

RBR NFN/7434/A2 1067
RECEIVED

SEP 19 1988

LAW LIBRARY

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

PROPOSED RULES

Administrative Hearings

Agriculture

Community Colleges

Human Resources

Insurance

NRCD

State Personnel

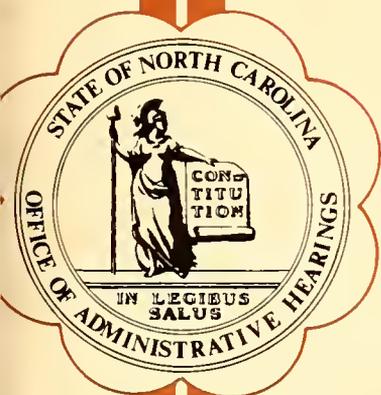
FINAL RULES

Revenue

LIST OF RULES AFFECTED

ISSUE DATE: SEPTEMBER 15, 1988

Volume 3 • Issue 12 • Pages 524-593



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-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 fifty 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 24 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.

North Carolina Register. Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions ninety-five dollars (\$95.00) per year.

North Carolina Administrative Code. Published in looseleaf notebooks with supplement service by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions seven hundred and fifty dollars (\$750.00). Individual volumes available.

ISSUE CONTENTS

NORTH CAROLINA REGISTER



Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, NC 27604
(919) 733 - 2678

Robert A. Melott,
Director
James R. Scarcella Sr.,
Deputy Director
Molly Mason,
Director APA Services

Staff:
Ruby Creech,
Publications Coordinator
Teresa Kilpatrick,
Editorial Assistant
Jean Shirley,
Editorial Assistant

I. PROPOSED RULES

Administrative Hearings

General	579
Hearings Division.....	581
Rules Division.....	580

Agriculture

N.C. Pesticide Board	524
----------------------------	-----

Community Colleges

Board of Community Colleges.....	557
-------------------------------------	-----

Human Resources

Facility Services.....	524
Mental Health: General	530
Mental Health: Other Programs.....	530
Social Services Commission	531

Insurance

Life: Accident and Health Division	534
---	-----

NRCDC

Community Assistance	555
Division of Economic Opportunity.....	556
Wildlife Resources Commission.....	555

State Personnel

Office of State Personnel.....	559
--------------------------------	-----

II. FINAL RULES

Revenue

Sales and Use Tax.....	584
------------------------	-----

III. LIST OF RULES AFFECTED

September 1, 1988.....	585
------------------------	-----

IV. CUMULATIVE INDEX591

NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
 (September 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
*****	*****	*****	*****	*****
09/01/88	08/11/88	08/18/88	10/01/88	01/01/89
09/15/88	08/26/88	09/02/88	10/15/88	01/01/89
10/03/88	09/12/88	09/19/88	11/02/88	02/01/89
10/14/88	09/26/88	10/03/88	11/13/88	02/01/89
11/01/88	10/11/88	10/18/88	12/01/88	03/01/89
11/15/88	10/26/88	11/02/88	12/15/88	03/01/89
12/01/88	11/07/88	11/15/88	12/31/88	04/01/89
12/15/88	11/23/88	12/02/88	01/14/89	04/01/89
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
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.

PROPOSED RULES

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Pesticide Board intends to amend rule(s) cited as 2 NCAC 9L .1002.

The proposed effective date of this action is February 1, 1989.

The public hearing will be conducted at 1:00 p.m. on November 3, 1988 at Board Room, Agriculture Building, One Edenton Street, Raleigh, N.C. 27611.

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 John L. Smith, Secretary, North Carolina Pesticide Board, P. O. Box 27647, Raleigh, NC 27611.

CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 9L - PESTICIDE SECTION

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

.1002 GENERAL REQUIREMENTS

- (c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours (~~see number 12 in this Paragraph for exception~~) after each application. This requirement must be fulfilled sooner if requested by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. The record shall show the following:
- (1) name of contractor;
 - (2) name and address of the person for whom the pesticide was applied;
 - (3) identification of farm or land sites treated with pesticide(s);
 - (4) name of crop which was treated;
 - (5) total number of acres treated;
 - (6) the year, month, day, and approximate time the pesticide was applied;
 - (7) the brand name of the pesticide(s) and EPA registration number;
 - (8) amount of formulated product or active material applied per acre (must specify);
 - (9) total gallons or pounds per acre of the final tank mix applied per acre;
 - (10) name of pilot;
 - (11) signature of person completing this record.

