in the Code of Federal Regulations as of May 20, 1984.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.68; 143-215.107 (a) (5).

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0600 - AIR QUALITY PERMITS

.0601 PURPOSE AND SCOPE

(a) A person shall have received a permit from the commission and shall comply with the conditions of the permit before he:

- (1) builds or operates any air pollution source;
- (2) builds or operates any equipment which may result in the emission of air pollutants or which is likely to cause air pollution;
- (3) alters or changes the construction or method of operation of any equipment or process from which air pollutants are or may be emitted;
- (4) enters into a contract to construct and install any air cleaning device or allows or causes the device to be constructed, installed or operated;

if any of these conditions are likely to contravene any air quality or emission control standard established under G.S. 143-215.107.

(b a) The following sources or activities are not likely to contravene any applicable ambient air quality or emission control standard, and therefore, are not required to obtain a permit:

- (1) air conditioning or comfort ventilation systems which do not transport, remove, or exhaust product or byproduct to the atmosphere;
- (2) combustion sources serving heating systems which provide comfort heat for residences;
- (3) laboratory equipment used for chemical or physical analysis;

- (4) nonstationary internal combustion engines and vehicles;
- (5) equipment which emits only nitrogen, oxygen, carbon dioxide, and/or water vapor;
- (6) maintenance, repair, or replacement of existing equipment that does not result in an increase to the emission of air pollutants;
- (7) smudge pots for orchards or small outdoor heating devices to prevent freezing of plants;
- (8) fuel burning equipment firing exclusively gaseous fuel with the total heat input rating of 250 million BTU per hour or less;
- (9) fuel burning equipment firing exclusively No. 1 or No. 2 fuel oil with the total heat input rating of 100 million BTU per hour or less;
- (10) fuel burning equipment firing a mixture, of gaseous fuel, No. 1 fuel oil or No. 2 fuel oil, in any proportion, with the total heat input rating of 100 million BTU per hour or less.

All other sources of air pollution for which there is an ambient air quality or emission control standard are considered likely to contravene the applicable standard and, therefore, shall apply for a permit, as required in Paragraph (b) of this Regulation.

(c b) The owner or operator of any source required by Paragraphs (b) and (c) of this Regulation to have a permit may request the director to exempt the source from having to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. If the documentation shows to the satisfaction of the director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required. However, if the staff shows that, notwithstanding emission control standards, the standards for ambient air quality will be, or are likely to be, contravened, a permit shall be required.

(d c) This Section applies to the establishment or operation of any complex source subject to Section .0800 of Subchapter 2D of this Title. All persons who establish or operate a complex source shall be required to obtain a permit as required by this Section. Any person who constructs or modifies a complex source subject to Section 15 NCAC 2D .0800 shall obtain a permit in accordance with Reg-

ulations .0602 through .0607 of this Section. If the source is excepted in Section 15 NCAC 2D .0800, a permit shall not be required.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.108; 143-215.109.

.0603 APPLICATIONS

(f) A public hearing shall be held before the issuance of any permit containing any one of these conditions:

- (4) an alternate compliance schedule promulgated in accordance with Regulation 15 NCAC 2D .0910; ~~or~~
- (5) the quantity of solvent-borne ink that may be used by a printing unit or printing systems in accordance with Regulation 15 NCAC 2D .0936; ~~or~~
- (6) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for incinerators constructed before July 1, 1987, in accordance with Regulation 15 NCAC 2D .0505.

The public hearing shall be preceded by a 30-day period of public notice during which the agency's analysis and draft permit shall be available for public inspection in the appropriate regional office. If and when a permit containing these conditions is issued, it will become a part of the North Carolina State Implementation Plan for Air Quality (SIP) as an appendix available for inspection at Department of Natural Resources and Community Development regional offices. The permit will be submitted to the U.S. Environmental Protection Agency for inclusion as part of the federally approved state implementation plan.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.108; 143-215.109.

.0607 COPIES OF REFERENCED DOCUMENTS

(a) Copies of applicable Code of Federal Regulations sections referred to in this Section and the North Carolina State Implementation Plan for Air Quality appendix of conditioned permits are available for public inspection at Department of Natural Resources and Community Development regional offices. They are:

- (6) Washington Regional Office, ~~4502 North Market Street, Post Office Box 4507,~~ 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889;

Statutory Authority G.S. 150B-14.

Notice is hereby given in accordance with G.S. 150B-12 that the Natural Resources and Community Development, Division of Community Assistance, intends to adopt regulations cited as 15 NCAC 13L .1501 - .1505; amend regulations cited as 15 NCAC 13L .0103; .0401; .0403; .0404; .0407; .0502; .0702; .0901; .0903; .0905; .0907; .0909; .0911; .0912; .0913; .1002; .1004; .1006; .1009; .1011; .1302; .1402; and .1403.

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

The public hearing will be conducted at 3:00 p.m. on February 16, 1988 at Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: All persons interested are invited to attend. Comments may be submitted in writing or may be presented orally at the hearing. Oral presentations which exceed three minutes are requested to have a written copy to be filed with the hearing clerk. Further details of the proposed rules may be obtained by writing or calling: Mr. Robert Chandler, Director, Division of Community Assistance. Phone: (919) 733-2850.

CHAPTER 13 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 13L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0103 DEFINITIONS

(h) Low-income families are those with a family income of 50 percent or less of median-family income. Moderate-income families are those with a family income greater than ~~54~~ 50 percent and less than or equal to 80 percent of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as such area and income is determined for purposes of assistance under Section 8 of the United States Housing Act of 1937.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

SECTION .0400 - DISTRIBUTION OF FUNDS

.0401 GENERAL

(c) Applicants can apply for funding under different grant categories of Community Revitalization, Economic Development, Development Planning, Demonstration Housing Demonstration, Interim Assistance and Urgent Needs. Applicants shall not apply for funding ~~in the contingency category.~~ contingency funding. Contingency grants will be selected from the Community Revitalization, Economic Development, Housing Demonstration, and Development Planning categories.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

.0403 SIZE AND USE OF GRANTS

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards shall not exceed the following amount in each grant category: Community Revitalization - six hundred thousand dollars (\$600,000); Economic Development - ~~seven hundred fifty thousand dollars (\$750,000).~~ Development Planning - ten thousand dollars (\$10,000); Demonstration - six hundred thousand dollars (\$600,000) or funds six hundred thousand dollars (\$600,000); Development Planning five thousand dollars (\$5,000); Housing Demonstration two hundred fifty thousand dollars (\$250,000) or funds available; Urgent Needs - seven hundred fifty thousand dollars (\$750,000); Interim Assistance - Seven hundred fifty thousand dollars (\$750,000); Contingency - seven hundred fifty six hundred thousand dollars (\$750,000). (\$600,000). Applicants shall not have a project or combination of projects, except for Urgent Needs projects, under active consideration for funding which exceeds seven hundred fifty thousand dollars (\$750,000).

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

.0404 GENERAL ALLOCATION

Each program year funds will be reserved for each grant category. No more than ~~one and one half~~ three percent of the State's Community Development Block Grant funds to be allocated to local governments will be awarded for Housing Demonstration and Development Planning grants, of which a maximum of sixty thousand dollars (\$60,000) may be awarded for Development Planning grants. In addition, up to five percent will be set aside for Urgent Needs and Contingency grants and up to

twenty percent will be set aside for Economic Development grants each year. The remaining funds will be distributed by NRCD to Community Revitalization grant applications.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 24 C.F.R. 570.491.

.0407 GENERAL APPLICATION REQUIREMENTS

(a) Local governments are required to submit applications in a manner prescribed by NRCD in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application, thus applications must provide sufficient information for NRCD to rate them against the selection criteria. All applicants are required to address their projects to ~~either~~ the Community Revitalization, Economic Development, Development Planning, Housing Demonstration, Interim Assistance or Urgent Needs grant category. Applicants may apply in more than one grant category, apply for several projects in the same grant category, and have more than one project approved, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in detail.

(d) NRCD may submit all CDBG applications and/or environmental review records to the State Clearinghouse for review and comments. NRCD may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (a); 24 C.F.R. 570.489.

SECTION .0500 - COMMUNITY REVITALIZATION PROJECTS

.0502 ELIGIBILITY REQUIREMENTS

(a) Applications for Community Revitalization funds must show that:

(1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and

(b) Applicants shall have the capacity to administer a Community Development Block Grant program. NRCD may examine the following areas to determine capacity:

(2) the rate of expenditure of funds and accomplishments in previously funded

Community Development Block Grant programs.

Applicants that show a lack of capacity will not be rated or funded.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

SECTION .0700 - DEVELOPMENT PLANNING PROJECTS

.0702 ELIGIBILITY REQUIREMENTS

(a) Applications for Development Planning funds must show that projects developed and funded in the future as a result of Development Planning grants will primarily benefit low- and moderate-income persons. Applicants that do not meet this requirement will not be rated or funded.

(b) Applicants shall have the capacity to administer a Community Development Block Grant program. NRCD may examine the following areas to determine performance:

- (2) the rate of expenditure of funds and accomplishments in previously funded Community Development Block Grant programs.

Applicants that show a lack of capacity will not be rated or funded.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

SECTION .0900 - GRANT ADMINISTRATION

.0901 GRANT AGREEMENT

(d) Neither CDBG funds ~~or~~ nor non-CDBG funds involved in a project may ~~not~~ be obligated, nor may any conditioned project activities begin until NRCD releases in writing any and all applicable conditions on the project. Recipients may incur certain costs prior to release of conditions with prior NRCD approval.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

.0903 METHOD OF PAYMENT

(a) Advance payments will be made by NRCD to recipients when the following conditions are met:

- (4) Recipients shall not maintain a cash balance from any advance payment ~~in~~ an amount exceeding when an advance payment exceeds five thousand dollars (\$5,000), for more than three days.

(b) Recipients who do not meet or adhere to the conditions in Paragraph (a) of this

Rule will not receive advance ~~funding~~ payments. Those recipients will receive grant payments on a reimbursement basis.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 42 U.S.C.A. 5304 (g).

.0905 LUMP SUM DRAWDOWN FOR PROPERTY REHABILITATION

(i) Request for NRCD review and approval of lump sum drawdown. NRCD review and approval of a request for a lump sum drawdown is required prior to drawdown. NRCD review can be carried out any time during the program year. All requests for drawdowns shall include:

- (1) a copy of the written agreement described in Paragraph ~~(2)~~ (c) of this Rule; and

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (g); 24 C.F.R. 570.489; 24 C.F.R. 570.494.

.0907 PROGRAM INCOME

(c) ~~All other~~ Unless otherwise required, program income generated by a pre-1986 grant may be retained by the recipient. Program Income is identified by the grant year in which the activities which generated the program income were funded. Pre-1986 Program Income shall be added to funds committed to a current project and used for activities approved in the project's application. Pre-1986 Program Income shall be expended prior to requesting additional funds from NRCD or shall be used in future CDBG projects.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 24 C.F.R. 570.494; 42 U.S.C.A. 5304 (b) (4).

.0909 PROPERTY MANAGEMENT STANDARDS

This Rule prescribes uniform standards governing the utilization and disposition of property acquired in whole or in part with Community Development Block grant funds.

- ~~(2)~~ (3) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of ~~three hundred dollars (\$300.00)~~ one thousand dollars (\$1,000) or more per unit.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (b) (4), (d) (2), (e); 24 C.F.R. 570.489; 24 C.F.R. 570.497.

.0911 RECORDKEEPING

(b) All Community Development Program records not confidential under federal law shall be made accessible to interested individuals and groups during normal working hours.

~~(b)~~ (c)
~~(c)~~ (d)

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (d) (2), (e); 24 C.F.R. 570.489; 24 C.F.R. 570.497.

.0912 AUDIT

(c) ~~Use of the A~~ "single audit," ~~concept is permissible,~~ in which the regular independent auditor will perform an audit of all compliance aspects for all federal grants along with the regular financial audit of the recipient, is permissible. Where feasible, the recipient shall use the same auditor so that the audit will include the financial and compliance work under a single plan in the most economical manner.

Authority G.S. 143-323; 143B-10; 159-34; 42 U.S.C.A. 5304 (d) (2), (e); 24 C.F.R. 570.499.

.0913 GRANT CLOSEOUTS

(f) Certificate of completion and final cost. Upon resolution of any findings ~~of in~~ the final audit, or if the final audit is waived, after NRCD has performed the review of documentation described in Paragraph (c) of this Rule, the recipient shall prepare a certificate of completion and final cost on a form prescribed by NRCD, and submit it to NRCD.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

SECTION .1000 - COMPLIANCE REQUIREMENTS

.1002 CITIZEN PARTICIPATION

(g) Persons wishing to object to the approval of an application by NRCD shall make such objection in writing. NRCD will only consider objections made ~~only~~ on the following grounds:

- (i) The applicant's description of the needs and objectives is plainly inconsistent with available facts and data;
- (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant;

(iii) The application does not comply with the requirements of this Subchapter or other applicable laws.

(h) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with ~~significant, generally~~ available facts and data, the objection shall include the facts and data upon which the objection is based.

(2) Citizen Participation in the program amendment process:

(a) Recipients proposing amendments which require prior NRCD approval in accordance with Rule .0910 of this Subchapter will be required to conduct one public hearing prior to submission of the amendment to NRCD in accordance with Rule 13L .1002(1)(c).

(b) Each recipient shall respond to citizen objections and comments in the same manner as in Subparagraph (1) (a) of this Rule.

(c) Persons wishing to object to the approval of an amendment by NRCD shall make such objection in writing. NRCD will consider objections made only on the following grounds:

(i) The recipient's description of needs and objectives is plainly inconsistent with available facts and data.

(ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the recipient.

(iii) The amendment does not comply with the requirements of this Section or other applicable laws and regulations.

(d) Such objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall include the data upon which the objection is based.

(3) Citizen Participation in the program closeout process:

(a) Recipients shall conduct one public hearing to assess program performance during the grant closeout process and prior to the actual closeout of the grant in accordance with Rule 13L .1002(1)(c).

- (b) Recipients shall continue to solicit and respond to citizen comment pursuant to Subparagraph (1) (a) of this Rule until such time as the grant program is closed.
- (4) Citizen Participation during program implementation. Citizens shall have the opportunity to comment on the implementation of a Community Development Program throughout the term of the program. Recipients shall solicit and respond to views and proposals of citizens in accordance with Subparagraph (1) (a) of this Rule.
- (5) Persons may submit written comments to NRCD at any time concerning the applicant's/recipient's failure to comply with the requirements contained in this Subchapter.
- (6) All records of public hearings, citizens' comments, responses to comments and other relevant documents and papers shall be kept to accordance with Rule .0911 of this Subchapter.
- (7) All program records shall be accessible to citizens in accordance with Rule .0911(b) of this Subchapter.
- (8) Recipients shall have a written complaint procedure applicable through the life of the grant and available to the general public. The procedure shall require grant recipients to respond in writing to written citizen complaint within ten calendar days of the lodging of the citizen complaint. The complaint procedure shall also state that if a complainant is dissatisfied with the local response, that person may direct the complaint to the North Carolina Department of Natural Resources and Community Development.

Statutory Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (a) (2).

.1004 ENVIRONMENTAL REVIEW

Purpose. To assure that applicants
Applicants/recipients shall comply with the policies of the National Environmental Policy Act of 1969 and all other applicable provisions of Federal and State law which further the purposes of such act (as specified in 24 CFR 58). and that they are effectively implemented in connection with the expenditure of Community Development Block Grant funds.

- (2) Applicants/recipients shall meet the requirements of the following Federal laws and regulations:

- (l) HUD environmental standards (24 C.F.R. Part 51), Environmental Criteria and Standards (44 F.R. ~~40860-40866~~, 40860-40866, July 12, 1979) and the CEQ standards at 40 C.F.R. Part 1500-1508;
- (4) The applicant/recipient shall meet the requirements of the following State laws and regulations where they are applicable to the provisions of this Subchapter:
 - (d) G.S. ~~421-126~~, 121-12, Protection of Properties ~~in~~ on the National Register, which requires consideration of project impact on any property listed in the National Register; and
 - (e) G.S. ~~70-1-3~~, 70-1 through 70-3, Indian Antiquities Act, which urges private landowners to refrain from excavation and other actions leading to the destruction of Indian archaeological sites on their property. It also requires local governments to report the discovery of artifacts and refrain from further excavation or construction when excavating or constructing on public lands.

Authority G.S. 113A; 143-215.1; 143-215.108; 143-323; 143B-10; 24 C.F.R. Part 58; 24 C.F.R. 570.495; 24 C.F.R. 570.496; 42 U.S.C.A. 4321 et. seq.; 42 U.S.C.A. 5304 (b) (4).

.1006 LABOR STANDARDS

(a) The following labor standards provisions outline the responsibilities of the recipient concerning the payment of wages, contract work hours, safety, health standards, and equal opportunity for programs governed under this Subchapter. Recipients must comply with the following federal laws and regulations:

- (1) Davis-Bacon Act (P.L. 74-403). This act requires that prevailing local wage levels be paid to laborers and mechanics employed on construction work assisted with CDBG funds.
- (2) Contract Work Hours and Safety Standards Act of 1962 (P.L. 87-581). Under this act, laborers and mechanics employed by contractors and subcontractors on construction work assisted with CDBG funds must receive overtime compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in any workweek. Violators shall be liable for the unpaid wages and in addition for liquidated damages com-

- puted in respect to each laborer or mechanic employed in violation of the act.
- (3) Federal Fair Labor Standards Act, (29 U.S.C. 201 et seq.), requiring that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.
 - (4) Anti-kickback (Copeland) Act of 1934, (18 U.S.C. 874 and 40 U.S.C. 276a), which outlaws and prescribes criminal penalties for "kickbacks" of wages in federally financed or assisted construction activities. Weekly statements of compliance and weekly payrolls must also be provided by all contractors and subcontractors.

(b) The U.S. Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 F.R. 3176; 64 Stat. 1267 and Section 2 of the Act of June 13, 1934, as amended [48 Stat. 948.40 U.S.C. 276(c)]).

(c) All contracts shall contain labor standards provisions as required in this Rule.

(d) Paragraph (a)(1) and (4) of this Rule shall apply to the rehabilitation of residential property only if such property is designed for residential use of eight or more families or if eight or more single family dwellings in the project area are owned in common and are located on contiguous lots or parcels.

(e) Recipients shall maintain records regarding compliance with the laws and regulations cited in this Rule in accordance with Rule .0911 of this Subchapter.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 5 U.S.C.A. 1332-15; 40 U.S.C. 276 (a) (c); 40 U.S.C.A. 327; 42 U.S.C.A. 5310.

.1009 HOUSING REHABILITATION

(e) Housing rehabilitation activities must comply with the following standards required under this Subchapter:

- (1) Architectural barriers (Rule .1007);
- (2) Historic preservation (Rule .1005);
- (3) (2)
- (4) (3)

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 42 U.S.C.A. 5305(a).

.1011 LEAD BASED PAINT

(a) The recipient must comply with the provisions of the Lead Based Paint Poisoning

Act (P.L. 91-695). The following actions are required whenever CDBG funds are used directly or indirectly for construction, rehabilitation or modernization of residential structures:

- (1) prohibition of the use of lead based paint;
- (2) elimination of immediate lead based paint hazards;
- (3) notification to residents and purchasers of structures constructed prior to 1950 of hazards of lead based paint poisoning. 24 CFR Part 570.608 and 24 CFR Part 35, including provisions of the above;
- (1) prohibiting the use of lead-based paint;
- (2) requiring elimination of lead based paint hazards; and
- (3) requiring notification of the hazards of lead-based poisoning to purchasers and tenants of housing constructed prior to 1978 which was acquired or rehabilitated with CDBG assistance.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (b) (4); 42 U.S.C.A. 4801 through 4846.

SECTION .1300 - DEMONSTRATION PROJECTS

.1302 ELIGIBILITY REQUIREMENTS

(a) Applications for Housing Demonstration projects must show that:

- (1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight. Applicants that do not meet these requirements will not be rated or funded.

Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.

SECTION .1400 - ECONOMIC DEVELOPMENT PROJECTS

.1402 ELIGIBILITY REQUIREMENTS

(a) Applications for Economic Development funds must show that at least 60 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons. Applicants that do not meet this requirement will not be rated or funded. In designing projects which meet this require-

ment, applicants must appropriately ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5301; 24 C.F.R. 570.489.

.1403 SELECTION CRITERIA

(a) Projects will be evaluated against four selection criteria as follows:

- (1) ~~Project benefit to low- and moderate-income persons.~~ The percentage of CDBG funds directly benefiting ~~low- and low and moderate income moderate income persons.~~ will be used as the measure of this criterion.
- (2) ~~Cost per job.~~ The CDBG cost per proposed job. will be used as the measure of this criterion.
- (3) ~~Investment per CDBG dollar in the proposed project.~~ The ratio of the amount of non-CDBG investment in the proposed project to the amount of CDBG funds in the proposed project. will be used as the measure of this criterion.
- (4) The local conditions and impact including: ~~Four factors will be used to measure the local conditions and impact:~~
 - (A) county unemployment;
 - (B) project wages;
 - (C) number of project jobs; and
 - (D) property tax.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304 (a) (1); 24 C.F.R. 570.489.

SECTION .1500 - INTERIM ASSISTANCE

.1501 DEFINITION

The Interim Assistance grant category includes activities directed toward the development of affordable housing units and/or activities eligible under Rule .1401 and .1402 of this Subchapter. All program income resulting from the CDBG expenditure, as determined at the time of the grant application, must be returned to grant recipients or to NRCD as provided under Rule .0907 of this Subchapter.

Authority G.S. 143-323; 24 C.F.R. 570.489.

.1502 ELIGIBILITY REQUIREMENTS

(a) Applications for Interim Assistance must demonstrate that the project shall be

completed and all funds returned to NRCD or the recipient within 36 months of the grant award in accordance with Rule .0907 of this Subchapter.

(b) Projects which are designed to provide assistance for the creation of jobs must comply with the requirements of Rule .1402 of this Subchapter.

(c) Projects which are designed to develop affordable housing for low and moderate income persons must:

- (1) be developed as defined under Section 3 (b) (3) of the U.S. Housing Act of 1937.
- (2) maintain rents for low and moderate income families at affordable levels, as determined by use of the U.S. Department of Housing and Urban Development, Housing Development Action Grant formula.

Authority G.S. 143-323; 24 C.F.R. 570.489.

.1503 SELECTION CRITERIA

Criteria shall be announced by NRCD at least 60 days prior to its acceptance of applications in this category.

Authority G.S. 143-323; 24 C.F.R. 570.489.

.1504 FUNDS AVAILABLE

The percent of funds available for these projects shall not exceed 75 percent of the funds remaining as of June 30 of the current year in the letter of credit for the third year preceding the current year.

Authority G.S. 143-323; 24 C.F.R. 570.489.

.1505 PRELIMINARY AWARDS

NRCD shall announce preliminary grant awards after review and evaluation of Interim Assistance applications. A grant agreement shall not be extended to a recipient until provision of an irrevocable letter of credit, bond, or other equivalent instrument securing the assistance to the developer to insure that sufficient program income to equal or exceed the CDBG assistance shall be available at the completion of the project. A preliminary award may be withdrawn by NRCD if an acceptable security instrument has not been provided to and approved by NRCD within 90 days from the date of the preliminary award. If a recipient that has received a preliminary award demonstrates that special circumstances warrant, NRCD may grant an extension of time for providing the security instrument

subject to any conditions deemed appropriate. In no case shall the time for providing the security instrument exceed six months from the preliminary grant award date.

Authority G.S. 143-323; 24 C.F.R. 570.489.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Natural Resources and Community Development, Division of Economic Opportunity, intends to adopt regulations cited as 15 NCAC 16E .0101 - .0106; .0201 - .0202.

The proposed effective date of this action is June 11, 1988.

The public hearing will be conducted at 10:00 a.m. on February 16, 1988 at Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27611.

Comment Procedures: All persons interested are invited to attend. Comments may be submitted in writing or may be presented orally at the hearing. Oral presentations which exceed three minutes are requested to have a written copy to be filed with the hearing clerk. Further details of the proposed rules may be obtained by writing or calling: Mr. James L. Forte, Director, Division of Economic Opportunity, Post Office Box 27687, Raleigh, N.C. 27611. Phone: (919) 733-2633.

CHAPTER 16 - DIVISION OF ECONOMIC OPPORTUNITY

SUBCHAPTER 16E - EMERGENCY COMMUNITY SERVICES HOMELESS GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0101 PURPOSE OF PROGRAM

The purpose of the Emergency Community Services Homeless Grant Program is to use public resources and programs in a more coordinated manner to meet the critically urgent needs of the homeless and to provide funds to assist the homeless with special emphasis on elderly persons, handicapped persons, families with children, Native Americans and Veterans.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

.0102 AUTHORITY AND DESIGNATION

(a) The department administers the Emergency Community Services Homeless Grant Program.

(b) The division has been designated by the secretary of the department to administer the Emergency Community Services Homeless Grant Program.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

.0103 ELIGIBLE ACTIVITIES

Activities funded under this Subchapter may include only those projects which:

- (1) Expand comprehensive services to homeless individuals to provide follow-ups and long-term services to enable homeless individuals to make the transition out of poverty.
- (2) Provide assistance in obtaining social and maintenance services and income support services for homeless individuals.
- (3) Promote private sector and other assistance to homeless individuals.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

.0104 ELIGIBLE AGENCIES

Eligible agencies for Emergency Community Services Homeless Grant Program funds are:

- (1) Community Action Agencies that are eligible to receive funds under section 675 (c) (2) (A) of the Community Services Block Grant Act and that were providing services to meet the critically urgent needs of homeless individuals as of January 1, 1987.
- (2) The statewide organization serving migrant and seasonal farmworkers that was providing services to meet the critically urgent needs of homeless individuals as of January 1, 1987.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

.0105 ELIGIBLE PROGRAM RECIPIENTS

(a) Program recipients of services must meet the poverty guidelines as established in (a) of Rule .0107 of Subchapter 16C.

(b) For the purpose of determining eligibility the following definition shall apply: "Homeless Individuals" an individual who lacks a fixed, regular, and adequate nighttime

residence; and an individual who has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill); an institution that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Exclusion: the term "homeless" or "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law).

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

.0106 ALLOCATION OF FUNDS

(a) Ninety-five percent of the funds allocated under the Emergency Community Services Homeless Grant Program will be used to make grants to those community action agencies as defined in (1) of Rule .0104 of this Subchapter. The amount of funds allocated to each eligible agency shall be based on the following method of distribution: Funds shall be allocated based on the ratio (percentage) of persons in poverty in the county (counties) served by the eligible agency compared to the total area (counties) served by all eligible agencies. Persons in poverty is defined as the number of persons who fall below the poverty threshold established by the Bureau of Census, U.S. Department of Commerce. The number of persons in poverty will be based on the most recent available census data.

(b) Five percent of the funds allocated under the Emergency Community Services Homeless Grant Program will be used to make a grant to the statewide organization serving migrant and seasonal farmworkers as defined in (2) of Rule .0104 of this Subchapter.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

SECTION .0200 - ADMINISTRATIVE POLICIES AND PROCEDURES

.0201 GENERAL PROVISION

(a) The provisions of Subchapters 16B, 16C, and 16E of this Chapter shall govern administration of funds by grant recipients under the Emergency Community Services Homeless Grant Program, except that in the case of conflicts among the provisions of Subchapters

16B, 16C, and 16E, the provisions of Subchapter 16E shall govern.

(b) Funds shall not be used to supplant other programs for homeless individuals administered by the state.

(c) Funds will not be used to defray state administrative costs.

(d) Agencies funded under the Emergency Community Services Homeless Grant Program will be required to show evidence of coordination with homeless assistance agencies at the local level in their application for funds.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

.0201 ACCOUNTABILITY

Separate financial and program records shall be established and maintained to ensure financial and program accountability for funds received and expended under the Emergency Community Services Homeless Grant Program.

Statutory Authority P.L. 100-77; G.S. 143B-10; 143B-276; 143B-277.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Certified Public Accountant Examiners intends to adopt the regulation cited as 21 NCAC 8H .0005; and amend regulations cited as 21 NCAC 8G .0403; 21 NCAC 8J .0002; .0003; 21 NCAC 8K .0104.

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

The public hearing will be conducted at 9:00 a.m. on February 22, 1988 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the board offices not later than noon on February 18, 1988. Anyone planning to attend the hearing should notify the Executive Director at the board offices by noon on Thursday, February 18, 1988, whether they wish to speak on the proposal and whether they will speak in favor of the proposal or against it.

CHAPTER 8 - BOARD OF CERTIFIED
PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8G - PROFESSIONAL ETHICS
AND CONDUCT

SECTION .0400 - CONTINUING
PROFESSIONAL EDUCATION

.0403 COURSES AND SPONSORS

(a) The following shall qualify as acceptable continuing education programs, provided the programs comply with the ~~standards for approval of courses and programs~~ CPE Program Standards set forth in these ~~Regulations~~ Rules:

- (1) Professional development programs of recognized national and state accounting organizations; ~~and~~
- (2) Technical sessions at meetings of recognized national and state accounting organizations and their chapters; ~~and~~
- (3) Courses taken at colleges and universities accredited by the Southern Association of Colleges and Schools, or comparable regional accrediting organizations; ~~and~~
- (4) Formal organized in-firm association of accounting firms education programs; ~~and~~
- (5) Formal correspondence courses; and
- (6) Other programs or courses complying with the standards set forth in Rule .0404.

(b) The board will maintain a list of sponsors which have agreed to conduct programs in accordance with the standards set forth in these ~~regulations~~ Rules. Sponsors shall indicate agreement by signing a CPE program sponsor agreement form provided by the board. Such an agreement shall provide the board authority to audit courses offered by the sponsor to determine if the sponsor is complying with the terms of the agreement. Failure to comply with the terms of the sponsor agreement shall be grounds for the board's termination of the agreement, removal of the CPE sponsor's name from the listing described in this Paragraph and notifying the public of this action.

(c) Sponsors that are approved and listed in good standing on the National Registry of CPE Sponsors maintained by the National Association of State Boards of Accountancy shall qualify as acceptable CPE sponsors. CPE sponsors listed on the NASBA Registry do not need to sign agreements with the board as discussed in Paragraph (b).

(d) Continuing professional education courses offered by sponsoring organizations should be on a professional level and should be addressed to the body of knowledge of accountancy. Examples of courses which might NOT meet such criteria are:

(1) Basic courses in the areas of accountancy, taxes and related technical subjects with which the licensee should already be familiar.

(2) Programs not designed for professional competence such as:

(A) Information for the general public on such matters as personal development, personal money management, personal investments, elementary income tax, social security and retirement benefits, etc.

(B) Sales-oriented presentations for office equipment and other system applications.

(3) Programs which do not in themselves contribute to the practice of accountancy, such as:

(A) Programs restricted to policies and procedures of a particular company or organization.

(B) Programs presenting scientific and technical knowledge of a sophistication generally considered beyond the scope required for the practice of accountancy. However, this would not exclude programs designed to acquaint the licensee with the economic, tax and accounting aspects of specialized areas of industry.

(e) Courses may be designed for CPE purposes in the following subject areas:

(1) Accounting;

(2) Auditing;

(3) Business Law;

(4) Communication Arts;

(5) Computer Science;

(6) Economics;

(7) Functional Fields of Business;

(A) Accounting Practice Management;

(B) Business Policy;

(C) Finance;

(D) Marketing;

(E) Organizational Behavior;

(F) Organizational Theory;

(G) Production;

(8) Management Advisory Services;

(9) Mathematics;

(10) SEC Practice;

(11) Social Environment of Business;

(12) Specialized Areas of Industry (e.g., Banking, Farming, Insurance, Real Estate);

(13) Statistics, Probability and Quantitative Applications in Business;

(14) Taxation.

(f) Neither the board nor its staff will "approve" specific courses for CPE credit. For example, a course may contribute to the professional competency of some participants, but not others. However, from the information presented by the sponsor, the board's CPE Advisory Committee may render an opinion as to whether the course may contribute to the professional competence of some certified public accountants, or, as to whether the course may contribute to the practice of accountancy. If a sponsor has any doubts about the acceptability of a program, it should seek an advisory opinion from the board's CPE Advisory Committee. If its answer is found to be unsatisfactory, the sponsor may request a formal ruling from the board. Note that the opinion of the CPE Advisory Committee is not binding on the board.

Statutory Authority G.S. 93-12 (8b).

SUBCHAPTER 8II - RECIPROCITY

.0005 EXEMPTIONS

(a) A person temporarily entering the state for the sole purpose of teaching at a continuing professional education or college course, delivering any other lecture or moderating any panel discussion shall be exempted from the use of title restrictions contained in G.S. 93-3 and the reciprocity licensing requirements specified in G.S. 93-12(6) and the rules in this Subchapter of the North Carolina Administrative Code provided that, in every instance of any kind that the CPA title is used, there is disclosure of the state, territory or district granting the CPA title.

(b) A person temporarily entering the state for the sole purpose of advisory or consulting services to persons employed by the same employer (including parent, sister or subsidiary entities) shall be exempted from the use of title restrictions contained in G.S. 93-3 and the reciprocity licensing requirements specified in G.S. 93-12(6) and the rules in this Subchapter of the North Carolina Administrative Code.

(c) These exemptions do not apply to any other professional services or other business activities unless expressly described in this

Rule or in a declaratory ruling issued by this agency.

Statutory Authority G.S. 93-3; 93-12.

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0002 SUPERVISION AND REGISTRATION OF CPA OFFICES

(a) Every office of a certified public accountant or firm of certified public accountants ~~in the public practice of accountancy~~ in North Carolina which ~~use~~ uses any words, letters, abbreviations, symbols or other means of identification to indicate that the office is engaged in the practice of public accountancy accounting as a certified public accountant shall be actively and locally supervised by a certified public accountant whose primary responsibility and a corresponding amount of time shall be work performed in that office. No person shall be designated as the ~~manager~~ supervisor of any such office unless he is the holder of a North Carolina certified public accountant certificate in good standing.

(b) Each individual practitioner or office supervisor shall file an office registration form with the board's office by December 31 of each year, indicating the name of the office supervisor, the location of the office and the telephone number of each office maintained within North Carolina.

(c) Changes in the information required by Paragraph (b) shall be delivered to the board office within 30 days after the change occurs.

(d) One representative of the firm may file all documents with the board on behalf of all firm offices in North Carolina; however, responsibility for compliance will remain with each office supervisor.

Statutory Authority G.S. 93-12 (8a); 93-12 (9).

.0003 REGISTRATION OF PARTNERSHIPS

(a) Each ~~resident certificate holder licensed by the board office supervisor, as referred to in Rule 8J .0002,~~ shall submit annually, at the time he applies for renewal of his certificate, by December 31 of each year a list of all resident and nonresident partners associated with him in the practice of public ~~accounting~~ accountancy and the location and ~~resident partner or manager of each office or branch office maintained in North Carolina.~~ One annual listing by the ~~senior or resident partner~~ a representative of each firm will satisfy

this requirement for all partners of the firm; provided, each partner gives adequate reference to this listing. However, each partner shall remain responsible for compliance with this Rule.

(b) The absence of such a filing will be construed to mean that no partnership exists.

(c) Changes in the required information shall be delivered to the board office within 30 days after the change occurs.

Statutory Authority G.S. 93-9; 93-12 (8a); 93-12 (9).

SUBCHAPTER 8K - PROFESSIONAL CORPORATIONS

SECTION .0100 - GENERAL PROVISIONS

.0104 REGISTRATIONS AND RENEWALS

(a) Applications for annual renewal of a certificate of registration of a professional corporation shall be filed with the board prior to the beginning of the calendar year for which renewal of registration is requested and shall be accompanied by the applicable fee.

(b) Applications for a renewal certificate of registration shall be in such form as supplied by the board and shall contain the name and address of the professional corporation; the address of each additional office operated or maintained by the corporation; the names and addresses of all of the officers, directors, and shareholders; and the names and addresses of all the employees of the corporation licensed by the board under the provisions of Chapter 93 of the General Statutes of North Carolina; and the names and addresses of all officers, directors, shareholders or employees individually licensed by the board who have died, become legally disqualified to perform the professional service regulated by the board or ceased to be a stockholder, officer or employee of the corporation since the filing of the last application required to be filed with the board.

(a) Professional corporations are to be formed and operated in accordance with the requirements specified in Chapter 55B of the General Statutes of North Carolina. Before a CPA professional corporation can offer to perform or perform any professional services, it must register with this board.

(b) The incorporators shall prepare the articles of incorporation along with any supporting documents and appropriate checks for fees payable to the Secretary of State. The incorporators shall also complete the application for professional association registration

along with any supporting documents and appropriate check for fees payable to the board as shown on the application form. All of these documents shall be filed with the board.

(c) Upon review and approval of the documents for filing, the board offices shall issue a certificate indicating the name of the professional association, the licensure status of the intended shareholders and other items are in compliance with board rules. The appropriate documents, including a certificate of registration, will be forwarded to the office of the Secretary of State for processing. Upon approval of the documents for filing, the Secretary of State shall return to the incorporators the articles of incorporation and certificate of registration.

(d) Professional corporations are required to follow the same rules of professional standards and conduct as other licensed individuals, including the choice of business name. The incorporators, officers, directors and shareholders must all hold North Carolina certificates of qualification on active status.

(e) Applications for certificates of registration shall be on a form supplied by the board and shall contain the name and address of the professional corporation, the address of each additional office operated or maintained by the corporation, the names and addresses of all of the officers, directors, and shareholders, and the names and addresses of all the employees of the corporation licensed by the board under the provisions of Chapter 93 of the General Statutes of North Carolina.

(f) Applications for annual renewal of a certificate of registration of a professional corporation shall be filed with the board prior to the beginning of the calendar year for which renewal of registration is requested and shall be accompanied by the applicable fee. In addition to the items described in Paragraph (e) of this Rule, renewal applications shall also contain the names and addresses of all officers, directors, shareholders or employees individually licensed by the board who have died, become legally disqualified to perform the professional service regulated by the board or ceased to be a stockholder, officer or employee of the corporation since the last application was required to be filed with the board.

Statutory Authority G.S. 55B-11; 93-8; 93-12 (3).

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Hearing Aid Dealers and Fitters Board intends to adopt regulations cited as 21 NCAC 22A .0307 - .0312; 22J .0014; amend regulations cited as 21 NCAC 22A .0203 - .0204; .0301; .0303; 22B .0101; .0302; .0307; .0501; .0503; 22C .0101; .0903; 22F .0001; .0003 - .0005; .0007 - .0008; .0010; .0013 - .0016; .0018; .0020; 22I .0001; .0003; .0006; .0008 - .0013; 22J .0002 - .0003; .0005; .0007 - .0010; 22K .0001 - .0004; and repeal regulations cited as 21 NCAC 22A .0101 - .0105; .0201 - .0202; .0205 - .0206; .0302; .0304 - .0306; 22B .0102 - .0107; .0201 - .0204; .0301; .0303 - .0306; .0308 - .0309; .0401 - .0402; .0502; .0504 - .0507; .0601 - .0602; 22C .0102; .0201 - .0205; .0301 - .0304; .0401 - .0402; .0501 - .0504; .0601 - .0602; .0701 - .0702; .0801 - .0808; .0901 - .0902; .0904 - .0911; 22D .0101 - .0105; .0201 - .0205; .0301 - .0310; .0401 - .0402; .0501 - .0503; 22E .0101 - .0103; .0201 - .0205; 22F .0002; .0006; .0009; .0011 - .0012; .0017; .0019; 22G .0001 - .0002; 22H .0001 - .0002; 22I .0002; .0004 - .0005; .0007; 22J .0001; .0004; .0006; and .0011 - .0013.

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

The public hearing will be conducted at 10:30 a.m. on February 15, 1988 at the Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609, in the Commission Conference Room, 2nd Floor.

Comment Procedures: Interested persons may present written or oral comments at the hearing or may deliver written comments to the North Carolina State Hearing Aid Dealers and Fitters Board, 136 Oakwood Drive, Winston-Salem, NC 27103, from January 15, 1988 to 10:00 a.m. on February 15, 1988.

CHAPTER 22 - BOARD OF HEARING AID DEALERS AND FITTERS

SUBCHAPTER 22A - BOARD RULES

SECTION .0100 - ORGANIZATIONAL RULES

- .0101 FORMAL NAME (REPEALED)
- .0102 PHYSICAL ADDRESS (REPEALED)
- .0103 OFFICE HOURS (REPEALED)
- .0104 MAILING ADDRESS (REPEALED)
- .0105 PURPOSES AND RESPONSIBILITIES (REPEALED)

Statutory Authority G.S. 93D-3; 150B-10; 150B-11.

SECTION .0200 - THE BOARD

.0201 COMPOSITION (REPEALED)

.0202 QUORUM (REPEALED)

Statutory Authority G.S. 93D-3.

.0203 MEETINGS OF THE BOARD

Meetings of the board shall be held at least annually quarterly or on the call of the president, the executive secretary, or a majority of the members of the board. at such time and place as may be designated in such call. The annual meeting to elect the president and the secretary-treasurer shall occur between the 15th day of July and the 15th day of August in each year. The dates for the quarterly meetings for the board's ensuing year and the examination preparation workshop dates for the upcoming calendar year shall be approved at that time.

Statutory Authority G.S. 93D-3 (b).

.0204 APPOINTMENTS

All Any members of the board are appointed by the Governor. Appointments are for staggered terms. may continue to serve beyond his term until his successor is duly appointed and sworn, in accordance with G.S. 93B-10, however any holdover shall not affect the expiration date of the succeeding term.

Statutory Authority G.S. 93B-10; 93D-3 (a).

.0205 QUALIFICATIONS (REPEALED)

.0206 ANNUAL REPORT (REPEALED)

Statutory Authority G.S. 93D-3.