~~(12) consent agreement(s) to deposit within 100 feet of residence; This is to be included in the records within seven working days.~~

Statutory Authority G.S. 143-458; 143-463; 143-466.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources intends to adopt, amend, repeal rule(s) cited as 10 NCAC 3A .0101 - .0102, .0201 - .0205, .0301 - .0302, .0401 - .0402, .0501 - .0502, .0601 - .0610, .0701 - .0703, .0801 - .0804, .0901 - .0902, .1001 - .1002, .1101 - .1102, .1201 - .1203; 10 NCAC 3R .1003.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 3:00 p.m. on October 17, 1988 at Hearing Room, Council Building, 701 Barbour Drive, Raleigh, N.C. 27603.

Comment Procedures: Address Comments To:
Lynda McDaniel
Division of Facility Services
701 Barbour Drive
Raleigh, N.C. 27603

Comments will also be received orally at the hearing.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3A - IDENTIFYING INFORMATION

SECTION .0100 - DIVISION STRUCTURE

.0101 LOCATION AND OFFICE HOURS

The Division of Facility Services is located at 1330 St. Mary's Street, P.O. Box 12200, 701 Barbour Drive, Raleigh, North Carolina 27605, 27603. Its office hours are eight o'clock to five o'clock on Monday through Friday.

Statutory Authority G.S. 143B-10.

.0102 PURPOSE AND RESPONSIBILITIES

The purpose of the Division of Facility Services is to improve the quality of health and social care in North Carolina. The division inspects and licenses health and social care facilities; plans, maintains, and implements a state-wide emer-

gency medical services system; develops an annual ~~health care facility~~ medical facilities plan; ~~and~~ develops primary health care services in small towns and rural areas; issues certificates of need for additional or new health care services; and licenses the use and possession of sources of radioactive materials.

Statutory Authority G.S. 143B-137; 143B-138.

SECTION .0200 - THE DIRECTOR'S OFFICE AND THE ASSISTANT DIRECTOR'S OFFICE

.0201 THE DIRECTOR

The Director of the Division of Facility Services is the chief administrative officer of the division with the responsibilities, power, responsibility, power and duties ~~duty of the director are~~ to provide agency division -wide management support through policy development, implementation, ~~and~~ interpretation, administrative functions, and specialized staff support to the operating sections of the division of Facility Services and their respective programs. The director also serves as Secretary of the North Carolina Medical Care Commission and provides clerical support to the commission.

Statutory Authority G.S. 143B-10.

.0202 THE DEPUTY DIRECTOR

Within the Division of Facility Services is an ~~assistant~~ deputy director with the responsibilities, power, responsibility, power, and duties of the assistant director are duty to serve as the chief administrative assistant to the director and to perform the functions of the director in his absence. The deputy director serves as an assistant secretary to the North Carolina Medical Care Commission.

Statutory Authority G.S. 143B-10.

.0203 STUDENT LOAN BRANCH (REPEALED)

Statutory Authority G.S. 131-121.

.0204 THE ASSISTANT DIRECTOR FOR FACILITY PLANNING AND DEVELOPMENT

Within the Division of Facility Services is an assistant director with the responsibility for administration of the Health Care Facilities Finance Act, supervision of the health resources development section, supervision of the certificate of need program and serving as acting director in the absence of both the director and deputy director. The assistant director is also an

assistant secretary of the North Carolina Medical Care Commission.

Statutory Authority G.S. 131A-2.

.0205 THE ASSISTANT DIRECTOR OF BUDGET AND ADMINISTRATIVE SERVICES

Within the Division of Facility Services is an assistant director with the responsibility for division-wide oversight of the budget, contracts, purchasing, data processing, and other administrative services.

Statutory Authority G.S. 143B-10.

SECTION .0300 - CONSTRUCTION SECTION

.0301 DESCRIPTION

The construction section is a section within the Division of Facility Services. It is located at ~~the principal address of the Division of Facility Services~~ 701 Barbour Drive and maintains ~~the same~~ office hours from eight o'clock until five o'clock Monday through Friday.

Statutory Authority G.S. 143B-10.

.0302 DUTIES AND RESPONSIBILITIES

The responsibilities ~~power,~~ and duties of the construction section are to attempt to bring adequate health care to citizens of the state by consultation with developers of health care and social institutions and by inspection of facilities for compliance with governing regulations; review construction and renovation plans, inspect construction progress at specific intervals, and reinspect facilities at specific intervals to determine compliance with the state building code, fire safety codes and other applicable rules to insure that health and social care facilities provide a safe environment for patients and residents served.