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS AND INTERPRETATIONS

The definitions set out in 21 NCAC 22A .0300 apply to 21 NCAC 22 only. cited in this Section shall serve as interpretations for terms appearing in G.S. 93D and in these Rules and Regulations. In addition, the definitions contained in the Food and Drug Administration Standards concerning Hearing Aid Devices, Title 21 of the Code of Federal Regulations Part 801, as published in the 42nd Volume of the Federal Register (February 15, 1977) page 9294 are adopted herein by reference, in ac-

cordance with G.S. 150B-14(b), with the following additions and amendments:

- (1) "Reconditioned" shall mean that the condition of the hearing aid is the same as a used hearing aid.
- (2) "Audiologist" shall mean any individual holding a valid non-temporary license as an audiologist issued by the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists who is not required to serve as an apprentice, as set forth in G.S. 93D-5, before applying for issuance of a license by examination, in accordance with the consent judgment entered in 80 CVS 8161 and filed in Wake County Superior Court Division, the case entitled Audiology Council of North Carolina, Inc., v. The North Carolina Hearing Aid Dealers and Fitters Board.

Statutory Authority G.S. 93D-3 (c); 150B-14.

.0302 BOARD (REPEALED)

Statutory Authority G.S. 93D-1; 93D-3.

.0303 LICENSE

"License" includes apprenticeship license and regular license shall mean the printed certificate, issued by the board, which an individual is required to obtain before engaging in the fitting and selling of hearing aids independent of a sponsor.

Statutory Authority G.S. 93D-3 (c).

.0304 HEARING AID (REPEALED)

.0305 PRACTICE OF SELLING AND FITTING HEARING AIDS (REPEALED)

.0306 DISORDERS OF HEARING (REPEALED)

Statutory Authority G.S. 93D-1; 93D-3.

.0307 REGISTERED APPRENTICE

"Registered Apprentice" shall mean any individual who has duly made application to the board and has been issued an apprentice registration certificate which entitles such individual to fit and sell hearing aids under the supervision of a licensee approved by the board.

Statutory Authority G.S. 93D-3 (c).

.0308 REGISTERED APPLICANT

"Registered Applicant" shall mean any individual, including a registered apprentice,

who has duly made application to the board for issuance of a license and for which one or more of the following conditions apply:

- (1) The individual is seeking admission to the next scheduled qualifying examination given by the board (license by examination);
- (2) The individual is seeking reciprocity pursuant to G.S. 93D-6;
- (3) The individual is seeking reinstatement of an expired license as set forth in G.S. 93D-11; or
- (4) The individual is seeking reissuance of a suspended license in accordance with the provisions of G.S. 93D-13.

Statutory Authority G.S. 93D-3 (c).

.0309 DULY MADE APPLICATION

"Duly made application" shall mean that the completed application form, including all required documents, photographs, and fees, and any supplemental information requested by the board, is in the hands of the executive secretary of the board.

Statutory Authority G.S. 93D-3 (c).

.0310 ONE FULL YEAR OF APPRENTICESHIP

"One full year of apprenticeship" shall mean that an individual, who is not an Audiologist and does not hold a masters degree in Audiology, has held a valid apprentice registration certificate for a period of 365 calendar days, has engaged in fitting and selling hearing aids for a minimum of 30 clock hours per week for a period of 50 weeks, and has received a minimum of 750 clock hours of direct supervision from a licensee approved by the board. The maximum time span allowed for completing the 365 calendar day requirement shall not exceed 24 consecutive months from the date of issuance of the initial apprentice registration certificate.

Statutory Authority G.S. 93D-3 (c).

.0311 DIRECT SUPERVISION

"Direct supervision" shall mean the provision of general direction and control, including immediate personal on-site inspection and evaluation of work constituting the fitting and selling of hearing aids, as well as the provision of consultation and instruction.

Statutory Authority G.S. 93D-3 (c).

.0312 AUDIOMETER

"Audiometer" shall mean an electronic device, used for air conduction testing, bone conduction testing, and for obtaining speech audiometry results, which contains a masking circuit, at least one VU meter, and capability of sound field output.

Statutory Authority G.S. 93D-3 (c).

SUBCHAPTER 22B - RULE MAKING
PROCEDURES

SECTION .0100 - PETITIONS FOR RULE
MAKING

.0101 PETITIONS

Any person wishing to submit a petition requesting the adoption of a rule by the State Board of Hearing Aid Dealers shall address a petition to the President of the North Carolina State Board of Hearing Aid Dealers, Post Office Box 1387, Greenville, North Carolina 27834. In accordance with G.S. 150B-16, any person desiring the adoption, amendment or repeal of a rule by the board shall submit a petition to the board containing the following information:

- (1) Name of board;
- (2) A draft of the proposed rule;
- (3) Reasons for the adoption, amendment or repeal;
- (4) Data supporting the proposed rule;
- (5) The effect of the proposal on existing rules;
- (6) Effects of the proposed rule on persons licensed under Chapter 93D of the General Statutes of North Carolina;
- (7) Names (including addresses if known) of those most likely to be affected by the rule; and
- (8) Name(s) and address(es) of petitioner(s).

Statutory Authority G.S. 93D-3 (c); 150B-12; 150B-16.

- .0102 CONTENTS OF PETITIONS (REPEALED)
- .0103 AMIENDMENT OR REPEAL (REPEALED)
- .0104 CONTENTS OF PETITIONS (REPEALED)
- .0105 GRANTING OR DENYING PETITIONS (REPEALED)
- .0106 RECOMMENDATION (REPEALED)
- .0107 FINAL DECISION (REPEALED)

Statutory Authority G.S. 93D-3; 150B-16.

SECTION .0200 - NOTICE

- .0201 NOTICE TO PARTIES (REPEALED)
- .0202 MAILING LIST (REPEALED)
- .0203 PUBLIC NOTICE (REPEALED)
- .0204 INFORMATION REQUESTS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-12; 150B-16.

SECTION .0300 - HEARINGS

.0301 LOCATION OF HEARINGS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-11; 150B-12; 150B-16.

.0302 COMMENTS

Any person desiring to present data, views or arguments on the proposed rule or rule change must file a notice with the President of the State Board of Hearing Aid Dealers, Post Office Box 1387, Greenville, North Carolina 27834, at least 15 days before the hearing. Such notice may be waived, or a failure to give notice may be excused by the presiding officer of the hearing for good reason. Any person permitted to make an oral presentation is encouraged to submit a written copy of the presentation to the President of the State Board of Hearing Aid Dealers, Post Office Box 1387, Greenville, North Carolina 27834, at least 15 days prior to the hearing. In accordance with G.S. 150B-12 and 150B-16, the record of hearing will be open for receipt of written comments for 30 consecutive days prior to the date of the public rule making hearing. Any interested person may present written or oral comments relevant to the actions proposed at the public rule making hearing or may deliver written comments to the board office no later than 10:00 a.m. on the day of the hearing. Any person planning to make oral comments is encouraged to submit a written copy of the presentation at or before the time of the public hearing.

Statutory Authority G.S. 93D-3 (c); 150B-12; 150B-16.

- .0303 REQUEST FOR ORAL PRESENTATIONS (REPEALED)
- .0304 ORAL PRESENTATION (REPEALED)
- .0305 WRITTEN STATEMENT (REPEALED)
- .0306 ACKNOWLEDGMENT (REPEALED)

Statutory Authority G.S. 93D-3; 150B-11; 150B-12; 150B-16.

.0307 CONTROL OF HEARINGS

(a) The presiding officer at the hearing shall have complete control of the proceedings including the following:

- (1) extension of any time requirements;
- (2) recognition of speakers;
- (3) time allotment for presentations; and
- (4) direction of the flow of discussion and the management of the hearing.

(b) The presiding officer at all times shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments. allotment of time for oral presentations.

Statutory Authority G.S. 93D-3 (c); 150B-12.

.0308 REQUEST FOR STATEMENT ON FINAL DECISION (REPEALED)

.0309 RECORDS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-11; 150B-12; 150B-16.

SECTION .0400 - EMERGENCY RULES

.0401 POWER TO ISSUE (REPEALED)

.0402 LENGTH OF EFFECTIVENESS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-13.

SECTION .0500 - DECLARATORY RULINGS

.0501 REQUEST FOR DECLARATORY RULING

Any person substantially affected by a statute administered by the board or by a rule promulgated by the State Board of Hearing Aid Dealers board may request a declaratory ruling as to how the statute or rule applies to a given factual situation or whether a particular board rule is valid. The President of the State Board of Hearing Aid Dealers will have the sole power to make such declaratory rulings. the validity of a rule or as to the applicability to a given state of facts. All requests for declaratory rulings shall be in writing and mailed to the President of the State Board of Hearing Aid Dealers, Post Office Box 4387, Greenville, North Carolina, 27834. shall contain the following information:

- (1) Name(s) and address(es) of petitioner(s);
- (2) Statute and or rule to which the petition relates; and
- (3) Concise statement of facts and explanation of the manner in which the petitioner is injured, or thinks he may be injured, by the statute or rule as applied to him.

Statutory Authority G.S. 93D-3 (c); 150B-17.

.0502 CONTENTS OF REQUEST (REPEALED)

Statutory Authority G.S. 93D-3; 150B-17.

.0503 REFUSAL TO ISSUE DECLARATORY RULING

Whenever the State Board of Hearing Aid Dealers believes for good reason that the issuance of a declaratory ruling is undesirable it may refuse to do so. When good reason is deemed to exist, the board will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling. In accordance with G.S. 150B-17, the board may decline to issue a declaratory ruling if any of the following circumstances exist:

- (1) The petitioner demonstrates that the circumstances surrounding the promulgation of the rule are so changed that the rule should be reinterpreted;
- (2) A similar factual situation has been the basis of a contested case;
- (3) The factual situation at issue was specifically considered upon the adoption of the rule being questioned, as evidenced by the rule making record;
- (4) The subject matter of the requested declaratory ruling is involved in a lawsuit pending in a court of this state or a federal court; or
- (5) Failure to comply with the requirements contained in Rule .0501 of this Section.

Statutory Authority G.S. 93D-3 (c); 150B-17.

.0504 ISSUANCE OF DECLARATORY RULING (REPEALED)

.0505 PROCEDURE (REPEALED)

.0506 VALIDITY OF RULE (REPEALED)

.0507 CIRCUMSTANCES (REPEALED)

Statutory Authority G.S. 93D-3; 150B-17.

SECTION .0600 - FEES

.0601 FEE SCHEDULE (REPEALED)

.0602 AMOUNT (REPEALED)

Statutory Authority G.S. 12-3.1; 93D-3.

SUBCHAPTER 22C - CONTESTED CASES

SECTION .0100 - GENERAL RULES

.0101 ADMINISTRATIVE HEARING PROCEDURES

Whenever the board by its official action acts in such a way as to affect the rights, duties or privileges of a specific identified party, that

party upon request will be given an administrative hearing. Such a hearing will be held prior to any final board action on the matter if the action of the board affects a right, privilege or benefit already enjoyed by the party.

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

- (1) 26 NCAC 3 .0001;
- (2) 26 NCAC 3 .0002;
- (3) 26 NCAC 3 .0004;
- (4) 26 NCAC 3 .0005;
- (5) 26 NCAC 3 .0006;
- (6) 26 NCAC 3 .0007;
- (7) 26 NCAC 3 .0008;
- (8) 26 NCAC 3 .0010;
- (9) 26 NCAC 3 .0011;
- (10) 26 NCAC 3 .0012;
- (11) 26 NCAC 3 .0013;
- (12) 26 NCAC 3 .0014;
- (13) 26 NCAC 3 .0015;
- (14) 26 NCAC 3 .0016;
- (15) 26 NCAC 3 .0017;
- (16) 26 NCAC 3 .0018;
- (17) 26 NCAC 3 .0019;
- (18) 26 NCAC 3 .0020;
- (19) 26 NCAC 3 .0021;
- (20) 26 NCAC 3 .0022;
- (21) 26 NCAC 3 .0023;
- (22) 26 NCAC 3 .0024;
- (23) 26 NCAC 3 .0025;
- (24) 26 NCAC 3 .0026;
- (25) 26 NCAC 3 .0027;
- (26) 26 NCAC 3 .0028; and
- (27) 26 NCAC 3 .0029.

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

Statutory Authority G.S. 93D-3 (c); 150B-14; 150B-38 (h).

.0102 HEARINGS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-38.

SECTION .0200 - REQUEST FOR A HEARING

- .0201 REQUEST (REPEALED)
- .0202 PREREQUISITES (REPEALED)
- .0203 WRITTEN REQUEST (REPEALED)
- .0204 CONTENTS OF REQUEST (REPEALED)
- .0205 ACKNOWLEDGMENT (REPEALED)

Statutory Authority G.S. 93D-3; 150B-38.

SECTION .0300 - THE GRANTING OF HEARING REQUESTS

- .0301 GRANTING A HEARING (REPEALED)
- .0302 CRITERIA (REPEALED)
- .0303 ISSUANCE (REPEALED)
- .0304 APPROVAL OF REQUEST (REPEALED)

Statutory Authority G.S. 93D-3; 150B-38.

SECTION .0400 - WAIVER

- .0401 FAILURE TO NOTIFY (REPEALED)
- .0402 FAILURE TO APPEAR (REPEALED)

Statutory Authority G.S. 93D-3; 150B-38; 150B-40.

SECTION .0500 - NOTICE

- .0501 REASONABLE NOTICE (REPEALED)
- .0502 NOTICE AND HEARING (REPEALED)
- .0503 ADDITIONAL INFORMATION ON NOTICES AND HEARINGS (REPEALED)
- .0504 WRITTEN ANSWERS TO NOTICE (REPEALED)

Statutory Authority G.S. 93D-3; 150B-38.

SECTION .0600 - WHO SHALL HEAR CONTESTED CASES

- .0601 HEARING OFFICERS (REPEALED)
- .0602 APPOINTMENT (REPEALED)

Statutory Authority G.S. 93D-3; 150B-40.

SECTION .0700 - PLACE OF HEARING

- .0701 LOCATION (REPEALED)
- .0702 ALTERNATIVE LOCATIONS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-38.

SECTION .0800 - INTERVENTION

- .0801 REQUIREMENTS (REPEALED)
- .0802 PERMISSIVE INTERVENTION (REPEALED)
- .0803 DISCRETIONARY INTERVENTION (REPEALED)
- .0804 ADVISABILITY (REPEALED)
- .0805 WRITTEN PETITION (REPEALED)
- .0806 PETITION FOR INTERVENTION (REPEALED)
- .0807 ALLOWANCE (REPEALED)
- .0808 DENIAL (REPEALED)

Statutory Authority G.S. 93D-3; 150B-14; 150B-38.

SECTION .0900 - HEARING OFFICERS

- .0901 HEARING OFFICER (REPEALED)
.0902 CONDUCT (REPEALED)

Statutory Authority G.S. 93D-3; 150B-40.

.0903 ALLEGED BIAS OF BOARD MEMBER

If for any reason a member of the body conducting the hearing determines that personal bias or other factors would keep him or her from being able to conduct the hearing and perform all duties in an impartial manner, he shall submit in writing to the President of the State Board of Hearing Aid Dealers his disqualification.

(a) If any party in a contested case reasonably believes that a member of the board involved in the hearing is personally biased or otherwise unable to participate in ruling on the issues raised in the hearing in an impartial manner, such party may file with the board a sworn notarized affidavit stating the specific reasons and facts for such belief. An affidavit will be considered timely if filed before commencement of the hearing. Any other affidavit may be found timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that any board member involved in the hearing may be biased.

(b) The remaining board members shall decide whether to disqualify the person being challenged by the following procedure:

- (1) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the remaining members of the hearing board;
- (2) The president of the North Carolina State Hearing Aid Dealers and Fitters Board may appoint a member of the board or the executive secretary to investigate the allegations of the affidavit;
- (3) If appointed, the investigator shall report his findings and recommendations to the remainder of the members of the hearing board who will then decide whether to disqualify the challenged individual; and
- (4) A record of the proceedings and the reasons for decisions reached will be maintained as part of the contested case record.

(c) A board member shall refrain from participating in a contested case if at any time he deems himself disqualified for any reason.

Statutory Authority G.S. 93D-3 (c); 150B-38 (h).

- .0904 BIAS CLAIMED BY PARTY (REPEALED)
.0905 AFFIDAVIT OF DISQUALIFICATION (REPEALED)
.0906 FILING AFFIDAVIT (REPEALED)
.0907 DISQUALIFICATION (REPEALED)
.0908 NEW HEARING (REPEALED)
.0909 DISQUALIFICATION OF ENTIRE BOARD (REPEALED)
.0910 DETERMINATION TO CONTINUE (REPEALED)
.0911 RECORDS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-40.

SUBCHAPTER 22D - CONDUCT OF THE
CONTESTED CASE

SECTION .0100 - FAILURE TO APPEAR

- .0101 PROCEEDING WITHOUT PARTY (REPEALED)
.0102 ALTERNATIVES OF HEARING OFFICER (REPEALED)
.0103 CONTINUANCES (REPEALED)
.0104 PETITION TO REOPEN (REPEALED)
.0105 CRITERIA FOR REOPENING A CASE (REPEALED)

Statutory Authority G.S. 93D-3; 150B-14; 150B-40.

SECTION .0200 - PREHEARING
CONFERENCE

- .0201 DISCRETION TO HOLD PREHEARING CONFERENCE (REPEALED)
.0202 PURPOSES (REPEALED)
.0203 NATURE OF PREHEARING CONFERENCE (REPEALED)
.0204 NOTICE OF PREHEARING CONFERENCE (REPEALED)
.0205 SIMPLIFICATION OF ISSUES (REPEALED)

Statutory Authority G.S. 93D-3; 150B-14; 150B-40.

SECTION .0300 - SUBPOENAS

- .0301 AUTHORITY TO ISSUE (REPEALED)
.0302 ISSUANCE (REPEALED)
.0303 SERVICE OF SUBPOENAS (REPEALED)
.0304 UNREASONABLE SUBPOENAS (REPEALED)
.0305 OBJECTIONS (REPEALED)
.0306 STATEMENT OF REASONS (REPEALED)
.0307 SERVICE OF OBJECTIONS

(REPEALED)

.0308 RESPONSES TO OBJECTIONS

(REPEALED)

.0309 HEARINGS ON SUBPOENA

CHALLENGES (REPEALED)

.0310 RULINGS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-14;
150B-39.

SECTION .0400 - DISCOVERY

.0401 DISCOVERY OF INFORMATION

(REPEALED)

.0402 FAILURE TO SUBMIT TO DISCOVERY

(REPEALED)

Statutory Authority G.S. 93D-3; 150B-14;
150B-39.

SECTION .0500 - DEPOSITIONS

.0501 USE OF DEPOSITIONS (REPEALED)

.0502 PROCEDURE FOR TAKING A

DEPOSITION (REPEALED)

.0503 RULINGS ON DEPOSITIONS

(REPEALED)

Statutory Authority G.S. 93D-3; 150B-14;
150B-39.

SUBCHAPTER 22E - DECISION IN CONTESTED CASES

SECTION .0100 - PROPOSALS FOR DECISIONS

.0101 HEARING OFFICERS (REPEALED)

.0102 PROPOSAL FOR DECISION

(REPEALED)

.0103 EXCEPTIONS (REPEALED)

Statutory Authority G.S. 93D-3; 150B-14;
150B-40.

SECTION .0200 - OBJECTIONS TO BOARD DECISIONS

.0201 FORM (REPEALED)

.0202 RECORDS (REPEALED)

.0203 SUBSTANTIAL PREJUDICE

(REPEALED)

.0204 ORAL ARGUMENTS (REPEALED)

.0205 NOTICE (REPEALED)

Statutory Authority G.S. 12-3.1; 93D-3;
150B-14; 150B-40.

SUBCHAPTER 22F - GENERAL EXAMINATION AND LICENSE PROVISIONS

.0001 TIME OF EXAMINATIONS

The board shall hold examinations at least once a year. Ordinarily these examinations shall be held in March, April, or May. However, the board reserves the right to set the examinations for any month. the qualifying examination as set forth in G.S. 93D-8 on the first Saturday in May of each year and shall hold an additional examination on the first Saturday in November of each year provided that at least four individuals have duly made application for issuance of a license and that the filing for admission to the examination was timely.

Statutory Authority G.S. 93D-3 (c); 93D-8.

.0002 PLACE OF EXAMINATIONS
(REPEALED)

Statutory Authority G.S. 93D-3; 93D-5;
93D-6; 93D-8; 150B-9 (c).

.0003 SUBMISSION OF APPLICATIONS
AND FEES

The board shall announce the time and place for holding each examination at least 90 days prior to the date thereof; and all applications for examinations must be made to the president of the board, accompanied by a check or money order for the amount of the examination fee as stated in 21 NCAC 22F .0009 and made payable to the North Carolina State Board of Hearing Aid Dealers and Fitters.

(a) A duly made application for issuance or renewal of an apprentice registration certificate shall be submitted to the executive secretary of the board no later than ten working days after the date that any of the following conditions exist:

- (1) Whenever a registered apprentice is separated from his sponsor for any reason;
- (2) Whenever a registered apprentice is notified by the executive secretary of the board that he failed to pass the qualifying examination;
- (3) Whenever the executive secretary of the board notifies the individual that his apprentice registration certificate has been invalidated for any reason; and
- (4) Whenever an Audiologist duly makes application for issuance of a license by examination and that individual elects to become a registered apprentice in order to engage in the fitting and selling of hearing aids, under the supervision of a licensee approved by the board.

while waiting to take the next scheduled qualifying examination.

(b) A registered apprentice who holds a masters degree in Audiology and is not an Audiologist, as defined in 21 NCAC 22A .0301 (2), may first apply for issuance of a license by examination any time after that individual has completed 250 clock hours of supervision by a licensee approved by the board. However, no later than ten working days after any registered apprentice who is not an Audiologist has held a valid apprentice registration certificate for 365 calendar days, the apprentice shall submit a duly made application for issuance of a license by examination and shall take the next scheduled qualifying examination. All registered apprentices shall reapply for a license by examination, within the time prescribed in Paragraph (c) of this Rule, each time they take and fail to pass the qualifying examination.

(c) Whenever a registered applicant is required to take the qualifying examination as a condition for issuance of a license or reissuance of a suspended license, the duly made application shall be considered by the board to be timely if it is in the hands of the executive secretary no later than 30 consecutive days prior to the examination date. The board shall have the right to refuse any person admission to the qualifying examination if such individual has not duly made application for issuance or reissuance of a license, has not attended an examination preparation workshop as set forth in 21 NCAC 22F .0014 (b), or has not made a timely filing.

(d) All fees shall be paid to the executive secretary by a bank check, certified check, or money order made payable to N.C. Hearing Aid Dealers and Fitters Board.

Statutory Authority G.S. 93D-3 (c); 93D-9.

.0004 QUALIFICATIONS

Each applicant must submit evidence to the board which shall show to the satisfaction of the board that the applicant is:

- (1) a person of good moral character;
- (2) at least 21 years of age (a person 19 years of age may be awarded an apprentice license);
- (3) the holder of a high school diploma or its equivalent;
- (4) free of contagious or infectious disease; and
- (5) has passed the required qualifying examination administered by the board (unless such applicant qualifies under 21 NCAC 22F .0011).

(a) The board may require such supplemental information to all applications for issuance and renewal of a license or an apprentice registration certificate as it deems necessary to determine the facts governing the qualifications of each licensee, registered applicant, and registered apprentice, as set forth in 21 NCAC 22 and G.S. 93D. Supplemental information may include, but is not necessarily limited to, letters of recommendation, affidavits, photographs, photocopies, official transcripts, and, if warranted, personal appearances before the board.

(b) Any registered apprentice who holds a masters degree in Audiology and any Audiologist who elects to be a registered apprentice shall, prior to the next scheduled qualifying examination, submit to 250 clock hours of direct supervision by a licensee approved by the board, whenever such apprentice takes and fails to pass the qualifying examination.

(c) Any registered apprentice who is not an Audiologist and does not hold a masters degree in Audiology shall, for each week prior to the next scheduled qualifying examination, submit to 15 clock hours of direct supervision by a licensee approved by the board, whenever such apprentice takes and fails to pass the qualifying examination.

(d) An Audiologist who engages in the fitting and selling of hearing aids, solely while serving as a salaried employee under the direct supervision of an otolaryngologist, shall not be subject to the provisions of 21 NCAC 22 or G.S. 93D.

Statutory Authority G.S. 93D-3 (c); 93D-5; 93D-9.

.0005 PASSING GRADES

The board will grant certificates only to those candidates who shall obtain a grade of at least 70 points on the examination. shall annually review the contents and outcome of the previous qualifying examinations and shall determine the minimum performance criteria required for passing the examination. In accordance with G.S. 93B-8 (a), each applicant shall be informed in writing of the requirements for passing the examination prior to his taking the examination.

Statutory Authority G.S. 93B-8; 93D-3 (c).

.0006 GRADING (REPEALED)

Statutory Authority G.S. 93D-3; 93D-5; 93D-6; 93D-8; 150B-9 (c).

.0007 COMMUNICATION OF RESULTS OF EXAMINATIONS

(a) The president will communicate to each applicant the result achieved on the examination. Pursuant to G.S. 93B-8 (b), each registered applicant shall be identified by number, rather than by name, for purpose of the examination.

(b) In no event will any information concerning answers of candidates be given to any one other than the candidate, nor will any answers be accessible for inspection at any time except at the discretion of the board. Upon 10 days written notice, an applicant will be allowed to review his examination after it has been graded. The executive secretary of the board shall issue written notification to each registered applicant, concerning only their own performance on the qualifying examination, no later than 14 consecutive days after the results of the examination are in the hands of the executive secretary.

Statutory Authority G.S. 93B-8; 93D-3 (c).

.0008 REVIEW OF EXAMINATION

Applicants must appear before the board in person when so requested to answer questions and supply additional evidence deemed necessary by the board to determine the applicants' qualifications and eligibility. A minimum of seven days notice will be given to an applicant who is to make an appearance before the board regarding qualifications and eligibility. As set forth in G.S. 93B-8 (c), each registered applicant who takes and does not pass the qualifying examination shall be granted an opportunity to review his examination in the presence of a representative of the board, upon written request from the applicant. Such written request shall be in the hands of the executive secretary of the board no later than 30 consecutive days after the written notification of the examination results was issued by the executive secretary.

Statutory Authority G.S. 93B-8; 93D-3 (c).

.0009 FEES (REPEALED)

Statutory Authority G.S. 93D-3; 93D-5; 93D-6; 93D-8; 150B-9 (c).

.0010 REFUNDS

Examination Application fees will shall not be refunded if the applicant fails to take the examination for any reason.

Statutory Authority G.S. 93D-3 (c).

.0011 RECIPROCITY (REPEALED)

.0012 LICENSES (REPEALED)

Statutory Authority G.S. 93D-3; 93D-5; 93D-6; 93D-8; 150B-9 (c).

.0013 APPRENTICESHIP REQUIREMENTS

All persons must be an apprentice for one full year before the board can authorize the issuance of a regular license, and must comply with the rules and regulations of the North Carolina Hearing Aid Dealers and Fitters Board with respect to training and supervision during the apprenticeship year. Failure to comply with said rules and regulations shall be sufficient grounds to deny or revoke said license after proper notice and hearing.

(a) Pursuant to G.S. 93D-9, each individual who duly makes application for issuance or renewal of an apprentice registration certificate shall submit a plan, using the form provided by the board, for completing the supervision requirement for the apprenticeship. The registered apprentice shall submit a report of the apprenticeship experience, using the form provided by the board, no later than ten working days after the date that any of the following conditions exist:

- (1) The apprentice and his sponsor are separated for any reason and thus causing the apprentice registration certificate to become invalidated;
- (2) The apprentice, who is not an Audiologist, has held a valid apprentice registration certificate for 365 calendar days;
- (3) The apprentice, who holds a masters degree in Audiology and is not an Audiologist, has completed 250 clock hours of supervision, prior to first taking the qualifying examination;
- (4) The apprentice has been notified by the executive secretary of the board that he failed the qualifying examination and the individual is reapplying for issuance of a license by examination;
- (5) The apprentice, who has renewed his apprentice registration certificate after failing to pass the qualifying examination, has been notified by the executive secretary of the board that he has passed the subsequent qualifying examination; or
- (6) The board has issued a written request to the registered apprentice for submission of a report, in order to deter-

mine fulfillment of the apprentice experience requirements.

(b) The initial apprentice registration certificate issued to any person who is not an Audiologist, and any subsequently issued replacements for an invalidated certificate, shall expire after the apprentice has held a valid apprentice registration certificate for a total of 365 calendar days. Upon receipt of a duly made application for issuance of a license by examination, the board shall, when necessary, extend the certificate, at no charge to the registered apprentice, until 30 consecutive days after the results of the next scheduled qualifying examination are in the hands of the executive secretary of the board. The initial apprentice registration certificate, and any replacements which are issued to an Audiologist prior to his first taking the qualifying examination, shall expire 30 consecutive days after the results of the next scheduled qualifying examination are in the hands of the executive secretary of the board.

(c) Whenever any registered apprentice takes and fails to pass the qualifying examination, the individual shall duly make application for issuance of a renewal certificate which shall expire 30 consecutive days after the results of the next scheduled qualifying examination are in the hands of the executive secretary of the board.

(d) All registered apprentices shall comply with the rules and regulations, including the code of ethics, promulgated by the board and with the provisions set forth in Chapter 93D of the General Statutes of North Carolina. Failure to comply shall be sufficient grounds to invalidate an apprentice registration certificate, to deny renewal of an apprentice registration certificate, or to deny or revoke a license after proper notice and hearing.

Statutory Authority G.S. 93D-3 (c); 93D-9.

.0014 TRAINING AND SUPERVISION

(a) An apprentice must submit to direct supervision of a sponsor designated or approved by the North Carolina Hearing Aid Dealers and Fitters Board, who will Each registered apprentice, excluding those Audiologists who elect to be a registered apprentice while waiting to take the qualifying examination for the first time, shall submit to direct supervision by a licensee who is approved by the board and who shall be responsible for the apprentice's training and supervision in the following areas:

- (1) testing and evaluation of human hearing;
- (2) evaluation and approval of all hearing aid fittings;
- (3) proper hearing aid service techniques;
- (4) minor hearing aid repair;
- (5) hearing aid use and adjustment;
- (6) speech audiometry;
- (7) testing techniques and evaluation of all hearing aid fittings;
- (8) other specialized tests that the sponsor or apprentice deem necessary;
- (9) maintenance of files of all audiograms and fittings made by the apprentice; and
- (10) providing for not less than 832 hours of instruction and direct supervision within one calendar year unless time has been accumulated under another approved sponsor and the board approves the accumulated time.
- (1) Anatomy, physiology, and pathology of the auditory mechanism;
- (2) Measurement techniques and test interpretation for assessment of hearing impairment and hearing handicap;
- (3) Hearing aid technology including instrument circuitry and acoustic performance data;
- (4) Design, selection, and modification of earmold shell coupling systems;
- (5) Hearing aid selection procedures, and fitting and adjustment techniques;
- (6) Post-delivery care including hearing aid orientation and counseling techniques, and hearing aid servicing;
- (7) Ethical conduct and regulatory issues concerning the fitting and selling of hearing aids; and
- (8) Other related topics that the sponsor or apprentice deem necessary.

(b) Practical Experience. Apprentices shall have adequate supervised practical experience from the sponsoring dealer during the apprentice year. In accepting an apprentice, the sponsor also accepts the responsibility for adequate training. This experience shall include, but not be limited to the following areas:

- (1) all phases of hearing testing (complete hearing evaluation);
- (2) hearing aid selection (hearing aid evaluation);
- (3) delivery of hearing aid;
- (4) instruction and consultation in hearing aid use;
- (5) post-fitting adjustments;
- (6) earmold impressions and modifications;
- (7) service and repair techniques.

(c) (b) Each apprentice, before receiving a regular license, Before taking the qualifying examination for the first time, each registered apprentice who is not an Audiologist shall attend an apprentice training session which shall be held for three days twice each year approximately 30 days prior to the licensing examination preparation workshop, sponsored by the board, which consists of three 2-day sessions. The workshop dates will be scheduled in conjunction with the dates for the qualifying examinations. Information concerning the scheduled times, dates, and topics for each session may be obtained from the executive secretary of the board. Written notice of intent to attend any or all of the 2-day sessions must be in the hands of the executive secretary of the board at least three consecutive days prior to the starting date of each session.

(d) Persons who hold a master's degree in audiology from an accredited university and who have completed the supervised experienced requirements of G.S. 90-295 shall be exempt from the apprenticeship requirements stated in Subparagraph (a)(10) and Paragraph (e) of this Rule, but shall be required to complete 250 hours of on-site or face-to-face supervision during the apprenticeship year by a sponsor designated by the board.

(e) Pursuant to G.S. 93D-14, all persons who currently hold a certificate of clinical competency in audiology and are salaried employees under the direct supervision of a physician licensed under G.S. 90 shall also be persons not affected by G.S. 93D.

(c) During the time that any individual holds a valid apprentice registration certificate or has duly made application for issuance of a license, that person may attend any or all of the workshop sessions on each occasion that they are conducted. The board shall have the right to refuse any person admission to the workshop sessions if the individual is not a registered apprentice or a registered applicant, or if timely notification of intent to attend was not made in accordance with Paragraph (b) of this Rule.

Statutory Authority G.S. 93D-3 (c); 93D-5.

.0015 SPONSOR'S DUTIES

(a) It shall be the responsibility of the Each sponsor of an a registered apprentice to acquaint his apprentice with 24 NCAC 22 and to shall supervise, instruct, and train demonstrate, and educate his apprentice in accordance with 24 NCAC 22 the rules and regulations promulgated by the board, includ-

ing the code of ethics, and with the North Carolina Chapter 93D of the General Statutes governing licensees; and of North Carolina.

(b) An applicant may obtain a sponsor on his own initiative, whose qualifications shall be reviewed by the board before approval of his sponsorship; provided, however, that the board shall be ultimately responsible for providing or designating a sponsor for any applicant who is unable to obtain a sponsor on his own initiative, who may be a member of the board, or other qualified person or persons designated by the board.

Pursuant to G.S. 93D-9 (c), the sponsor shall assist his apprentice in submitting all required plans for completing the supervision requirements for the apprenticeship and all required reports of the apprenticeship experience.

(c) In accepting an apprentice, including any individual who is an Audiologist or holds a masters degree in Audiology, the sponsor shall be responsible for the conduct of such registered apprentice while that individual is engaged in the fitting and selling of hearing aids and shall acquaint his apprentice with all federal and state regulations concerning the fitting and selling of hearing aids.

(d) In accepting any apprentice who has taken and failed to pass the qualifying examination, the sponsor shall provide training and direct supervision in accordance with this Rule and 21 NCAC 22F .0004.

Statutory Authority G.S. 93D-3 (c); 93D-9.

.0016 SEPARATION OF APPRENTICE AND SPONSOR

(a) In any case where an a registered apprentice license holder is separated from his sponsor for any cause, he shall surrender his identification card to his sponsor for return to the board with his apprentice license certificate. Upon application of a new sponsor, a new identification card may be issued and his new apprentice license shall be forwarded to his new sponsor after necessary fees have been paid. reason, the following procedures shall apply:

- (1) The apprentice shall return the original and all copies of his invalidated apprentice registration certificate, along with his pocket identification card which was issued by the board, to the executive secretary of the board within ten working days after such separation;
- (2) The sponsor shall notify the executive secretary of the board, in writing, of any separation from his apprentice within

ten working days after such separation; and

- (3) The sponsor shall assist the apprentice by returning to the executive secretary of the board, within ten working days after such separation, the original and all copies of the apprentice's invalidated apprentice registration certificate that may be in the possession of the sponsor.

(b) Failure to abide by the procedures stated in this Rule may result in denial of any future applications for issuance of an apprentice registration certificate or a license, and may result in disciplinary action for the sponsor after proper notice and hearing.

Statutory Authority G.S. 93D-3 (c); 93D-5.

.0017 APPRENTICE TERMINATION (REPEALED)

Statutory Authority G.S. 93D-3; 93D-5; 93D-6; 93D-8; 150B-9 (c).

.0018 CHANGE OF ADDRESS

It is the duty of all licensees, within the State of North Carolina registered applicants, and registered apprentices to notify the executive secretary of the board, within ten working days, of any change in address or the business location, name(s) or the street address(es), within the State of North Carolina, of their place(s) of business or proposed place(s) of business. Failure to do so may result in a fine of no more than twenty-five dollars (\$25.00), license suspension or revocation. Any one or more of the penalties may be imposed by the board disciplinary action after proper notice and hearing.

Statutory Authority G.S. 93D-3 (c); 93D-10.

.0019 SPONSORS' RESIDENCE (REPEALED)

Statutory Authority G.S. 93D-3; 93D-5; 93D-6; 93D-8; 150B-9 (c).

.0020 CONTINUING EDUCATION

Continuing education is endorsed by the board and each apprentice and regular licensee is encouraged to participate in educational opportunities on a regular basis. The board will require evidence of continuing education by each licensee at the time of their license renewal. Each licensee shall be required to obtain a specified number of Continuing Education Units, on an annual basis, as a re-

quirement for license renewal. The duty of obtaining information regarding the number of required continuing education program clock hours of credit or the topic content categories applicable for credit, and for obtaining the forms, issued by the board, for requesting program approval and attendance verification is solely a the responsibility of the licensee. Current requirements may be obtained from the executive secretary of the board and these requirements shall be reviewed annually by the board.

Statutory Authority G.S. 93D-3 (c); 93D-11.

SUBCHAPTER 22G - RENEWALS AND REGISTRATIONS

.0001 ANNUAL RENEWAL OF CERTIFICATES (REPEALED)

.0002 FORFEITURE (REPEALED)

Statutory Authority G.S. 93D-3; 93D-11.

SUBCHAPTER 22H - REVOCATION OF LICENSES

.0001 PETITION AND BOARD PROCEDURES (REPEALED)

.0002 PROCEDURE WHERE MEMBER OF BOARD INVOLVED (REPEALED)

Statutory Authority G.S. 93D-3; 93D-13; 150B-14; 150B-38.

SUBCHAPTER 22I - EXAMINATION OF CLIENTS

.0001 CLIENTS' INTEREST

A hearing aid dealer after careful evaluation of the disorder of hearing should All licensees shall advise the client to take the necessary recommended actions that would as prescribed in 21 CFR 801 (effective August 15, 1977), Subparts 801.420 and 801.421, in order to serve the best interest of the client.

Authority G.S. 93D-3 (c); 21 CFR 801.420; 21 CFR 801.421.

.0002 PROFICIENCY (REPEALED)

Authority G.S. 93D-3; 21 CFR 801.420; 21 CFR 801.421.

.0003 VISUAL INSPECTION

The hearing aid dealer and fitter shall use an otoscope or other suitable ear light to examine All licensees shall use a suitable device having its own light source for visual in-

spection of the external auditory canal and the tympanic membrane, in order to fulfill the requirements of 21 CFR 801 (effective August 15, 1977), Subpart 801.420 concerning the warning to hearing aid dispensers.

Authority G.S. 93D-3 (c); 21 CFR 801.420.

.0004 MEDICAL REFERRAL (REPEALED)

.0005 MEDICAL REFERRAL OF OTHER HEARING PROBLEMS (REPEALED)

Authority G.S. 93D-3; 21 CFR 801.420; 21 CFR 801.421.

.0006 DISCLOSURE

Every person who sells and fits hearing aids shall deliver to the person purchasing the hearing aid a receipt or booklet containing the following:

- (1) name and address of dealer;
- (2) name of seller and fitter;
- (3) name of customer;
- (4) name of manufacturer;
- (5) date of sale and delivery;
- (6) condition of hearing aid; new; used; re-conditioned;
- (7) model and serial number of the instrument;
- (8) total cost to customer for hearing aid and accessories provided;
- (9) charge for fitting and service; and
- (10) signature of customer.

(a) In addition to the information required by G.S. 93D-7, all licensees shall, by the time of delivery of the hearing aid(s), complete a written statement of sale containing the following:

- (1) The business name and street address, within the State of North Carolina, of at least one place of business of the seller;
- (2) The name of the person delivering the hearing aid(s) and the name of the person who sold the hearing aid(s);
- (3) The name of the purchasing party, if different from the name of the consumer;
- (4) The date of sale, if different from the date of delivery;
- (5) The model of the hearing aid(s); and
- (6) The total cost to the purchaser for all products and services.

(b) A copy of all statements of sales shall be retained for a period of three calendar years from the date of delivery of the hearing aid(s).

Statutory Authority G.S. 93D-3 (c).

.0007 AUDIOMETERS (REPEALED)

Authority G.S. 93D-3; 21 CFR 801.420; 21 CFR 801.421.

.0008 CALIBRATION CHECK FOR AUDIOMETERS

(a) All audiometers used in the fitting and selling of hearing aids ~~must~~ shall have an annual calibration check and be recalibrated, if necessary, ~~between January 1st and April 1st.~~ The board will not accept calibration records except from calibration centers approved by the board. A list of the authorized centers may be obtained from the secretary of the board, in accordance with the standards cited in Rule .0010 of this Subchapter.

(b) Whenever any individual applies for issuance and renewal of a license or an apprentice registration certificate, the board shall require proof of audiometer calibration within the 12 consecutive months preceeding such application.

Statutory Authority G.S. 93D-3 (c).

.0009 APPROVAL OF CALIBRATORS

If audiometers are calibrated within the State of North Carolina the person, firm, company or corporation (unless they are manufacturers of audiometers) doing the calibration ~~must be~~ The board shall not accept calibration records from any individual or calibration center unless such individual or center has been approved by the board prior to calibration. Manufacturers of audiometers regardless of their location, may calibrate without prior approval of the board. A list of authorized individuals and centers, as well as the form used to apply to become an authorized calibrator, may be obtained from the executive secretary of the board.