Statutory Authority G.S. 122C-23; 130A-5; 131A-4; 131A-5; 131A-9; 131D-1; 131D-2; 131D-12; 131E-80; 131E-105(a).

SECTION .0400 - HEALTH RESOURCES DEVELOPMENT SECTION

.0401 DESCRIPTION

The ~~rural~~ health resources development section is a section within the Division of Facility Services. It is located at ~~437 N. Harrington Street,~~ 301 Ashe Avenue, Raleigh, North Carolina, 27603, and maintains ~~the same~~ office hours as the principal address of the Division of Facility Ser-

ices. from eight o'clock to five o'clock Monday through Friday.

Statutory Authority G.S. 143B-10.

.0402 DUTIES AND RESPONSIBILITIES

The responsibilities ~~powers~~, and duties of the health resources development section are to ~~make primary health care available and accessible to persons who receive insufficient medical attention in the small towns and rural areas of North Carolina.~~ assist small towns and rural areas in providing primary health care by assisting in the development of rural health clinics and in the recruitment of physicians and to develop the state medical facilities plan to assist in determining the need for new and additional health care services in North Carolina.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 143B-10.

SECTION .0500 - EMERGENCY MEDICAL SERVICES SECTION

.0501 DESCRIPTION

The emergency medical services section is a section within the Division of Facility Services. It is located at ~~the principal address of the division~~ 701 Barbour Drive, Raleigh, North Carolina, 27603 and maintains ~~the same~~ office hours from eight o'clock to five o'clock Monday through Friday.

Statutory Authority G.S. 143-507; 143-508.

.0502 DUTIES AND RESPONSIBILITIES

The responsibilities ~~powers~~, and duties of the section are to plan, implement, and maintain a state-wide emergency medical services system and to insure that prompt, high quality emergency medical care is available in North Carolina through the training of emergency services personnel, inspection of emergency vehicles, and development of a statewide emergency communications system.

Statutory Authority G.S. 131E-156; 131E-157, 143-509.

SECTION .0600 - LICENSURE SECTION

.0601 DESCRIPTION

The licensure ~~and certification~~ section is a section within the Division of Facility Services. It is located at ~~the principal address of the division~~ 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains ~~the same~~ office hours from

eight o'clock to five o'clock Monday through Friday.

Statutory Authority G.S. 143B-10.

.0602 DUTIES AND RESPONSIBILITIES

The responsibilities ~~powers~~, and duties of the licensure section are to issue state licenses to all health and social care facilities ~~certify facilities for participation in medicare and medicaid, inspect all jails and local confinement facilities, issue licenses to all charitable organizations soliciting funds in the state, inspect and register all x-ray facilities, and license and inspect the storage and use of radioactive materials.~~ required to be licensed under the general statutes, inspect all jails on a semi-annual basis and issue licenses to professional fund raising personnel and charitable organizations soliciting funds in the state.

Statutory Authority G.S. 122C, Article 2; 131C-4; 131C-11; 131D-2; 131E, Article 5; 131E, Article 6; 131E, Article 8; 131E, Article 10.

.0603 SURVEY AND CONSULTATION BRANCH (REPEALED)

.0604 RADIATION BRANCH (REPEALED)

Statutory Authority G.S. 104C-4; 122-72.6; 130-4-5; 131D-1; 131E-77; 131E-80; 131E-102; 131E-105; 131E-138; 131E-141.

.0605 JAILS AND DETENTION BRANCH

Within the licensure ~~and certification~~ section is the jails and detention branch. It is located at ~~the principal address of the division~~ 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains ~~the same~~ office hours from eight o'clock to five o'clock Monday through Friday. The responsibilities ~~powers~~, and duties of the jail and detention branch are to inspect all local confinement facilities semi-annually, ~~and to assist communities in planning and implementing projects involving construction and renovation of local confinement facilities.~~ The branch also has the responsibility to train local confinement personnel, to investigate all deaths occurring in jails, and to assist jail authorities in renovation of existing jails and construction of new jails.

Statutory Authority G.S. 131D-11 to 131D-13; 153A-220 to 153A-223; 153A-230.5.

.0606 REGIONAL OFFICES (REPEALED)

Statutory Authority G.S. 143B-10.

.0607 SOLICITATION LICENSING BRANCH

Within the licensure ~~and certification~~ section is the solicitation licensing branch. It is located at ~~437 North Harrington Street, 701 Barbour Drive,~~ Raleigh, North Carolina, 27603 and maintains ~~the same~~ office hours from eight o'clock to five o'clock, Monday through Friday, ~~as the division.~~ The responsibilities ~~powers,~~ and duties of the solicitation licensure branch are to require full public disclosure of facts, including purposes of fund and actual use of funds, by organizations who solicit funds from the public for charitable purposes; and to prevent deceptive and dishonest statements and conduct in the solicitation of funds in the name of charity. license all charitable organizations who solicit funds in North Carolina to license fund raising counsels and to license fund raising solicitors in order to prevent deceptive and dishonest fund raising in the name of charity.

Statutory Authority G.S. 131C-1 et seq.

.0608 GROUP CARE FACILITIES BRANCH

Within the licensure ~~and certification~~ section is the group care facilities branch. It is located at ~~the principal address of the division~~ 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains ~~the same~~ office hours from eight o'clock to five o'clock, Monday through Friday. The responsibilities ~~powers,~~ and duties of the group care facilities branch are to inspect, license, and ~~offer professional~~ provide consultation to ~~group care~~ domiciliary homes and mental health facilities required to be licensed ~~by state statute.~~ under the general statutes.

Statutory Authority G.S. 122C, Article 2; 131D-2.

.0609 MEDICAL FACILITIES LICENSURE BRANCH

Within the licensure section is the medical facilities licensure branch. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday. The responsibilities and duties of the medical facilities licensure branch are to inspect and license the health and social care facilities and services which require licensure under the general statutes.

Statutory Authority G.S. 131E, Article 5; 131E, Article 6; 131E, Article 8; 131E, Article 10

.0610 REGIONAL OFFICES

Within the Division of Facility Services is located the Black Mountain regional office. The Black Mountain regional office houses staff from the licensure section, medicare/medicaid section

and the emergency medical services section. The section staff are located as follows:

- Building 14 - emergency medical services
- Buildings 15 and 22 - medicare/medicaid section
- Building 16 - licensure section
- Building 17 - medical review branch

All offices in Black Mountain maintain office hours from eight o'clock to five o'clock, Monday through Friday. The responsible officials in the regional office are the regional supervisors for emergency medical services, licensure, and medicare/medicaid. The responsibilities and duties of the regional office are to inspect, certify, and license health and social care facilities and services in the regional area.

Statutory Authority G.S. 143B-10.

SECTION .0700 - NORTH CAROLINA MEDICAL CARE COMMISSION

- .0701 DESCRIPTION (REPEALED)**
- .0702 RESPONSIBILITIES AND DUTIES (REPEALED)**
- .0703 EXECUTIVE COMMITTEE (REPEALED)**

Statutory Authority G.S. 143B-165.

SECTION .0800 - CERTIFICATION SECTION

.0801 DESCRIPTION

The certification section is a section within the Division of Facility Services. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday.

Statutory Authority G.S. 143B-10.

.0802 DUTIES AND RESPONSIBILITIES

The responsibilities and duties of the certification section are to certify health care facilities and services for participation in the federal medicare and state medicaid programs and to perform patient care reviews under the medicaid program.

Statutory Authority G.S. 42 U.S.C. 1302.

.0803 MEDICARE-MEDICAID CERTIFICATION BRANCH

Within the certification section is the medicare-medicaid certification branch. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday. The responsibilities and duties of the medicare-medicaid certification branch are to inspect and certify health care facilities and services for participation

in the federal medicare and state medicaid programs.

Statutory Authority 42 U.S.C. 1302.

.0804 MEDICAL REVIEW BRANCH

Within the certification section is the medical review branch. It is located at Biggs Avenue, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday. The responsibilities and duties of the medical review branch are to review the level of care provided patients in nursing homes supported under the medicaid program.

Statutory Authority 42 U.S.C. 1302.

SECTION .0900 - RADIATION PROTECTION SECTION

.0901 DESCRIPTION

The radiation protection section is a section within the Division of Facility Services. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday.

Statutory Authority G.S. 104E-6.

.0902 DUTIES AND RESPONSIBILITIES

The responsibilities and duties of the radiation protection section are to inspect and register x-ray facilities, to license the storage and use of radioactive materials, to analyze environmental samples for radioactivity levels and to maintain a radiological emergency response team from the state.