Statutory Authority G.S. 93D-3 (c).

.0010 STANDARDS FOR AUDIOMETERS

All audiometers used in measuring the hearing thresholds ~~must~~ for fitting and selling hearing aids shall be in calibration according to ASA, ISO or ANSI published the standards which are contained in the ANSI S3.6-1969 (revised 1979) specifications for audiometers and which are adopted by reference, in accordance with G.S. 150B-14 (b).

Statutory Authority G.S. 93D-3 (c); 150B-14.

.0011 SYMBOLS FOR AUDIOGRAMS

(a) The board recommends that the following standard symbols ~~are to~~ be used in recording hearing thresholds:

(1) Right ear unmasked will be ~~noted~~ denoted as follows:

~~(a)~~ (A) air -- a small circle;

~~(b)~~ (B) bone -- a 45 degree angle pointing left.

(2) Left ear unmasked will be ~~noted~~ denoted as follows:

~~(a)~~ (A) air -- a small "x";

~~(b)~~ (B) bone -- a 45 degree angle pointing right.

(3) Right ear masked will be ~~noted~~ denoted as follows:

~~(a)~~ (A) air -- a small triangle;

~~(b)~~ (B) bone -- a single bracket open on the right.

(4) Left ear masked will be ~~noted~~ denoted as follows:

~~(a)~~ (A) air -- a small square;

~~(b)~~ (B) bone -- a single bracket open on the left.

(5) No response ~~in~~ for the right ear will be ~~noted~~ denoted by a small arrow pointing southwest.

(6) No response ~~in~~ for the left ear will be ~~noted~~ denoted by a small arrow pointing southeast.

(7) An asterisk will denote the contralateral ear masked.

(8) A capital "S" will denote ~~free~~ sound field responses.

(b) In all cases where the symbols listed in this Rule are not used, a symbol key shall be included on the audiogram form.

Statutory Authority G.S. 93D-3 (c).

.0012 DISPLAY OF PRINTED CERTIFICATES

Hearing aid dealers and fitters and apprentices must have an office to display their license and must carry a copy of their license with them when doing outside business which takes them from their offices. Pursuant to G.S. 93D-12, all licensees and registered apprentices shall have a street address, located within the State of North Carolina, at which they display their license or apprentice registration certificate. In addition, all licensees and registered apprentices shall carry with them a copy of their license or apprentice registration certificate, or their pocket identification card issued by the board, when doing business which takes them outside of their offices.

Statutory Authority G.S. 93D-3 (c); 93D-12.

.0013 CLIENTS' RIGHT TO SERVICE

(a) Service after sale is a customer's consumer's right and the dealer must all licensees and registered apprentices shall furnish ~~an~~ to each hearing aid purchaser, in writing, at least one business address within the State of North Carolina where service and fulfillment of guarantees can be obtained. This information shall be given to the purchaser by the time of delivery of the hearing aid(s).

(b) A post office box ~~does~~ shall not suffice for a dealer the business address referred to in Paragraph (a) of this Rule and the address of any hearing aid manufacturer, distributor, or repair facility, located outside the State of North Carolina, shall not suffice for this required address. In addition, the address of any hearing aid manufacturer or repair facility within the State of North Carolina shall not suffice for the referenced address, unless the licensee or registered apprentice who is the seller of the hearing aid(s) is also the owner or an employee of such facility.

Statutory Authority G.S. 93D-3 (c).

SUBCHAPTER 22J - UNETHICAL CONDUCT

.0001 FRAUD (REPEALED)

Statutory Authority G.S. 93D-3; 93D-13.

.0002 EMPLOYMENT OF SUSPENDED OR UNLICENSED PERSONS

It shall be unethical and against the rules of the board a violation of this Rule to employ directly or indirectly any suspended or unlicensed person to perform in a capacity regulated by House Bill 965, Chapter 909, G.S. 93D-1 through 93D-16. Chapter 93D of the General Statutes of North Carolina.

Statutory Authority G.S. 93D-3 (c).

.0003 ADVERTISING

~~(a)~~ It shall be unethical and against the rules of the board to a violation of this Rule to perform any of the following acts:

(1) To use or cause or prompt the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation however disseminated or published which is misleading, deceiving, or untruthful;

~~(b) (2) It shall also be unethical to~~ To advertise a particular model, type, or kind of

hearing aid for sale when purchasers or prospective purchasers responding to such advertisements cannot have it demonstrated to them or cannot purchase the advertised model or kind from the ~~dealer or fitter~~ licensee or registered apprentice, and the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind of hearing aid than that advertised;

(c) A hearing aid dealer or fitter shall not represent that the professional services or advice of a physician, or audiologist will be used or made available in selling, fitting, adjustment, maintenance, or repair of hearing aid when that is not true; or using the words "doctor," "clinical" and/or "research audiologist," "audiologic" or other words of similar class, abbreviations, symbols or equipment, such as stethoscopes, head mirrors, or headlights, which tend to connote audiological or professional services when such use is not accurate, usual and customary, provided that the title "certified hearing aid audiologist" may be used when the license is so certified by the National Hearing Aid Society.

(3) To advertise that a product is offered for sale at a "sale price" when, within the past six months from the date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at a higher price;

(4) To advertise hearing aids at a low price and thereafter attempt to encourage customers to purchase similar hearing aids which were not described and priced in such advertising; or

(5) To advertise or disseminate any information which represents hearing aids as having a regular price or state value, or words of similar meaning, when, within the past six months from the date of the advertisement, less than 50 percent of all sales of that specific model of the product were sold at that price.

Statutory Authority G.S. 93D-3 (c); 93D-13 (a).

.0004 USE OF LICENSE BY ANOTHER (REPEALED)

Statutory Authority G.S. 93D-3; 93D-13.

.0005 DEFAMATION OF COMPETITORS

No hearing aid dealer or fitter It shall be unethical and a violation of this Rule for any licensee or registered apprentice shall to defame

competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questioned credit standing or competency, by false representations, or to falsely to disparage the products of competitors in any respect. their business methods, selling prices, values, credit term policies, or services.

Statutory Authority G.S. 93D-3 (c).

.0006 DISPLAY OF PRODUCTS (REPEALED)

Statutory Authority G.S. 93D-3; 93D-13.

.0007 PRICES

It shall be unethical and against the rules of the board a violation of this Rule to quote prices of competitive hearing aids or devices a competitor without disclosing that they are may not be the present actual current prices or to show, demonstrate, or represent competitive models as being current models when such is not a fact. charged by the competitor.

Statutory Authority G.S. 93D-3 (c); 93D-13 (a).

.0008 USE OF TRADEMARKS

(a) It shall be unethical and against the rules of the board a violation of this Rule to imitate, copy, or otherwise simulate the trademarks, trade names, service marks, brands, or labels of competitors with the capacity, tendency or effect for the purpose of misleading or deceiving purchasers or prospective purchasers consumers.

(b) No hearing aid dealer or fitter shall use in his advertising of the name, model name or trademark of a particular manufacturer or hearing aid in such manner as to imply a relationship with the manufacturer that does not exist, or otherwise, to mislead or deceive buyers.

Statutory Authority G.S. 93D-3 (c); 93D-13 (a).

.0009 OBTAINING INFORMATION ABOUT COMPETITORS

No hearing aid dealer or fitter It shall be unethical and a violation of this Rule to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements, or misrepresentations, by the impersonation of one in authority, or by any other unfair means.

Statutory Authority G.S. 93D-3 (c).

.0010 INDUCEMENTS TO PURCHASE

It shall be unethical and ~~against the rules of the board~~ a violation of this Rule to directly or indirectly give, offer to give, permit, or cause to be given money or anything of value to any person who advises another in a professional capacity, as ~~an inducement to influence them to contract to purchase products sold or offered for sale by a hearing aid dealer or to influence any person to refrain from dealing in the products of competitors, or with competitors.~~ for the purpose of diverting or influencing the freedom of choice of the consumer in the selection of a source for the fitting and selling of hearing aids.

Statutory Authority G.S. 93D-3 (c).

.0011 MISREPRESENTATION OF EDUCATION (REPEALED)

.0012 MISREPRESENTATION OF PRODUCTS (REPEALED)

.0013 UNETHICAL BUSINESS PRACTICES (REPEALED)

Statutory Authority G.S. 93D-3; 93D-13.

.0014 FALSE OR CONCEALED INFORMATION

It shall be unethical and a violation of this Rule to make false statements or representations to the board or to willfully conceal information from the board in connection with the issuance, reinstatement, reissuance, replacement, or renewal of a license or an apprentice registration certificate, including information as to whether any registered apprentice has satisfied or complied with the apprenticeship requirements.

Statutory Authority G.S. 93D-3 (c); 93D-13 (a).

SUBCHAPTER 22K - FORMS

.0001 DESIGNATION

The forms used by the North Carolina State Board of Hearing Aid Dealers and Fitters ~~will~~ shall be known by the following titles: ~~and numerical designations:~~

- (1) Application for License; — Form HAD-1; and
- (2) ~~Audiometer Calibration Report — Form HAD-2.~~ Application for Apprentice Registration Certificate;
- (3) Application for License Renewal;
- (4) Plan for Completing the Supervision Requirements for the Apprenticeship;

- (5) Report of the Apprenticeship Experience;
- (6) Application for Approval of a Program for CEU Accreditation;
- (7) Report of Program Attendance for Issuance of CEU Credit;
- (8) Application to Become an Authorized Calibrator; and
- (9) Application for Replacement of a Valid Printed Certificate Due to Loss or Name Change.

Statutory Authority G.S. 93D-3 (c); 150B-11 (1).

.0002 APPLICATION FOR LICENSE

(a) Form HAD-4 is the application form for an initial license as a hearing aid dealer and fitter; an apprenticeship license; a renewal license; and, a reciprocal dealer and fitters license. It requires the following information:

- (1) general information;
- (2) education;
- (3) references;
- (4) qualifications;
- (5) miscellaneous data;
- (6) type of license applied for;
- (7) applicant's affidavit; and
- (8) sponsor's affidavit.

(b) A recent photograph of the applicant must be attached to the application.

(c) Both the applicant's affidavit and the sponsor's affidavit must be notarized.

(d) A check for the correct amount of the license applied for must accompany the application.

The Application for License form shall be used by all registered applicants, as defined in 21 NCAC 22A .0308, who are seeking issuance of a license.

Statutory Authority G.S. 93D-3 (c).

.0003 APPLICATION FOR APPRENTICE REGISTRATION CERTIFICATE

Form HAD-2 is the audiometer calibration report which must be filled out and submitted to the board once a year to assure that all audiometers are calibrated to meet the required standards. The Application for Apprentice Registration Certificate form shall be used on each occasion that any individual is applying for issuance of an initial apprentice registration certificate, issuance of a new certificate to replace an invalidated apprentice registration certificate, or issuance of a renewal certificate.

Statutory Authority G.S. 93D-3 (c).

.0004 ACCESS TO FORMS

The forms ~~described~~ listed in ~~21 NCAC 22K 21 NCAC 22K .0001~~ are on file in the central office of the State Board of Hearing Aid Dealers located at 1716 West Fifth Street Extension, Greenville, North Carolina 27834 and may be obtained through a visit to same offices or by writing to the President of the State Board of Hearing Aid Dealers at Post Office Box 1387, Greenville, North Carolina 27834, from the executive secretary of the board.

Statutory Authority G.S. 93D-3 (c); 150B-11 (1).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Pharmacy intends to adopt, amend regulations cited as 21 NCAC 46 .1303; 1601; 1804; .2001; .2004 - .2016.

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

The public hearing will be conducted at 2:00 p.m. on February 16, 1988 at The Institute of Pharmacy, 109 Church Street, Chapel Hill, North Carolina 27514.

Comment Procedures: Persons wishing to present oral data, views or arguments on a proposed rule may file a notice with the board at least 10 days prior to the public hearing to the board at Post Office Box 11, Carrboro, North Carolina, 27510. Any person may also file a written submission containing data, comments or arguments at any time until 30 days after the hearing.

CHAPTER 46 - PHARMACY

SECTION .1300 - GENERAL DEFINITIONS

.1303 PHARMACY PERMIT

"Pharmacy Permit" means a permit issued or reissued by the Board of Pharmacy for:

- (1) a new pharmacy;
- (2) a change of pharmacist-manager of an established pharmacy;
- (3)

A change of ownership of an established pharmacy to a successor business entity but not including transfer to or from a

sole proprietorship, a partnership, corporation, or any other business entity unless such transfer results in a change in the controlling interests in the pharmacy;

- (4) a transfer of ownership of a permit is not allowed where the permit is or will be involved in a pending disciplinary proceedings.

A change in controlling interests shall be deemed to have taken place with the acquisition of more than 50 percent interest by any party.

Statutory Authority G.S. 90-85.6; 90-85.21.

SECTION .1600 - LICENSES AND PERMITS

.1601 PHARMACY PERMITS

- (7) ~~The board shall not issue or renew a permit. In addition to the requirements for issuance and renewal of a pharmacy permit imposed by statute and by other rules and regulations of the board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the traditional physician - pharmacist - patient relationship does not exist. Provided, however, that this Rule shall not prohibit the occasional mailing of prescription drugs to bona fide customers of any pharmacy when the traditional physician-pharmacist-patient relationship is present, until the board is satisfied that:~~

- (a) The pharmacy maintains records of prescriptions compounded or dispensed and distributed in a manner that is readily retrievable;
- (b) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of 40 hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (c) The pharmacy complies with all lawful orders, directions, and requests for information from the boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (d) The pharmacy complies with all USP and FDA requirements regarding the

storage, packaging, and shipping of prescription medications.

The pharmacist manager and all other pharmacists employed in pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46 .1801 and .1805, and 21 C.F.R. 1306.04, 1306.05, and 1306.21.

- (9) Permits to operate pharmacies and drugstores as provided for in G.S. 90-85.21, whether original or renewal, shall be issued to the pharmacist-manager of such drugstore or pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of the said pharmacy as required by G.S. 90-85.21. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit. Such reissuance shall be in accordance with the statutes and regulations governing the issuance of pharmacy permits.

Statutory Authority G.S. 90-85.21; 150B-11.

SECTION .1800 - PRESCRIPTIONS

.1804 PRESCRIPTION: RECEIVING AND DISPENSING

In order to assure that the traditional physician/pharmacist/patient relationship exists and the safe and secure distribution of drugs and devices and to provide the services specified in G.S. 90-85.3(r) to ultimate users who are not institutionalized:

- (1) Any place where prescription orders are received for eventual filling or refilling filled or refilled shall have a permit as specified in G.S. 90-85.21 or G.S. 90-85.22 and conform to all pertinent requirements.
- (2) The dispensing [see G.S. 90-85.3(f)] of prescription orders drugs described in Paragraph (1) of this Rule shall occur only on the same premises where the prescription order was received filled or refilled and all relevant transactions shall be

completed at that location, except as provided in Paragraph (3) of this Rule.

- (3) Prescription orders may be received for filling and refilling and prescription drugs may be delivered only by a pharmacist or a bona fide employee of the pharmacy. Prescription drugs must be delivered directly to the patient or to an adult member of the patient's household or to another responsible person acting on the patient's behalf. The person to whom delivery is made must sign for the prescription drugs where practicable, and if such is not practicable, then the person making the delivery must sign and indicate how and where delivery was accomplished. The pharmacists shall maintain records for three years of all prescription drugs which are delivered pursuant to this Paragraph. The pharmacist manager of the pharmacy shall be ultimately responsible for the receipt of prescription orders and delivery of prescription drugs in conformance with this Paragraph.

Statutory Authority G.S. 90-85.3.

SECTION .2000 - ADMINISTRATIVE PROVISIONS

.2001 RIGHT TO HEARING

(a) Subchapter 2C of the Model Administrative Procedures for Administrative Hearing Procedures, codified as Title 22, NCAC, effective February 1, 1986, are hereby adopted by reference. In applying 22 NCAC, Subchapter 2C to this board, the definitions contained in 22 NCAC 2A .0005 shall apply as modified herein:

- (1) "Agency" means the North Carolina Board of Pharmacy.
- (2) "Agency Address" means:
North Carolina Board of Pharmacy
Post Office Box H
Carrboro, North Carolina 27510
- (3) "Agency Head"
(A) In the context of final agency decisions, "agency head" means the board.
(B) In the context of the board granting administrative authority, "agency head" means the executive director of the board.

(b) Copies of 22 NCAC Subchapter 2C and 22 NCAC 2A .0005 are on file in the board's office and may be inspected in that office or at the Office of Administrative Hearings, Raleigh, N.C. Copies may be ob-

tained for a charge to be determined by each office.

When the board acts or proposes to act, other than in rule-making or declaratory ruling proceedings, in a manner which will affect the rights, duties, privileges or a license of a specific, identifiable person, such person has the right to an administrative hearing. When the board proposes to act in such a manner, it shall give such person notice of their right to a hearing by mailing by certified mail to them at their last known address a notice of the proposed action and a notice of a right to a hearing.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38.

.2004 REQUEST FOR HEARING

(a) Any time an individual believes their rights, duties, or privileges have been affected by the board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) Before an individual may file a request he must first exhaust all reasonable efforts to resolve the issue informally with the board.

(c) Subsequent to such informal action, if still dissatisfied, the individual should submit a request to the board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request should contain the following information:

- (1) name and address of the petitioner,
- (2) a concise statement of the action taken by the board which is challenged,
- (3) a concise statement of the way in which the petitioner has been aggrieved, and
- (4) a clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the board, a hearing will be scheduled.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38.

.2005 GRANTING OR DENYING HEARING REQUEST

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

(b) The denial of 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 con-

tain a statement of the reasons leading the board to deny the request.

(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 .2004 of this Section.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38.

.2006 NOTICE OF HEARING

(a) The board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):

- (1) the name, position, address and telephone number of a person at the offices of the board to contact for further information or discussion;
- (2) the date, time, and place for a pre-hearing conference, if any; and
- (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.

(b) The board shall give notice to all parties with a notice of hearing either personally or by certified mail or, if those methods are unavailable, in accordance with G.S. 1A-1, Rule 4 (j) (1). In the event that notice is accomplished by certified mail, the delivery date on the return receipt shall be the date of notice.

(c) If the board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license or permit. Upon service of the order, the licensee or permit holder to whom the order is directed shall immediately cease the practice of pharmacy in North Carolina. The board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the board of a final agency decision pursuant to G.S. 150B-42.

Statutory Authority G.S. 90-85.6; 150B-3 (c); 150B-11; 150B-38.

.2007 WHO SHALL HEAR CONTESTED CASES

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

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38; 150B-40.

.2008 INFORMAL PROCEDURES

(a) Except as prohibited by statute, the board and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

(b) Informal disposition may be made of any contested case or any issue therein by stipulation, agreement, or consent order at any time during the proceedings.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38.

.2009 PETITION FOR INTERVENTION

(a) A person desiring to intervene in a contested case must file a written petition with the board's office. The request should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of case).

(b) The petition must include the following information:

- (1) the name and address of petitioner;
- (2) the business or occupation of petitioner, where relevant;
- (3) a full identification of the hearing in which petitioner is seeking to intervene;
- (4) the statutory or non-statutory grounds for intervention;
- (5) any claim or defense in respect of which intervention is sought; and
- (6) a summary of the arguments of evidence petitioner seeks to present.

(c) The board will mail copies of the petition to the parties to the case, with the costs at the rate of twenty-five cents (\$.25) per page chargeable to the petitioner.

(d) If the board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary, which are imposed on the intervenor.

(e) If the board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38.

.2010 TYPES OF INTERVENTION

(a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and their petition is timely.

(b) Permissive Intervention. A petition to intervene permissibly as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the board determines that:

- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearing; and
- (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.

(c) The board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38.

.2012 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a board member determines that personal bias or other factors render them unable to conduct the hearing and perform all duties in an impartial manner, that board member shall voluntarily decline to participate in the hearing or decision.

(b) Petition for disqualification. If for any reason any party in a contested case believes that a board member is personally biased or otherwise unable to conduct the hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of case).

(c) Contents of affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the board member.

(d) Timeliness of affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts

which give rise to a reasonable belief that a board member may be disqualified under this Rule.

(e) Procedure for determining disqualification.

- (1) The board will appoint a board member to investigate the allegations of the affidavit.
- (2) The investigator will report their findings and recommendations to the board.
- (3) The board shall decide whether to disqualify the challenged individual.
- (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the board.
- (5) A record of proceedings and the reasons for decision reached will be maintained as part of the contested case record.
- (6) When a board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the board.
- (7) If three or more members of the board are disqualified pursuant to this Rule, the board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).
- (8) Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38; 150B-40.

.2012 FAILURE TO APPEAR

Should a party fail to appear at a scheduled hearing, the board, or the designated ad-

ministrative law judge, may proceed with the hearing and make its decision in the absence of the party, provided that the party has been given proper notice. The board or the administrative law judge may order a continuance in order to give the party another opportunity to appear.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38; 150B-40.