Statutory Authority G.S. 104E-9; 104E-10.1; 104E-11; 104E-14; 104E-15; 104E-17.

SECTION .1000 - CERTIFICATE OF NEED SECTION

.1001 DESCRIPTION

The certificate of need section is a section within the Division of Facility Services. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday.

Statutory Authority G.S. 131E-177.

.1002 DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the certificate of need section are to accept, review, and approve applications for new or additions to health care

facilities, equipment or services as required under rules and statute.

Statutory Authority G.S. 131E-177.

SECTION .1100 - CHILD DAY CARE SECTION

.1101 DESCRIPTION

The child day care section is a section within the Division of Facility Services. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday.

Statutory Authority G.S. 143B-168.3.

.1102 DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the child day care section are to inspect and license child day care facilities and to administer the purchase of care programs.

Statutory Authority G.S. 110-90; 110-105; 143B-153.

SECTION .1200 - NORTH CAROLINA MEDICAL CARE COMMISSION

.1201 DESCRIPTION

Within the Division of Facility Services is the North Carolina Medical Care Commission. It is located at 701 Barbour Drive, Raleigh, North Carolina 27603 and maintains office hours from eight o'clock to five o'clock, Monday through Friday.

Statutory Authority G.S. 143B-165.

.1202 RESPONSIBILITIES AND DUTIES

The responsibilities and duties of the North Carolina Medical Care Commission are:

- (1) To adopt rules for the construction and maintenance of hospitals, public health centers and related facilities and to receive and administer funds which may be provided by the General Assembly and the federal government (G.S. 131E, Article 4).
- (2) To adopt rules for the allocation, apportionment, and granting of funds made available by the state for grants-in-aid to counties, cities, towns, and subdivisions of government to acquire real estate and construct hospital facilities (G.S. 131E, Article 4).
- (3) To approve grant-in-aid from funds supplied by the federal and state governments for the planning of hospitals and other related medical facilities (G.S. 131E, Article 4).

- (4) To carry out and effectuate the purposes and provisions of the Health Care Facilities Finance Act (G.S. 131A).
- (5) To adopt rules for the licensure of hospitals under the provisions of the Hospital Licensure Act (G.S. 131E, Article 5).
- (6) To adopt, amend, and repeal all rules necessary for the implementation of the Nursing Home Licensure Act (G.S. 131E, Article 6, Part A).
- (7) To adopt, amend, and repeal all rules necessary for the implementation of the Home Health Agency Licensure Act (G.S. 131E, Article 6, Part C).
- (8) To adopt, amend, and repeal all rules necessary for the implementation of the Ambulatory Surgical Facility Licensure Act (G.S. 131E, Article 6, Part D).
- (9) To adopt rules specifying equipment, sanitation, supply, and design requirements for ambulances and for certification of emergency medical personnel (G.S. 131E, Article 7).
- (10) To adopt rules for the licensing and regulation of hospices pursuant to the Hospice Licensure Act (G.S. 131E, Article 10).
- (11) To carry out provisions of the Hospital District Act (G.S. 131E, Part C).
- (12) To adopt, amend, and repeal all rules necessary for the certification of abortion clinics (G.S. 14-45.1).

Statutory Authority G.S. 143B-165

.1203 EXECUTIVE COMMITTEE

(a) There shall be an executive committee of the North Carolina Medical Care Commission composed of five members of the commission in addition to the chairman and vice-chairman of the commission. Three members shall be appointed by a vote of the commission at the December meeting of each odd year and two members shall be appointed by the chairman of the commission at the December meeting of each even year. No member of the executive committee, except the chairman and vice-chairman, shall serve more than two two-year terms in succession. The chairman and vice-chairman of the commission shall also be chairman and vice-chairman of the executive committee.

(b) The functions of the executive committee shall be to:

- (1) transact business in behalf of the commission, consistent with established policy, which in the opinion of the chairman is of such urgency that action is required before the next regularly scheduled commission meeting and the impact of the

action would not justify the convening of a special meeting of the commission;

- (2) transact business in behalf of the commission when a quorum is not obtained at any commission meeting for which prior notice of at least ten days has been given;
- (3) review periodically the activities of the commission and the assignments and recommendations of the various committees for the purpose of developing policy recommendations for commission consideration.

(c) All actions of the executive committee shall be reviewed at the next commission meeting and if disagreement is expressed by a simple majority of the members present and voting at any commission meeting in which a quorum is present, the functions of the executive committee shall be suspended until resolved by later action of the commission.