.2013 SUBPOENAS

(a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the board and shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The board shall issue the requested subpoenas within three days of receipt of the request.

(b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of one of the members of the board or the board's executive director; and a "return of service." The "return of service" form as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.

(c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the board.

(d) Except as otherwise stated in a particular subpoena, any person receiving a subpoena from the board may object thereto by

filing a written objection to the subpoena with the board's office. Such objection must be filed within five days of receipt of the subpoena or two days prior to the date on which the subpoena is returnable or testimony to be taken, whichever is soonest.

(e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.

(f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the board.

(g) The party who requested the subpoena, in such time as may be granted by the board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the board.

(h) After receipt of the objection and response thereto, if any, the board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.

(i) Promptly after the close of such hearing, a majority of the board members with voting authority, or an administrative law judge assigned to the case pursuant to G.S. 150B-40(e), 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. 90-85.6; 150B-11; 150B-38; 150B-39.

.2014 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the board's own motion, the presiding officer may exclude witnesses from the hearing room so

that they cannot hear the testimony of other witnesses.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38; 150B-40.

.2015 FINAL DECISION

In all cases heard by the Board of Pharmacy, the board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38; 150B-42.

.2016 PROPOSALS FOR DECISIONS

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the rules of the Office of Administrative Hearings, 26 NCAC 3 .0026. Any party may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be received within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter, 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 with ten days of the receipt of the proposal for decision. The 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 request for further oral argument, notice will be issued promptly to all parties designating time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the board may adopt the proposal for decision or may modify it as the board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as

adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled board meeting following receipt of the written exceptions.

Statutory Authority G.S. 90-85.6; 150B-11; 150B-38; 150B-40.

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Physical Therapy Examiners intends to amend regulations cited as 21 NCAC 48A .0003(a); 48C .0302(d); 48D .0003(a); .0005(b)(1),(c)(1)(2),(d); .0006; .0009(a); .0010(a); 48E .0101(b); .0104; .0105; .0110(b)(3),(4)(A)(B); 48F .0001(a)(2); .0002(a)(13); .0003; 48G .0104; .0203(b); 48H .0102; adopt: 21 NCAC 48 H .0104; repeal: 21 NCAC 48H .0103.

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

The public hearing will be conducted at 1:00 P.M. on February 18, 1988 at 900 Ridgefield Drive, Suite 250, Raleigh, N. C. 27609.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of the hearing will be open for receipt of written comments from January 17, 1988, to 5:00 P.M. on February 17, 1988. Such written comments must be delivered or mailed to Constance Peake, N. C. Board of Physical Therapy Examiners, 2426 Tryon Road, Durham, NC 27705.

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

SUBCHAPTER 48A - ORGANIZATION

.0003 MEMBERSHIP OF BOARD

(a) Selection of Board Members. Nominations for members of the board shall be sought from licensees residing in North Carolina. No more than ten nominees receiving the highest number of nominations, plus ties, for

each category (physical therapist, physical therapist assistant, medical doctor) shall be eligible to be placed on the ballot; provided, however, a nominee must receive more than one nomination to appear on the ballot. If no nominee receives more than one nomination, all nominees will be eligible to appear on the ballot. The ballots that are distributed to each licensee in North Carolina shall list each nominee's place and location of employment and practice setting. The results of the balloting shall be forwarded to the President of the North Carolina Physical Therapy Association, or his designate, for submission to the Governor.

Statutory Authority G.S. 90-270.25; 90-270.26.

SUBCHAPTER 48C - SCOPE OF PHYSICAL THERAPY PRACTICE

SECTION .0300 - RECENT GRADUATES

.0302 AUTHORIZATION

(d) Any PT graduate or PTA graduate who fails to take the next succeeding examination may request an informal meeting with the board t for applicant's failure to take the examination. If due cause is established, the authorization can be extended for a period not to exceed six nine months. ~~from the date of issuance.~~ The board's determination as to whether there was due cause shall be final.

Statutory Authority G.S. 90-270.24; 90-270.26; 90-270.31.

SUBCHAPTER 48D - EXAMINATIONS

.0003 NOTICE OF EXAMINATION

(a) Notices. Adequate notice of dates ~~and place~~ of examinations shall be furnished to all educational programs in North Carolina ~~for posting~~ and to all persons currently licensed with the board.

Statutory Authority G.S. 90-270.26; 93B-8(b).

.0005 EXAMINATION SCORES

(b) Failure of Examination:

- (1) An examinee may be failed on either part score or total score. If the required minimum score of any part is failed, but the total score is passed, only the part which is failed must be repeated. Even ~~though if~~ all parts have been passed at one time or another, ~~the examination must be repeated until a passing total score is received.~~ a passing total score

on the entire examination must be received at one sitting.

(c) Transfer of Scores. Scores will be released as follows:

(1) To an individual who took the examination in North Carolina at his request and with no charge;

(2) ~~To an individual's educational program, without charge, providing the individual signs a permission form;~~

(2) To licensing boards in other states upon the request of the individual and the payment of the fee; licensure information may be included with the score release;

(3) To other persons or institutions upon the request of the individual and the payment of the fee.

(d) Scores Related to Passing Level. Scores released to the individual ~~or his educational program~~ will include the North Carolina passing level for the examination.

Statutory Authority G.S. 90-270.26; 90-270.33; 93B-8(c),(d).

.0006 NOTIFICATION OF EXAMINATION RESULTS

(a) Individuals. All applicants will be notified in writing of the results of the examination.

(b) North Carolina Educational Programs. After each examination the North Carolina educational programs that had graduates taking the examination will be notified as to the number of their graduates who passed the examination, the number who failed and the parts that were failed. sent the scores for all their graduates with no identification number or identifying name. North Carolina passing level and the cumulative data for the examination will be included.

Statutory Authority G.S. 90-270.26.

.0009 RETAKING EXAMINATION

(a) Arrangements for Retake. To retake the examination, the applicant must notify the executive secretary at least five weeks, 45 days unless instructed otherwise by the board, in advance of the examination date and pay the retake fee and the examination cost at that time.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.33.

.0010 ADMINISTRATION OF

EXAMINATION

(a) Proctoring. The written examination shall be proctored by at least one member of the board, by the executive secretary or by the personnel of a professional testing service. Other proctors shall be retained as required.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.36.

SUBCHAPTER 48E - APPLICATION FOR LICENSURE

SECTION .0100 - UNITED STATES TRAINED PHYSICAL THERAPISTS

.0101 FILING APPLICATION

(b) To be certain an applicant will be considered for the examination date he desires, he must submit his application to the executive secretary at least five weeks 45 days prior to the examination.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.31(b).

.0104 EXAMINATION SCORES

Persons seeking licensure by endorsement must have their examination scores sent to the executive secretary by either the state of endorsement, the state in which the examination was taken or by report from the Interstate Reporting Service. The scores may be on the board's form or the official letter-head of the other licensing board. The licensing board may use the North Carolina form or its official letter-head, but in either case must bear the official signature and seal of that board must appear thereon.

Statutory Authority G.S. 90-270.26; 90-270.31(b).

.0105 VERIFICATION OF LICENSURE

Verification of an active license in another state must be sent to the executive secretary by the board in the other state either on the North Carolina licensure verification form or as a letter on the board's official letter-head containing the information requested on the verification form. In either case, it must bear the official signature and seal of the board of that state.

Statutory Authority G.S. 90-270.26; 90-270.31(b).

.0110 FOREIGN-TRAINED PHYSICAL THERAPISTS

(b) Supporting Documents. In addition to the other requirements of this Section and G.S. 90-270.30, each foreign-trained applicant must submit the following:

- (1) If the applicant has been graduated from a physical therapy educational program accredited by an agency recognized by the U.S. Office of Education or the Council on Postsecondary Accreditation, a certification of physical therapy education is to be submitted directly to the board.
- (2) If the applicant does not meet the requirements of 21 NCAC 48E .0110(b)(1), then the board will examine the applicant's educational program to determine if the general college and professional instruction is substantially equivalent to that of a United States trained physical therapist. It is the responsibility of the applicant to make arrangements with a credentialing service acceptable to the board to have the credentials evaluated. The board will make its own review of applicant's educational program and is not bound by the findings of the credentialing service.
- (3) ~~An official certification from the applicant's school of acceptable performance in courses given in the English language, or the submission of scores~~ Scores acceptable to the board on the TOEFL (Test of English as a Foreign Language), TSE (Test of Spoken English), or appropriate substitute examinations evidence authorized by the board. ~~Foreign-trained physical therapists whose native language is English are exempt from the requirements of this Paragraph.~~
- (4) Proof acceptable to the board that the applicant has satisfactorily completed:
 - (A) ~~Sixty 58 - 62~~ semester hours of general college education, which shall include a minimum of:
 - (i) eight semester hours of biological sciences; and
 - (ii) ~~sixteen 12~~ semester hours of natural sciences including at least one course each in physics and chemistry.
 - (iii) ~~thirty-six~~ semester hours of college level courses.
 - (B) ~~Sixty 57 - 61~~ semester hours of professional curriculum, including basic health sciences, clinical sciences and clinical education. The board may, but is not required to, transfer hours of credit from professional curriculum to

general college education at its discretion.

Statutory Authority G.S. 90-270.26; 90-270.29; 90-270.30; 90-270.31.

CHAPTER 48F - CERTIFICATES: FEES: INVESTIGATIONS: RECORD OF LICENSEES

.0001 LICENSURE CERTIFICATE

(a) Names:

- (1) A licensee's name will appear on the certificate as the name of the individual at the time of licensure, except in the case of a person taking the examination who is married during the time between the examination and the actual date of licensure. This person may elect to use her maiden name or her married name, if the marriage takes place prior to the date of licensure.
- (2) If a name is changed after the date of licensure, the ~~certificate will continue to bear the name of the individual at the time of issuance.~~ licensee may request a new certificate to reflect the name change and pays the cost for a duplicate certificate.

Statutory Authority G.S. 90-270.26; 90-270.31; 90-270.33.

.0002 FEES

(a) The following fees are charged by the board:

- (13) processing fee for returned checks ten dollars (\$10.00).

Statutory Authority G.S. 25-3-512; 90-270.26; 90-270.27; 90-270.29 through 90-270.33.

.0003 INVESTIGATIONS

Any complaint relevant to alleged violations of the North Carolina Physical Therapy Practice Act must be made in writing, signed by the person submitting the complaint, and include his address. Complaints are to be sent to the executive secretary. ~~for referral to the board.~~

Statutory Authority G.S. 90-270.26; 90-270.35; 90-270.36.

SUBCHAPTER 48G - RETENTION OF LICENSE

SECTION .0100 - LICENSURE RENEWAL

.0104 LICENSURE CARD

~~Wallet size A licensure cards card and renewal certificate~~ bearing the current name of the licensee, license number and a January 31 expiration date will be issued to ~~all persons~~ each person having an active license.

Statutory Authority G.S. 90-270.26; 90-270.32.

SECTION .0200 - LAPSED LICENSES

.0203 REVIVAL OF LAPSED LICENSE

(a) If a license has lapsed less than five years, it may be revived by paying the revival of lapsed license fee and the current year's renewal fee and by completing the revival form.

~~(b) If a license has lapsed for five years or more, but the applicant for revival of lapsed license has been licensed and practicing under a currently valid license in another state for the period during which the license has lapsed in North Carolina, it may be revived by paying the revival of lapsed license fee and the current renewal fee and by completing the revival form.~~

~~(c)~~ (b) If a license has lapsed for five years or more during which time an applicant for revival of license has not been actively engaged in practice as a physical therapist or physical therapist assistant, it may be revived by paying the application fee; and

- (1) passing the PES exam; or
- (2) satisfactorily completing at least 500 hours of clinical work as authorized by the board within a period of time not to exceed six months under the supervision of a licensed physical therapist who must be present during and account for the 500 hours on a form provided by the board.

Statutory Authority G.S. 90-270.26; 90-270.32; 90-270.33.

SUBCHAPTER 48II - RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURE

SECTION .0100 - AVAILABILITY OF RULES

.0102 INSPECTION OF RULES

Official rules will be available for public inspection in the ~~Attorney General's Office~~ Office of Administrative Hearings or by making an appointment with the executive secretary.

Statutory Authority G.S. 90-270.26; 150B-62.

.0103 ADOPTION OF MODEL RULE

(REPEALED)

Statutory Authority G.S. 90-270.26.

.0104 CONTESTED CASES

The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby adopted by reference, as provided for in G.S. 150B-14(c), for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative Code and that 26 NCAC 3 .0001(2); .0002(a)(1); .0003(b); .0025 and .0026 shall not apply.

Statutory Authority G.S. 150B-38(h); 150B-14(a)(4).

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Examiners of Practicing Psychologists intends to adopt and amend regulations cited as 21 NCAC 54 .1605; .1608; .1701(4); .1702; .1703(c); .1801; .1803; .2301; .2304; .2401-.2402; .2501 - .2505; and .2601 - .2602.

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

The public hearing will be conducted at 2:00 p.m. on March 3, 1988 at Magnolia Cottage, Mission Valley Inn, Raleigh, N. C.

Comment Procedures: Requests to present written or oral comments at the public hearing or other comments not presented at the hearing should be submitted in writing by February 29, 1988, to the board at the following address: N.C. State Board of Examiners of Practicing Psychologists, University Hall, Appalachian State University, Boone, NC 28608.

CHAPTER 54 - PRACTICING PSYCHOLOGISTS

SECTION .1600 - GENERAL PROVISIONS

.1605 FEES

In addition to fees specified in Article 18A, Chapter 90 of the North Carolina General Statutes, the following charges will be assessed for the indicated services:

- (1) ~~five dollars (\$5.00)~~ eight dollars (\$8.00) - copy of annual directory of licensed psychologists;
- (2) five dollars (\$5.00) - copy of 21 NCAC 54;
- (3) thirty dollars (\$30.00) - renewal of license;
- (4) ten dollars (\$10.00) - late renewal of license;
- (5) fifteen dollars (\$15.00) - duplicate license;
- (6) one hundred dollars (\$100.00) - national examination taken prior to October 6, 1989; one hundred fifty dollars (\$150.00) - national examination taken on or after October 6, 1989; and
- (7) ten dollars (\$10.00) - state examination; and
- (8) twenty five cents (\$0.25) per page - copy of minutes of board meetings or transcript of hearing.

Statutory Authority G.S. 12-3.1(c); 90-270.9; 90-270.11 (a) (1); 90-270.11 (b) (1); 90-270.14(1); 90-270.20.

.1608 ETHICAL VIOLATIONS

The board will use standards and guidelines established by the American Psychological Association in determining whether violations of the code of ethics Ethical Principles of Psychologists have occurred. These will include but are not limited to the then-current editions of Standards for Educational and Psychological Testing and Standards for Providers of Psychological Services General Guidelines for Providers of Psychological Services. In addition, publications, guidelines, policies, and statements provided by the American Association of State Psychology Boards, the National Association of School Psychologists, and other relevant professional associations and bodies will be used in interpreting the Ethical Principles of Psychologists.

Statutory Authority G.S. 90-270.9; 90-270.15 (a) (8).

SECTION .1700 - APPLICATION FOR LICENSURE

.1701 CREDENTIALS REQUIRED

The credentials required for each applicant consist of:

- (4) three professional acceptable reference letters from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist;

Statutory Authority G.S. 90-270.9; 90-270.11(a), (b); 93B-9.

.1702 FOREIGN DEGREE APPLICATION POLICY

(a) When an applicant applies for licensure on the basis of a foreign degree, only official transcripts and documents should be submitted in support of the application. In those rare instances where originals cannot be supplied, a meeting with one of the board members or its designee must be arranged so that the original transcript(s) can be reviewed and copied.

(b) Supporting validation of the foreign psychology degree must be from one or more North Carolina university psychology professor(s) or other qualified psychologist(s) designated by the board. Relevant materials from the American Association of State Psychology Board's Committee on Foreign Education may also be utilized in making the final determination.

(c) Given the variability in education credentials throughout the world, additional documentation relevant to the country involved may be required.

(a) Applicants applying for licensure on the basis of a foreign degree must provide documentation which:

- (1) establishes the authenticity of the degree granting institution, the degree and transcripts, and any supporting documentation;
- (2) establishes the equivalence of the degree in terms of level of training, content of curriculum, and course credits; and
- (3) establishes the equivalence of any supervised experience obtained in the foreign country.

(b) Only official transcripts and documents should be submitted in support of the application and should be received directly from the institution(s) or individual(s) involved. In those rare instances where official documents cannot be provided by the institution, the original possessed by the applicant may be acceptable after having been reviewed and copied by a board member or designee.

(c) Official transcripts or supporting documentation which are in a language other than English must be accompanied by an ac-

ceptable translation with notarized verification of its accuracy and completeness. This translation must be completed by an individual other than the applicant who is acceptable to the board and demonstrates no conflict of interest. Such individuals may include college or university language faculty, a translation service, or an American consul.

(d) Documentation relevant to Paragraph (a) of this Rule may include, but is not limited to, validation of degree equivalence by college or university faculty in the United States, reports from a credentials' evaluation service acceptable to the board, materials available from the Foreign Graduate Committee of the American Association of State Psychology Boards, and or an interview with the board.

(e) An applicant's references must include individuals from member jurisdictions of the American Association of State Psychology Boards, including a doctoral level psychologist familiar with the applicant's professional practice of psychology.

Statutory Authority G.S. 90-270.9; 90-270.11(d).

.1703 TEMPORARY LICENSES

(c) A psychologist who comes to reside in North Carolina or an applicant for licensure who is otherwise qualified for licensing may be issued a temporary license until the board conducts its next regularly scheduled licensing examination and the applicant can be notified of the results, provided the following ~~is~~ are received and approved by the board:

- (1) credentials listed in 21 NCAC 54 .1701 Credentials Required and/or 21 NCAC 54 .1702 Foreign Degree Application Policy; and
- (2) ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00).

This license cannot be issued, reissued, or extended if the applicant chooses not to take the first scheduled examination after being admitted, if the applicant fails the examination, ~~or~~ if the applicant has previously failed an examination, or if the applicant has previously failed to appear for an examination to which he/she was admitted.

Statutory Authority G.S. 90-270.5; 90-270.9.

SECTION .1800 - EDUCATION

.1801 PRACTICING PSYCHOLOGIST REQUIREMENTS AS OF JUNE 30, 1987

(a) This rule applies only to those Practicing Psychologist applicants who apply for a license on or before:

- (1) July 1, 1989, or
- (2) July 1, 1993, provided they were enrolled in doctoral training programs on or before December 31, 1987, and received their doctoral degree after July 1, 1987, but on or before July 1, 1993.

~~(a)~~ (b) A doctoral degree in psychology from an accredited educational institution will be considered to be a planned and directed program of studies which is psychological in nature. If the applicant does not possess such a degree, evidence must be provided that the degree is from an accredited educational institution and is based on a program of planned and directed studies which is psychological in nature. Such a program must:

- (1) be taken within a recognizable, coherent, organizational entity within the university which contains an identifiable psychology faculty and a psychologist responsible for the program;
- (2) include practicum, internship, field, or laboratory training appropriate to one's area of specialty and to the practice of psychology;
- (3) include a minimum of 60 semester hours of graduate study in standard psychology courses:
 - (A) a maximum of six semester hours will be allowed for dissertation/thesis, and
 - (B) a maximum of six semester hours will be allowed for internship/practicum;
- (4) include instruction in:
 - (A) scientific and professional ethics and standards,
 - (B) research design and methodology, and
 - (C) statistics and psychometrics;
- (5) ordinarily include a minimum of three semester hours in each of the following substantive content areas:
 - (A) biological bases of behavior,
 - (B) cognitive-affective bases of behavior,
 - (C) social bases of behavior, and
 - (D) individual differences.

~~(b)~~ (c) If the applicant wishes to claim that course work done in departments other than psychology should be counted in meeting the minimum hour requirement, evidence must be provided, in a form specified by the board, that such courses are psychological in nature. This evidence shall consist of:

- (1) a description of the courses;

- (2) textbooks used;
- (3) name of professors;
- (4) statement of professors' membership in national, regional, and state psychological associations; and
- (5) professors' licensure or certification status.

Statutory Authority G.S. 90-270.9;
90-270.11(a)(1)c.

**.1803 PRACTICING PSYCHOLOGIST
REQUIREMENTS AS OF
JULY 1, 1989**

(a) This rule applies to all Practicing Psychologist applicants making application after July 1, 1989, except those applicants who meet all the following requirements:

- (1) were enrolled in doctoral training programs on or before December 31, 1987; and
- (2) received their doctoral degree after July 1, 1987, but on or before July 1, 1993; and
- (3) make application on or before July 1, 1993.

Practicing Psychologist applicants meeting all the requirements specified in Subparagraphs (a)(1), (a)(2), and (a)(3) of this Rule shall be considered under Rule .1801 Practicing Psychologist Requirements as of June 30, 1987.