(d) The initial approval of all projects under the Health Care Facilities Finance Act must be given by a quorum of the full commission.

(e) A quorum of the executive committee shall consist of at least four members of the executive committee.

Statutory Authority G.S. 143B-165; 143B-166.

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .1000 - SPECIAL CRITERIA AND STANDARDS: IN GENERAL

.1003 STATE MEDICAL FACILITIES PLAN

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

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

tuned in this Subchapter and in G.S. 1311-183 and need projections to determine whether applications proposing additional beds and services of these types may be approved under the certificate of need program.

(b) The annually published State Medical Facilities Plan approved by the Governor, and any duly adopted amendments or additions thereto, is hereby adopted by reference as a rule for the calendar year during which it is in effect.

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

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1); 42 U.S.C. 300K-2.

Notice is hereby given in accordance with G.S. 150B-12 that the Director of the Division of Mental Health, Mental Retardation and Substance Abuse Services intends to amend rule(s) cited as 10 NCAC 14C .0704, .0709, and 10 NCAC 18A .0131

The proposed effective date of this action is January 1, 1989

The public hearing will be conducted at 10:00 a.m. on October 17, 1988 at Dorothea Dix Hospital, 820 South Boylan Avenue, Administration Building - Taylor Hall, Personnel Conference Room Number 16, Raleigh, N.C. 27603

Comment Procedures: Any interested person may present his/her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact: Jan Warren, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury St., Raleigh, N.C. 27611, (919) 733-7971 by October 14, 1988. Written comments must be sent to the above address. The hearing record will remain open for written comments from September 15, 1988 through October 17, 1988. Fiscal information on these rules or further directions to Dorothea Dix Hospital is also available from the same address.

CHAPTER 14 - MENTAL HEALTH: GENERAL

SUBCHAPTER 14C - GENERAL RULES

SECTION .0700 - RULES GOVERNING DEPARTMENT: TRAFFIC PARKING AND REGULATION OF VEHICLES AT DIVISION INSTITUTIONS

.0704 PURPOSE

The purpose of Rules .0704 through .0716 in this Section is to establish specific procedures governing which may be implemented in order to govern traffic, parking, registration of motor vehicles, and the department of individuals or groups of individuals on the grounds of division institutions. These procedures are supplemental to G.S. 14-132 and the statewide motor vehicle laws in Chapter 20 of the General Statutes which are applicable on the grounds of division institutions.

Statutory Authority G.S. 143-116.6; 143-116.7.

.0709 VEHICLE REGISTRATION

(a) If the institution director elects to require vehicle registration, each vehicle used or parked on institutional property by employees shall must be registered and shall must display an official sticker. Newcomers to the institutional staff shall display an official sticker within 48 hours of beginning employment, excluding holidays and weekends. For the purposes of the rules in this Section, "employees" shall include those persons who have assigned work stations on the grounds of the institution. Bonafide visitors to the institution are exempt from vehicle registration requirements. Students and trainees shall register their vehicles and display an official temporary permit valid up to 90 days.

(b) The registration sticker shall be mounted on the left hand side of the rear bumper of the vehicle in such a manner as to be clearly visible upon approaching the rear of the vehicle. The temporary permit shall be displayed in the lower left hand side of the rear window.

(b) The registration sticker or temporary permit shall be displayed in such manner as designated by the institution director.

(j) Registration stickers shall may be issued to be valid for a period of up to three years dating from the date of the facility wide issue. There shall be a charge of one dollar (\$1.00) each for the original registration sticker and one dollar (\$1.00) for each additional or replacement registration sticker. for each sticker sufficient to defray the cost of its issuance.

Statutory Authority G.S. 143-116.7.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18A - MONITORING PROCEDURES

SECTION .0100 - REVIEW PROCESS FOR AREA PROGRAMS AND THEIR CONTRACT AGENCIES

.0131 ON-SITE VALIDATION REVIEWS

(a) Each year the division director shall select a minimum of 12 ~~six~~ area programs from within the State for an on-site validation review. ~~process.~~ The selection of the area programs for on-site validation shall occur following the self-survey by all area programs within a region scheduled for self-survey that fiscal year. Area program management and a stratified sample of all components of the selected area programs shall be reviewed.

Statutory Authority G.S. 122C-113; 122C-141(b); 122C-142(a); 122C-191(d).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Social Services Commission intends to adopt, amend rule(s) cited as 10 .30 .0214; 42C .2007, .2401; 49B .0304 and .0306

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 10:00 a.m. on October 19, 1988 at Albemarle Building, Director's Conference Room, 8th Floor - Room 864, 325 N. Salisbury St., Raleigh, N.C. 27611.

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 Alfred, 325 N. Salisbury Street, Raleigh, N.C. 27611, 919-733-3055.

CHAPTER 30 - FOOD ASSISTANCE

SECTION .0200 - MANUAL

.0214 ADDITIONAL MANDATORY VERIFICATIONS

(a) The county department will verify household size. Verification will be accomplished through a collateral contact or readily available documentary evidence. A collateral contact is defined as a verbal confirmation of a household's

circumstances by someone outside the household, such as employees, landlords, neighbors, etc. A collateral contact may be made in person or by telephone.

(b) The county department will verify that the household actually incurs a major utility expense. Verification is required on a one-time basis unless the household has moved or changed its utilities or unless questionable.

(c) The county department will check Property Tax Listings at initial application and once every twelve months thereafter.

(d) The county department will check the DMV listing Division of Motor Vehicles (DMV) file for licensed vehicles at initial application and at each subsequent recertification, not to exceed once ~~each three months.~~ every six months.

Statutory Authority G.S. 108A-51; 143B-153.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2000 - PERSONNEL

.2007 QUALIFICATIONS OF PERSONAL CARE STAFF

Each aide, administrator, and supervisor-in-charge, who provides personal care to residents in family care homes and homes for the aged and disabled, who is hired after January 1, 1989 to work in a home and who does not have six months experience shall have successfully completed an aide training program approved by the Department of Human Resources, Domiciliary Home Personnel Policies Review Committee. When an individual has not already successfully completed an approved aide training program, he/she shall enroll in the first available approved aide training program which is scheduled to commence within 60 days of the date of his/her employment. The program may be established by the home or by an organization or educational institution and taught by the administration, supervisor-in-charge, other qualified staff, or by an organization or educational institution. The licensed home shall provide a planned orientation within the first week of employment for all personal care staff hired after January 1, 1989 emphasizing resident care policies and procedures, the home's philosophy and goals, and staff performance expectations.

The aid training program shall consist of at least the following:

- (1) Twenty hours of classroom instruction to commence within 60 days of employment.

The instruction shall include the individual's duties, basic personal care skills, resident safety and rights, the social and psychological aspects of aging, interaction with families, the importance of activities and social services, and death and dying. The 20 hours of classroom instruction shall be completed within the first 120 days of employment.

- (2) Forty hours of supervised training. These hours shall consist of an appropriately supervised work assignment and shall commence upon employment. The 40 hours of supervised training shall be completed within the first 120 days of employment.
- (3) Proof of successful completion of training shall be retained in the home's records, and shall be available for inspection.

Statutory Authority G.S. 131D-2; 143B-153.

SECTION .2400 - ADMISSION POLICIES

.2401 ADMISSIONS

(a) Any adult (18 years of age or over) who, because of a temporary or chronic physical condition or mental disability, needs a substitute home may be admitted when, in the opinion of the resident, physician, family or social worker, and the administrator the services and accommodations of the home will meet his particular needs.

- (b) Exceptions. People are not to be admitted:
- (1) for treatment of mental illness, or alcohol or drug abuse;
 - (2) for maternity care;
 - (3) for professional nursing care under continuous medical supervision;
 - (4) for lodging, when the personal assistance and supervision offered for the aged and disabled are not needed; or
 - (5) with disease in a communicable stage or carrier state. This provision does not prohibit the admission of residents who are hepatitis B carriers to a home operated by a contract agency of an area mental health, mental retardation and substance abuse program if the home is in compliance with the rules codified in 10 NCAC 18H .0107 through .0115. Copies of the rules in 10 NCAC 18H .0107 through .0115 may be obtained at no cost by writing: Publications Officer, Division of Mental Health, Mental Retardation and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611. The Division of Facility Services may accept documentation submitted to county departments of social services by

area mental health, mental retardation and substance abuse programs as evidence that the home is in compliance with 10 NCAC 18H .0107 through .0115. Unless the Communicable Disease Control Measures (10 NCAC 7A .0209) require restriction, this provision does not prohibit the admission of individuals with HIV infection to a home which has established through its written admission policies that it is operated solely for the benefit of residents with HIV infection and which is following infection control measures outlined in the "Division of Health Services Guidelines for Handling Body Fluids." The administrator is responsible for establishing written procedures for implementing the infection control measures. Documentation that the procedures have been reviewed and approved by a qualified health care professional in private practice or in the public health department must be on file in the home and available for inspection by the monitoring and licensing agencies. Copies of the rules in 10 NCAC 7A .0209 and the infection control guidelines may be obtained at no cost by writing the Division of Health Services, Communicable Disease Control Branch, 225 N. McDowell Street, Raleigh, N. C. 27602.