(b) A doctoral degree based on a planned and directed program of studies in psychology from an institution accredited by one of the regional accrediting bodies recognized by the Council on Postsecondary Accreditation is required. The doctoral program must be one which was fully accredited by the American Psychological Association throughout the period of the applicant's enrollment in the program, or one which meets all of the following requirements, as determined by the board and documented in a format specified by the board.

- (1) The program, wherever it may be administratively housed, must be publicly identified and clearly labeled as a psychology program; such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train psychologists.
- (2) The program must stand as a recognizable, coherent organizational entity within the institution.
- (3) The program must maintain clear authority and primary responsibility for the core and specialty areas whether or not the program crosses administrative lines.

- (4) The program must have an identifiable body of students who are matriculated in that program for a degree.
- (5) There must be an identifiable full-time psychology faculty employed by and providing instruction and/or program coordination at the home campus of the institution.
- (6) There must be a psychologist responsible for the applicant's program either as the administrative head of the program, or as responsible for the individual applicant's program in the role of advisor, major professor, or committee chair.
- (7) The program in psychology must be an integrated, organized sequence of study as demonstrated by an identifiable curriculum track or tracks wherein course sequences are outlined.
- (8) The program must encompass the equivalent of three years of full-time academic study, two years of which are at the institution from which the degree is granted, and one year of which is in residence at the institution from which the degree is granted, or its equivalent. Residence requires interaction with psychology faculty and other matriculated psychology students; one year's residence or its equivalent are defined as follows:
 - (A) 30 semester hours taken on a full-time or part-time basis at the institution, or
 - (B) a minimum of 300 hours of student-faculty contact involving face - to - face individual or group educational meetings. Such educational meetings must include both faculty - student and student - student interaction, be conducted by the psychology faculty of the institution at least 90 percent of the time, be fully documented by the applicant and the institution, and relate substantially to the program components specified in Subparagraphs (b)(9), (b)(10), and (b)(11) of this Rule. The institution must clearly document how the applicant's performance is assessed and evaluated.
- (9) The program must include practicum, internship, field, or laboratory training appropriate to the area of specialty and the practice of psychology; this experience must be supervised by a psychologist.

(10) The program of study must include a minimum of 60 semester hours of graduate study in standard psychology courses except as allowed in this Subparagraph. These hours will include instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, and the specialty area. A maximum of six semester hours will be allowed for internship practicum and a maximum of six semester hours will be allowed for thesis/ dissertation. If the applicant wishes to utilize selected course work from other than psychology departments or programs toward meeting the minimum course hour requirements and/or curricular requirements specified in this Subparagraph and in Subparagraph (b)(11), evidence must be provided, in a form specified by the board, that such courses are relevant to the applicant's organized sequence of study or that they are psychological in nature. This evidence shall consist of:

- (A) a description of the courses;
 - (B) the textbooks used;
 - (C) name, degree, and specialty of the professor;
 - (D) statement of professors' membership in national, regional, and state psychological associations;
 - (E) licensure or certification status of the professors; and
 - (F) relevance to specialty area and organized sequence of study.
- (11) Ordinarily, the program must include demonstrated competency in the four substantive content areas identified in this Subparagraph; typically, this will be met through a minimum of three semester hours in each of these content areas:

- (A) biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology);
- (B) cognitive-affective bases of behavior (e.g., cognition, memory, learning, thinking, motivation, emotion);
- (C) social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, cultural and ethnic bases, sex roles);

(D) individual differences (e.g., personality theory, human development, abnormal psychology, individual differences).

Statutory Authority G.S. 90-270.2(a); 90-270.9; 90-270.11(a)(1)c.

SECTION .2300 - ADMINISTRATIVE HEARING PROCEDURES

.2301 RIGHT TO A HEARING

When the board proposes to suspend or revoke a license, or at any other time when it deems a hearing appropriate or legally required, it shall give notice to the person(s) affected of the right to an administrative hearing. ~~The notice will be mailed by certified mail to such person at his last known address. Personal service or other authorized methods of service may be used if service cannot be accomplished by certified mail upon reasonable effort.~~ Such person may assert his right to a hearing by mailing or delivering to the board by certified mail a written request for a hearing, as provided in Rule .2302(c) of this Section, ~~except that attempts at informal resolution are not required,~~ and a hearing will be granted ~~provided that the container of the request bears a postmark dated prior to the date on which the board proposed to act or such other date as may be specified in the notice.~~ The written request must be received by the board or placed in the mail, as evidenced by the postmark on the envelope or container in which it is mailed, prior to the date on which the board proposes to act or such other date as may be specified in the notice

Statutory Authority G.S. 90-270.9; 150B-3(b); 150B-11(1); 150B-38.

.2304 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 of Examiners of Practicing Psychologists:

- (5) shall inform the party or parties, other than the board, of the right to file a written response to the allegations in the notice of hearing no later than ten days prior to any scheduled hearing date or within such other time as may be set out in the notice;
- (6) when the person receiving the notice of hearing is a licensee, shall provide him or her with an opportunity to show compliance with all lawful requirements for retention of his or her license without

disciplinary action, if such an opportunity has not been provided prior to issuance of the notice;

- (5) (7) may include any other information deemed relevant to informing the party or parties as to the procedure of the hearing.

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-38.

SECTION .2400 - RULEMAKING PROCEDURES

.2401 PETITION FOR RULE MAKING HEARINGS

Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the board shall address a petition to the North Carolina State Board of Examiners of Practicing Psychologists at the address shown in Rule .1602 of this Chapter. The petition should include the following information:

- (1) an indication of the subject area to which the petition is directed (for example: "This is a petition to conduct rulemaking to amend Section 21 NCAC 54 .2200 pertaining to Professional Corporation.");
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reasons for the proposal;
- (4) the effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) effect of the proposed rule on existing practices in the area involved, including cost factors if available;
- (7) names of those most likely to be affected by the proposed rule, with addresses if reasonably known; and
- (8) name(s) and address(es) of petitioner(s).

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-16.

.2402 DISPOSITION OF PETITION

(a) The board shall determine whether to grant the petitioner's request. Prior to making this determination, the board's chairperson or his/her designee may request additional information from the petitioner(s), may contact interested persons likely to be affected by the proposed rule and request comments, or may use any other appropriate method for obtaining relevant information. The chairperson or designee shall consider all of the contents of the petition submitted plus any other information obtained by the means described herein.

(b) The chairperson or designee shall recommend to the board either the institution of rulemaking proceedings or the denial of the petition, as the total information obtained suggests to be proper and in the public interest.

Statutory Authority G.S. 90-270.9; 150B-16.

SECTION .2500 - RULEMAKING HEARINGS

.2501 REQUEST TO PARTICIPATE IN HEARING

(a) Any person desiring to present oral data, views, or arguments on a proposed rule should file a request to participate in a manner such that the request will be received in the board's office at least five days prior to the rulemaking hearing.

(b) The request to participate should contain a clear reference to the proposed rule, a brief summary of the person's views with the respect thereto, and how long the person desires to speak.

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-12.

.2502 BOARD RESPONSE TO THE REQUEST TO PARTICIPATE

Upon receipt of a request to participate in a rulemaking hearing, the chairperson or his/her designee shall acknowledge receipt of the request and inform the person of any limitations on oral presentations deemed necessary for a full and effective public proceeding on the proposed rule. In general, each presentation will be limited to 15 minutes.

Statutory Authority G.S. 90-270.9; 150B-11(1).

.2503 PRESENTATION OF ORAL COMMENT

(a) The presiding officer shall create an agenda of members of the public who have requested participation in the rulemaking hearing.

(b) If time allows, the presiding officer shall permit limited comment by attending members of the public who have not submitted requests to participate.

(c) Any person making an oral presentation is encouraged to submit a written copy of the presentation to the chairperson, the presiding officer, or a board designee prior to or during the rulemaking hearing.

Statutory Authority G.S. 90-270.9; 150B-11(1).

.2504 WRITTEN SUBMISSIONS

Any person may file a written submission containing data, comments or arguments, for or against a rule, after publication of a notice of rulemaking by the board. Written comments must be received in the board's office at least five days prior to the rulemaking hearing or delivered to the board at the rulemaking hearing or any meeting immediately preceding the rulemaking hearing, unless a different period has been prescribed in the notice or granted upon request. Upon receipt of written comments, the board shall acknowledge the receipt in writing with an assurance that the comments therein will be considered fully by the board.

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-12.

.2505 POWERS AND DUTIES OF THE PRESIDING OFFICER

Unless otherwise designated by the board, the chairperson of the board shall act as presiding officer. The presiding officer at the hearing shall have complete control of the proceedings, including: extensions of any time requirements, recognition of speakers, time allotments for presentations, direction of the discussion, and management of the hearing. The presiding officer, at all times, will take care that each person participating in the hearing is given a fair opportunity to present views, data, and comments.

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-12.

SECTION .2600 - DECLARATORY RULINGS

.2601 REQUEST FOR DECLARATORY RULING

(a) All requests for declaratory rulings shall be written and mailed to the North Carolina State Board of Examiners of Practicing Psychologists at the address shown in Rule .1602 of this Chapter.

(b) Each Request for Declaratory Ruling must include the following information:

- (1) name and address of the persons requesting the ruling;
- (2) the statute or rule to which the request relates;
- (3) a concise statement of the manner in which the requesting person is aggrieved by the rule or statute or its potential application to him her; and

- (4) a statement whether an oral hearing is desired and, if so, the reason therefor.

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-17.

.2602 DISPOSITION OF REQUEST

(a) Upon receipt of a Request for Declaratory Ruling, the board shall determine whether a ruling is appropriate under the facts stated.

(b) When the board determines for good cause that the issuance of a declaratory ruling is inappropriate, it shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request.

(c) Prior to issuing a declaratory ruling, the board may give notice of the declaratory proceedings to any persons it deems appropriate and may direct that fact - finding proceedings appropriate to the circumstances of the particular request be conducted by board employees or agents. The proceedings may consist of written submissions, an oral hearing, or other appropriate procedures. Any proceedings conducted by the board shall be scheduled to provide the desired facts so that the declaratory ruling may be issued within 60 days from receipt of the Request for Declaratory Ruling.

(d) Persons who qualify under the provision of G.S. 150B-38 and 21 NCAC 54 .2306 and .2307 and who file timely petitions for intervention shall be permitted to intervene in proceedings for declaratory rulings. Persons so intervening shall be permitted to file written submissions and participate in the oral hearing or other proceedings conducted by the board. Persons so intervening shall be bound by the declaratory ruling as though they were the person requesting such ruling.

(e) The board may initiate a rulemaking proceeding or contested case, based on information available to it as a result of a declaratory ruling request, when appropriate.

Statutory Authority G.S. 90-270.9; 150B-11(1); 150B-17.

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 and repeal regulations cited as 25 NCAC 1B .0302 - .0303; .0305 - .0306 - .0308;

.0313; .0315 - .0319; .0321; .0324 - .0331; .0336 - .0339; .0341; .0345; .0346; .0347 .0348; .0349; .0351; .0352; .0353; 25 NCAC 11 .0203; 25 NCAC 11 .0504(a) and 1C .0202.

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

The public hearing will be conducted at 9:00 a.m. on February 23, 1988 at 101 West Peace Street, Raleigh, N. C.

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

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

SECTION .0300 - CONTESTED CASE HEARING PROCEDURE

.0302 AVAILABILITY OF HEARING (REPEALED)

Statutory Authority G.S. 126-4; 126-5; 126-16; 126-25; 126-36; 126-36.1; 126-39; 150A-2(2).

.0303 PUBLIC HEARING (REPEALED)

Statutory Authority G.S. 150A-23(e); 150A-32(a).

.0305 COMMENCEMENT OF PROCEEDINGS (REPEALED)

.0306 DEFICIENCY IN REQUEST (REPEALED)

Statutory Authority G.S. 126-4.

.0308 AGENCY NOTICE TO STATE PERSONNEL (REPEALED)

Statutory Authority G.S. 126-4.

.0313 PREHEARING CONFERENCE (REPEALED)

Statutory Authority G.S. 126-4; 150A-33(5).

.0315 CONDUCT OF HEARING (REPEALED)

Statutory Authority G.S. 126-4(9).

.0316 FAILURE TO APPEAR (REPEALED)

Statutory Authority G.S. 150A-25(a).

.0317 PROCEDURE AT HEARINGS (REPEALED)

.0318 ORDER OF RECEIVING EVIDENCE (REPEALED)

.0319 DISCUSSION OF PENDING ACTION (REPEALED)

Statutory Authority G.S. 126-4(9).

.0321 EVIDENCE (REPEALED)

Statutory Authority G.S. 150A-29.

.0324 ABSTRACTS OF DOCUMENTS (REPEALED)

.0325 COPIES (REPEALED)

.0326 OTHER DOCUMENTS (REPEALED)

Statutory Authority G.S. 126-4(a).

.0327 CROSS EXAMINATION (REPEALED)

.0328 REBUTTAL EVIDENCE (REPEALED)

Statutory Authority G.S. 150A-25(d).

.0329 HEARING OFFICERS (REPEALED)

Statutory Authority G.S. 126-4(11).

.0330 HEARING OFFICER BIAS (REPEALED)

Statutory Authority G.S. 126-4(9).

.0331 AUTHORITY OF HEARING OFFICER (REPEALED)

Statutory Authority G.S. 150A-33.

.0336 PROPOSED FINDINGS OF FACT; CONCLUSION OF LAW AND BRIEF (REPEALED)

Statutory Authority G.S. 126-4(9); 150A-34.

.0337 PROPOSAL FOR DECISION OF HEARING OFFICER (REPEALED)

Statutory Authority G.S. 126-4(9); 150A-34(b).

.0338 SERVICE OF PROPOSAL (REPEALED)

Statutory Authority G.S. 126-4(9).

.0339 PREPARATION OF PROPOSAL (REPEALED)

Statutory Authority G.S. 150A-34(b).

.0341 GENERAL PRINCIPLES GOVERNING DISCOVERY (REPEALED)

Statutory Authority G.S. 126-4; 150A-28.

.0345 REQUEST FOR CONTINUANCE (REPEALED)

Statutory Authority G.S. 126-4(9).

.0346 REQUIREMENT OF FACTUAL DISPUTE (REPEALED)

Statutory Authority G.S. 126-4(9); 126-37.

.0347 NOTIFICATION OF WITNESSES (REPEALED)

.0348 AVAILABILITY OF STATE EMPLOYEES TO TESTIFY (REPEALED)

.0349 HEARING OFFICER'S AUTHORITY TO RECOMMEND DISMISSAL (REPEALED)

Statutory Authority G.S. 126-4(9).

.0351 COMPUTATION OF TIME (REPEALED)

.0352 FILING OF PAPERS WITH STATE PERSONNEL (REPEALED)

Statutory Authority G.S. 126-4(9).

.0353 RESOLUTION OF GRIEVANCE WITHOUT HEARING (REPEALED)

Statutory Authority G.S. 150A-2(2).

SUBCHAPTER II - SERVICE TO LOCAL GOVERNMENT

SECTION .0200 - LOCAL GOVERNMENT EMPLOYMENT POLICIES

.0203 EQUAL EMPLOYMENT OPPORTUNITY

(a) Affirmative Action:

- (4) Discrimination on the basis of age, sex or ~~physical disability~~ handicapping conditions is prohibited except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary for job performance.

- (12) ~~The Office of State Personnel will conduct periodic on-site review of local affirmative action programs to evaluate success in meeting policy requirements and to provide assistance in problem areas. The Office of State Personnel~~

will be available to provide technical assistance in meeting policy requirements in accordance with G.S. 126-10.

(c) Appeal of Discrimination:

- (1) Any applicant or employee who believe that employment, promotion, training, transfer or salary increase was denied or that demotion, transfer, lay-off or termination was forced because of race, color, national origin or political or religious affiliations may appeal to the State Personnel Commission. Appeal may also be filed if discrimination on the basis of age, sex, or ~~physical disability~~ handicapping condition did not result from bona fide occupational qualifications.

Statutory Authority G.S. 126-10; 126-16; 168; Title VII of the Civil Rights Act as amended by the Equal Employment Opportunity Act of 1972, effective March 24, 1972; Federal Standards for a Merit System of Personnel Administration; 5 U.S.C. 1501-1508; P.L. 95-256, April 6, 1978.

SUBCHAPTER IC - PERSONNEL ADMINISTRATION

SECTION .0200 - GENERAL EMPLOYMENT POLICIES

.0202 EQUAL EMPLOYMENT OPPORTUNITY

(a) It is the policy of the State of North Carolina that neither race, religion, color, creed, national origin, sex, age, political affiliation, nor ~~physical disability~~ handicapping condition is to be considered in the:

- (1) recruitment and employment of new employees of the state;
- (2) promotion, demotion, transfer, lay-off, termination or selection of employees of the state for training and development;
- (3) establishment of rates of pay including the awarding of salary adjustments and/or annual salary increments.

(b) Special provisions relative to age. Equal employment opportunity as to age applies only to persons between 40 and 70 years of age. State and federal laws forbid employment discrimination on the basis of age for these persons. It is unlawful "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age."

(c) Special provisions relative to handicap.

(1) Equal employment opportunity for persons with disabilities includes the making of a reasonable accommodation to the known physical limitations of a qualified handicapped applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include:

- (A) making facilities used by employees readily accessible to and usable by such person;
- (B) job restructuring (reassigning non-essential duties and/or using part-time or modified work schedules);
- (C) acquisition or modification of equipment or devices;
- (D) provision of readers or interpreters; and/or other similar actions. Agencies are required to make such adjustments for the known limitations of otherwise qualified handicapped applicants and employees, unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

(2) Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:

- (A) the nature and cost of the accommodation needed;
- (B) the type of the agency's operation, including the composition and structure of its work force; and
- (C) the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.

(d) Bona Fide Occupational Qualifications.

(1) Age, sex or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification will depend on the facts in each case. This exemption will be construed very narrowly and the agency will have the burden of proving the exemption is justified.

(2) Physical fitness requirements based upon preemployment physical examinations relating to minimum standards

for employment may be a reasonable employment factor, ~~other than age or sex.~~ provided however that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the category, regardless of age or sex.

(3) A differentiation based on a physical examination may be recognized as reasonable in certain job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.

(4) To establish age, sex or physical requirements as a bona fide occupational qualification, it will be necessary to submit a recommendation to the Office of State Personnel setting forth all facts and justification as to why the requirement should be considered as an employment factor in each of the classifications in question.

~~(c) Effective July 1, 1977, direct appeal to the State Personnel Commission on the basis of political affiliation is provided only to employees with five or more years of immediate continuous state service or in positions subject to competitive service. Effective July 1, 1985, direct appeal to the State Personnel Commission on the basis of political affiliation discrimination is provided only to employees who meet the standards for continuous state service set out in G.S. 126-5(c)(1), or to employees who served or were separated from positions subject to competitive service.~~

(f) Special provisions Relative to Communicable and Infectious Diseases.

(1) Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are handicapped if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to persons with handicaps are applicable to persons with communicable and infectious diseases, including the requirement for a reasonable accommodation to the known limitations of an

otherwise qualified applicant or employee.

- (2) It is not discriminatory action to fail to hire, transfer, or promote, or to discharge a handicapped person because the person has a communicable disease which would disqualify a non-handicapped person from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with private physicians and or public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons.
- (3) It must be remembered that AIDS, unlike most communicable diseases, is transmitted only by exchange of body fluids through sexual contact, sharing of needles and syringes, or transfusion of infected blood. According to the U.S. Department of Health and Human Services, Public Health Service, no cases have been found where the AIDS virus has been transmitted by casual contact, and there is on evidence that it can be transmitted by casual contact.

There is no evidence that employing a person with AIDS would present a health hazard to other persons in the usual work place.

Statutory Authority G.S. 126-4; 126-5(c)(1)(2)(3)(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261, March 24, 1972.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0500 - EMPLOYEE GRIEVANCES

.0504 DISCRIMINATION

Any applicant for state employment or state employee or former state employee who has reason to believe that employment, promotion, training, salary adjustment, a merit salary increment or transfer was denied him/ her or that demotion, lay-off or termination of employment was forced upon him/ her because of race, religion, color, creed, national origin, sex, age, political affiliation, or ~~physical disability~~ handicapping condition except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration, shall have the right to appeal directly to the State Personnel Commission within 30 days of the alleged discriminatory action.

Statutory Authority G.S. 126-36; 126-38; 168A-2.

Upon request from the adopting agency, the text of rules 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 1 - DEPARTMENTAL RULES

SUBCHAPTER 1C - GENERAL ADMINISTRATION

SECTION .0400 - INTEREST REQUIREMENTS

.0402 ESTABLISHED INTEREST RATES

(h) For the calendar year 1988, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 30, 1987 an interest rate of 9 percent per annum. The computation shall be at the rate of 3/4 percent per month or fraction thereof.

History Note: Statutory Authority G.S. 105-241.1; 105-262; Eff. November 9, 1977; Amended Eff. February 1, 1988; January 1, 1987; January 1, 1986; January 1, 1985.

CHAPTER 6 - INDIVIDUAL INCOME TAX

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0300 - PERSONAL EXEMPTION

.0315 PARAPLEGICS

An additional one thousand and one hundred dollars (\$1,100.00) exemption may be claimed for the taxpayer or the taxpayer's dependent who is a paraplegic or who is disabled to the extent that he must use a wheelchair to move about and to function effectively or who is a double-leg amputee above the knee. This

exemption may be claimed for a qualified spouse who meets the requirements for a dependent even though a dependency exemption may not be claimed. A supporting statement from a physician must be attached to the return.

History Note: Statutory Authority G.S. 105-149(a)(8d); 105-262; Eff. April 19, 1981; Amended Eff. February 1, 1988.

SECTION .0800 - INSTALLMENT SALES

.0801 GENERAL

(b) Those federal rules and regulations which are not deemed to be contrary to the context and intent of State law will be followed on installment sales and reposessions and dispositions on installment sales. Exceptions to federal rules and regulations include: State and federal differ on sales between related parties, and State law has no provision for unstated interest on installment sales.

When an individual moves into North Carolina from a state having an income tax law after having made an election to report a gain to his former state of residence on the installment basis for income tax purposes, he must include in his North Carolina income that portion of each collection received after becoming a North Carolina resident which represents gain. (When the individual's former state does not have an income tax law, he does not have to report any portion of the gain from an installment sale made prior to moving to North Carolina.)

When an individual moves out of North Carolina after having made an election to report a gain on the installment basis he must continue to file a North Carolina return and report for income taxation each year his gain from the installment sale. If this gain should be taxed by the taxpayer's new state of residence, North Carolina does not allow any tax credit.

History Note: Statutory Authority G.S. 105-141(a); 105-142(f); 105-144; 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; May 1, 1984; June 1, 1982.

SECTION .0900 - SALE OF PRINCIPAL RESIDENCE

.0902 RULES

(c) The new residence must be used as the individual's principal residence within two

years before or after the sale of the old residence.

The replacement period is suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their residence) serves on extended active duty with the Armed Forces of the United States after the date of sale of the old residence. In no case, however, may the period be suspended longer than four years after the date of the sale of the old residence. The replacement period is suspended for members of the Armed Forces until one year after the last day on which they are either stationed outside of the United States, or at a remote site within the United States, except that the replacement period may not exceed eight years after the date of sale of the old residence. This eight year suspension applies to those residences sold after July 18, 1984.

The replacement period for purchasing a new principal residence to postpone the tax on the gain from the sale of a principal residence is suspended up to four years after the date of sale during the time an individual has his tax home outside of the United States.

An individual will be allowed to postpone the taxing of gain on the sale of more than one principal residence within the replacement period if the proceeds are reinvested in a new principal residence and he relocates for employment purposes and qualifies to deduct moving expenses.

History Note: Statutory Authority G.S. 105-144.2; 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; August 1, 1986; May 1, 1984; March 29, 1981.

SECTION .2200 - TRAVEL EXPENSES

.2203 FEDERAL PRACTICE TO BE FOLLOWED

In determining whether or not travel, entertainment, and business gift expenses are allowable deductions, the department follows federal rules and regulations in effect during the income year which are not deemed to be contrary to the context and intent of state law; however, North Carolina law does not subject unreimbursed business meals and entertainment expenses to the 80 percent limitation required for federal tax purposes, nor are unreimbursed employee business expenses subject to the two percent adjusted gross income floor required for federal tax purposes.

History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; June 1, 1982.

SECTION .2300 - EDUCATION EXPENSES

.2302 FEDERAL PRACTICE TO BE FOLLOWED

In determining whether or not education and training expenses are allowable deductions for state income tax purposes, the department follows those federal rules and regulations in effect during the income year which are not deemed to be contrary to the context and intent of state law, except that North Carolina has no provision for reducing such expenses by two percent of adjusted gross income as required for federal tax purposes. In addition, for state income tax purposes, all ordinary and necessary expenses of attending summer school are deductible up to two hundred and fifty dollars (\$250.00) for a teacher, substitute teacher, principal, or superintendent of the public schools of this state even if they are not allowable as deductions for federal income tax purposes.

History Note: Statutory Authority G.S. 105-147(2); 105-147(3); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988.

SECTION .2400 - MOVING EXPENSES

.2402 FEDERAL PRACTICE TO BE FOLLOWED

In the administration of G.S. 105-147(8) the federal rules and regulations pertaining to moving expenses are followed (including the 80 percent limitation for unreimbursed meals). Form D-453, "Schedule of Moving Expenses," or federal Form 3903, should be filed with the individual return, Form D-400, when the moving expense deduction is claimed.

History Note: Statutory Authority G.S. 105-147(8); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; March 11, 1978.

SECTION .2500 - RETIREMENT PLANS

.2502 FEDERAL PRACTICE TO BE FOLLOWED

(a) The federal rules and regulations pertaining to the self-employed retirement con-

tributions deduction will be followed except where such rules and regulations are deemed to be contrary to the context and intent of state law. Generally, a part-year resident or non-resident owner-employee's deduction for contributions to a Keogh or HR-10 plan is allowed only to the extent that the earned income from the business that has the plan is taxable to North Carolina. A taxpayer is not required to attach to his North Carolina income tax return copies of any forms or schedules pertaining to his self-employed retirement contribution deduction which he is required to file with the Internal Revenue Service; however, copies of such forms must be furnished if requested by the Department of Revenue.

History Note: Statutory Authority G.S.

105-147(20); 105-262;

Eff. February 1, 1976;

Amended Eff. February 1, 1988;

August 1, 1986; May 1, 1984; June 1, 1982.

SECTION .2800 - TAXES PAID

.2806 NONDEDUCTIBLE

The following are nondeductible:

- (15) 100 percent withholding penalty assessed corporate officer.

History Note: Statutory Authority G.S.

105-147(6); 105-262;

Eff. February 1, 1976;

Amended Eff. February 1, 1988;

August 1, 1986; March 11, 1978.

SECTION .2900 - CASUALTY AND THEFT LOSSES

.2901 GENERAL

(c) A casualty is the complete or partial destruction of loss of property resulting from an identifiable event that is damaging to property, and is sudden, unexpected, or unusual in nature. A sudden event is one that is swift and precipitous and not gradual or progressive. An unexpected event is one that is ordinarily unanticipated and that occurs without the intent of the one who suffers the loss. An unusual event is one that is extraordinary and nonrecurring, does not commonly occur during the activity in which the taxpayer was engaged when the damage occurred, and does not commonly occur in the course of day-to-day living. Casualty losses do not include progressive deterioration through a steadily operating cause and damage from a normal process.

(d) The term "theft" generally refers to the felonious taking and removing of money or property with intent to deprive the rightful

owner of it. Theft includes, but is not limited to, larceny, robbery, and embezzlement.

(e) A casualty loss may be claimed only by the owner of the property at the time the loss occurred. Payment for destroyed or lost property by a person other than the owner of the property will not entitle that person to claim a casualty loss. Where there is a life estate and the property involved is damaged or destroyed there may be a casualty loss deduction which may be claimed by the life tenant and remainderman. The casualty loss deduction which may be claimed by the life tenant is based on the life tenant's interest in that part of the property damaged or destroyed after taking into consideration the fair market value of the property before and after the loss, and it cannot exceed the life tenant's basis after adjustment for capital improvements and depreciation. The amount allowable as a casualty loss deduction by the remainderman is based on the remainderman's interest (as of the date the loss occurred) in that portion of the property damaged or destroyed.

When property is owned jointly, the loss deductible by each co-owner is limited to the amount of the allowable casualty loss deduction multiplied by his percentage of ownership. If the property damaged or destroyed is real property owned by a husband and wife as tenants by the entirety, the allowable casualty loss deduction is divided equally between husband and wife.

(f) Losses such as those described in G.S. 105-147(9)a. and b. will be allowed to the same extent allowed for federal income tax purposes, except where federal rules and regulations may be contrary to the context and intent of State law. In computing the casualty loss deduction, State law does not require that the amount of each casualty loss be reduced by one hundred dollars (\$100.00) or that the total losses for the year be reduced by ten percent of adjusted gross income.

History Note: Statutory Authority G.S.

105-147(9)a.; 105-147(9)b.; 105-262;

Eff. February 1, 1976;

Amended Eff. February 1, 1988;

May 1, 1984; June 1, 1982.

SECTION .3300 - ACCOUNTING PERIODS AND METHODS

.3303 ACCOUNTING PERIODS

(b) Initial income year:

- (1) An individual having no accounting period or not keeping books must compute his taxable income on a cal-

endar year basis unless he has elected to compute his income on the variable period of 52 or 53 weeks for federal income tax purposes. After filing his initial return, an individual may change his income subject to the conditions set forth in G.S. 105-142 as explained in 17 NCAC 6B .3304.

- (2) A newly-formed partnership may adopt the same taxable year as that of its partners who own an aggregate interest in partnership profits and capital of greater than 50 percent unless the partnership establishes a business purpose for having a different year. If partners owning the majority interest have different tax years, the partnership must adopt the same tax year as that of its principal partners. (A principal partner is a partner who has at least a five percent interest in partnership profits or capital.) Where neither condition is met, a partnership is required to adopt a calendar year as its tax year.
- (3) In filing its first return a trust may choose either a calendar year or a fiscal year as its annual accounting period for income tax purposes.

An estate, in filing its first return, may choose the same accounting period as the decedent had (whether a calendar year or fiscal year), or may choose a calendar year or fiscal year regardless of the period used by the decedent.

If the estate elects to use the same accounting period as that used by the decedent, the first return filed will be for a short period to fill out the unexpired full year of the decedent. No annualizing is required for this short period, however, and the full personal exemption may be claimed on the estate return as if the period were for a full year.

History Note: Statutory Authority G.S. 105-135(5); 105-142(a); 105-142(b); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988.

SECTION .3500 - PARTNERSHIPS

.3504 ACCOUNTING PERIOD

For taxable years beginning on or after January 1, 1987, all partnerships must use the same taxable year as that of its partners who own an aggregate interest in partnership profits and capital of greater than 50 percent unless the partnership establishes a business purpose for having a different year. If partners owning

the majority interest have different tax years, the partnership must adopt the same tax year as that of its principal partners. (A principal partner is a partner who has at least a five percent interest in partnership profits or capital.) Where neither condition is met, a partnership is required to adopt a calendar year as its tax year.

A partnership that must change its taxable year to conform to the above requirements is required to file a return for the short taxable year that begins with the first day of its current taxable year beginning after 1986. For example, a partnership with a taxable year ending on September 30, 1987, that is required to change to a calendar taxable year has a short tax year beginning on October 1, 1987, and ending on December 31, 1987. The individual partners of a partnership which is required to file a short taxable year return are required to report the amount of net income or loss for the short taxable year in income currently and are not allowed to elect to include such net income in income ratably over the first four tax years beginning after 1986 as allowed for federal tax purposes.

Generally, a partnership's tax year continues after the death of a partner, the entry of a new partner, or the liquidation, sale, or exchange of a partner's interest unless there is a termination of the partnership.

History Note: Statutory Authority G.S. 105-142(a); 105-142(b); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988.

SECTION .3700 - ESTATES AND TRUSTS

.3712 DISTRIBUTIONS TO BENEFICIARIES

(b) Estates and complex trusts are allowed under G.S. 105-161(d)(6) to deduct the amount of income of the taxable year which is required to be distributed currently, and any other amounts properly paid, credited or required to be distributed for the taxable year.

The amount of income required to be distributed for the taxable year includes any amount required to be distributed which may be paid out of income or corpus to the extent that it is paid out of income of the taxable year.

Other amounts include all amounts properly paid, credited, or required to be distributed during the taxable year other than income required to be distributed currently, including: (1) amounts distributed in the discretion of the fiduciary, (2) the payment of an annuity to the

extent not paid out of income of the taxable year, and (3) a distribution of property in kind.

Distributions to beneficiaries in the first 65 days of a tax year are considered as having been made on the last day of the preceding tax year if the trustee elects to treat the distributions in the same manner for federal tax purposes.

History Note: Statutory Authority G.S. 105-161(d)(5); 105-161(d)(6); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; June 1, 1982.

.3722 GRANTORS TRUSTS

G.S. 105-163 provides that the grantor or another person who is treated as the owner of any portion of a trust under Sections 671-678 of the Internal Revenue Code shall be considered as the owner of such portion for state income tax purposes. Federal rules and regulations will be followed in the administration of G.S. 105-163.

History Note: Statutory Authority G.S. 105-163; 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988.

SECTION .3800 - MISCELLANEOUS RULES

.3801 INCOME

(a) A bonus received by a cash basis taxpayer after moving to North Carolina is taxable income to him even though the bonus is paid for services rendered prior to the time the taxpayer moved to North Carolina. A bonus received by a taxpayer after moving out of North Carolina, which is based on services rendered while a resident of this state, is considered as income earned in and reportable to North Carolina.

An employment termination payment received by a nonresident from his employer that is based on years of service is deemed to be compensation for past service and will be taxed to the nonresident in the proportion that the number of years of service the individual had with that employer in North Carolina is to the total years of service with that employer.

An employment termination payment that is made by a qualified employees' pension or profit sharing plan and received by an individual while a nonresident is not taxable by North Carolina.

(k) Liquidating dividends are reportable as gain or deductible as loss from the sale of stock, with one exception as stated below.

When a distribution is made in complete liquidation of a corporation, the amount received by a shareholder is usually treated as full payment in exchange for his stock, and the difference between the amount received and his cost basis of the stock is a reportable gain or a deductible loss. The exception referred to above is that when the distribution is in complete liquidation of the corporation and the transfer of property under the liquidation occurs within one calendar month, the shareholders may make an election which will limit the recognition of that part of an individual shareholder's gain on the liquidation which is attributable to appreciation in the value of certain corporate assets unrealized at the time of the distribution. The requirements for making such an election are set out in G.S. 105-144(c).

When a distribution is made as one of a series of distributions with the intent to effect eventually a complete liquidation of a corporation, no gain is deemed to be realized by a shareholder until his cost has been recovered, after which any amount received is reportable income.

If a corporation's assets are sold and a distribution of the proceeds is made in complete liquidation, the amount received in excess of his cost basis is income reportable by the shareholder.

When a partial liquidation of a corporation occurs, distributions of accumulated earnings and profits are taxable as ordinary dividends. Distributions in excess of the corporation's earnings and profits constitute a return of capital and serve to reduce the taxpayer's cost basis in the stock. Distributions in excess of both earnings and profits and the cost basis of the stock are taxable as a gain from the sale of the stock. The amount determined as ordinary dividends would be subject to the deductible dividend percentage if received from a corporation which paid taxes to North Carolina.

History Note: Statutory Authority G.S. 105-141(a); 105-141.1; 105-144(c); 105-147(7); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; August 1, 1986; May 1, 1984; June 1, 1982.

.3802 DEDUCTIONS

(g) When a taxpayer uses a portion of his home regularly and exclusively either as his principal place of business; or as a place of business that is used by patients, clients, or customers in meeting and dealing with him in the normal course of his trade or business, he

may deduct a pro rata portion of the operating and depreciation expense. In determining whether or not the expenses are allowable deductions, the department follows those federal rules and regulations in effect during the income year, except that North Carolina has no provision for reducing such expenses by two percent of adjusted gross income as required for federal tax purposes.

(p) Individuals engaged in the commercial growing of trees are allowed to elect to claim a current income tax deduction for reasonable expenses paid for reforestation and cultivation or they may elect to amortize such expenses over a period of 60 months. No deduction will be allowed under other provisions of the law for amounts deducted under this provision and the deduction must be reduced by any incentive payments which are excludable from gross income. This election must be made within the time prescribed by law (including extensions thereof) for filing the return for the taxable year and may not be revoked.

History Note: Statutory Authority G.S. 105-147(1); 105-147(2); 105-147(7); 105-147(9)a; 105-147(10); 105-147(24); 105-147(25); 105-148(1); 105-148(2); 105-148(8); 105-262; Eff. February 1, 1976; Amended Eff. February 1, 1988; April 1, 1987; February 1, 1987; August 1, 1986.

.3803 OTHER ITEMS

(b) When a taxpayer acquires a bond at a price which is less than the redemption value, it is acquired at a discount. If the bond is sold prior to maturity or redeemed at maturity for an amount in excess of its basis, the taxpayer has a reportable gain. If the bond is sold prior to maturity for a price which is less than its basis, the taxpayer has a deductible loss. The taxpayer reports his gain or deducts his loss regardless of whether interest on the bond is taxable or exempt. The ratable monthly portion of the original issue discount on corporate bonds or other evidences of indebtedness (except North Carolina and U.S. Government obligations) is taxable.

A U.S. Government Series E Savings Bond purchased at a given price and redeemable at a higher price based on a schedule printed on the bond is not considered a bond purchased at a discount. For a bond of this type, the difference between the purchase price and the redemption value is interest which is exempt from state income tax.

For obligations acquired on or after October 22, 1986, a purchaser of stripped bonds or coupons is treated as having acquired an original issue discount bond. The amount determined as original issue discount is not taxable but must be taken into account in determining the taxpayer's basis in the obligation. In determining the amount of original issue discount and the adjustment to the basis, federal rules and regulations in effect during the income year will be followed which are not deemed to be contrary to the context and intent of state law.

(m) State Legislators' expenses are deductible to the same extent allowable for Federal Income Tax purposes (including the 80 percent limitation for unreimbursed meals and the two percent federal adjusted gross income floor for unreimbursed employee business expenses), except that for State Tax purposes a legislative day includes any day the General Assembly was not in session but the legislator's physical presence was recorded at a meeting of a board, commission, committee, or council, funded wholly or partly from state funds of which the legislator was a member.

History Note: Statutory Authority G.S. 8-45.3; 105-142(a); 105-144(a); 105-144.3; 105-147(1)h; 105-147(9)a; 105-147(17); 105-147(19); 105-148(1); 105-159.1; 105-163.16(c); 105-163.16(e); 105-251; 105-262; 147-77; Eff. February 1, 1976; Amended Eff. February 1, 1988; February 1, 1987; August 1, 1986; May 1, 1984.

SUBCHAPTER 6C - WITHHOLDING

SECTION .0200 - FILING WITHHOLDING REPORTS

.0202 QUARTERLY AND MONTHLY

Every employer required to withhold North Carolina income tax must file a return on Form NC-5, Employer's Report of North Carolina Income Tax withheld, for each calendar quarter except for employers required to file monthly returns. An employer required to withhold an average of five hundred dollars (\$500.00) or more of North Carolina income tax per month during a calendar year or an employer classified as transient or seasonal must make a monthly report and payment of tax withheld in lieu of a quarterly report.

History Note: Statutory Authority G.S. 105-163.6; 105-163.18; 105-262; Eff. February 1, 1976;

Amended Eff. February 1, 1988; February 21, 1979. D-400, provided they are living together at the end of the tax year.

SUBCHAPTER 6D - ESTIMATED TAX

**SECTION .0100 - FILING ESTIMATED
INCOME TAX PAYMENTS**

.0101 FORMS

The form for payments of estimated individual income tax, Form NC-40, is available from the Department of Revenue in the form of a personalized payment book or a four-part nonpersonalized form. Both types of forms include vouchers and instructions for making the payments.

*History Note: Statutory Authority G.S.
105-163.15; 105-163.18;
105-254; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; August 1, 1986.*

.0102 REQUIREMENTS FOR FILING

(a) An individual is required to pay estimated income tax if the tax shown due on the income tax return for the taxable year, reduced by the North Carolina tax withheld and allowable tax credits, is forty dollars (\$40.00) or more regardless of the amount of income the individual has that is not subject to withholding.

(b) If a husband and wife make combined estimated tax payments on Form NC-40, they must also file on a combined return, Form

(c) A taxpayer filing a short period return because of changing his income year is required to make estimated income tax payments on the installment dates which fall within the short period and 15 days after the close of the short period which would have been due had he not changed his income year. The penalty for underpayment of estimated income tax for a short period will be computed for the period of underpayment based on the tax shown due on the short period return and computed in the same manner as it would have been computed had the taxpayer not changed his income year.

(d) Applying prior year's income tax refund to current year's estimated income tax: An individual may elect to have his or her income tax refund applied to estimated income tax for the following year. For example, an individual due a refund on his 1987 income tax return may have all or any portion of the refund applied to his estimated tax for 1988. The individual may not however, file a 1987 tax return in 1989 and request the refund be applied to his 1989 estimated tax since the refund can only be applied to the tax year which follows the year for which the request for refund is made.

*History Note: Statutory Authority G.S.
105-163.15; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 1988; August 1, 1986;
May 1, 1984; February 21, 1979.*

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15	Natural Resources and Community Development, Department of
16	Education, Department of
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19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
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24	Housing Finance Agency
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42	Optometry, Board of Examiners in

44	Osteopathic Examination and Registration, Board of
46	Pharmacy, Board of
48	Physical Therapy, Examining Committee of
50	Plumbing and Heating Contractors, Board of
52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
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