Statutory Authority G. S. 131D-2; 143B-153.

CHAPTER 49 - AFDC

SUBCHAPTER 49B - ELIGIBILITY DETERMINATION

SECTION .0300 - ELIGIBILITY FACTORS

.0304 KINSHIP AND LIVING WITH A SPECIFIED RELATIVE

- (a) Eligibility requirements pertaining to kinship and living with a specified relative shall be found in 45 CFR 233.90 and this provision is hereby adopted by reference under G.S. 150B-14(c).
- (b) Verification of kinship shall be made only at application unless previous documentation appears to be incorrect.
- (1) Kinship of a child to a specified relative except for an alleged father shall be verified by examining:
 - (A) birth certificates; or
 - (B) hospital records established at birth; or
 - (C) marriage record; or
 - (D) Social Security Administration records; or

- (E) two of the following:
- (i) school records;
 - (ii) Bible records;
 - (iii) hospital or physician's records;
 - (iv) court records including adoption records;
 - (v) immigration records;
 - (vi) naturalization records;
 - (vii) church documents;
 - (viii) passport;
 - (ix) military records;
 - (x) U. S. census records;
 - (xi) signed statement from an individual having specific knowledge about the kinship of the child to the specified relative. The statement shall include:
 - (I) name of child;
 - (II) date of birth;
 - (III) place of birth;
 - (IV) individual's relationship; and
 - (V) basis of individual's knowledge.
- (2) Kinship of a child to his alleged father or other alleged paternal relative shall be verified by verifying the child's relationship to the alleged father and if necessary the alleged father's relationship to the alleged paternal relative. Relation to the alleged father shall be verified by examining:
- (A) court support records; or
 - (B) county department of social services support records; or
 - (C) statement signed and dated by the father that acknowledges his paternity; or
 - (D) two of the following:
 - (i) school records;
 - (ii) Bible records;
 - (iii) hospital or physician records;
 - (iv) court records;
 - (v) immigration records;
 - (vi) naturalization records;
 - (vii) church documents;
 - (viii) passport;
 - (ix) military records;
 - (x) U. S. census records;
 - (xi) signed statement from an individual having specific knowledge about the kinship of the child to the specified relative. The statement shall include:
 - (I) name of child;
 - (II) date of birth;
 - (III) place of birth;
 - (IV) individual's relationship; and
 - (V) basis of individual's knowledge.
- (c) Verification that a child is living within the home of a specified relative shall be made during each determination of eligibility by:

- (1) a home visit when there is evidence of the child living in the home; or
- (2) use of school records; or
- (3) use of day care center records; or
- (4) statement of a social worker employed by the county department of social services when, following a home visit, he is able to substantiate that the child is living in the home; or
- (5) statement from a non-relative having personal knowledge of the child living with the specified relative; or
- (6) ~~(5)~~ two of the following:
 - (A) medical records, including health department records;
 - (B) Social Security or other benefit records;
 - (C) rental records;
 - (D) church records.
 - ~~(E) signed statements from non-relatives having personal knowledge of the child living with the specified relative.~~

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.10.

.0306 DEPRIVATION

Eligibility requirements pertaining to deprivation shall be found in 45 CFR 233.90 and this provision is hereby adopted by reference under G.S. 150B-14(c).

- (1) Death of either parent: The death of either parent shall be established through the use of the following:
 - (a) death certificate;
 - (b) written notice from the Bureau of Vital Statistics or a county health department;
 - (c) SSA or VA records;
 - (d) military records;
 - (e) cemetery records;
 - (f) hospital records;
 - (g) insurance company records;
 - (h) records of a fraternal organization;
 - (i) obituary;
 - (j) ~~signed~~ statement from an individual knowledgeable about the death.
- (2) Physical or mental incapacity of parent:
 - (a) Incapacity shall be established through the use of the following:
 - (i) a medical examination of the incapacitated parent, or a medical report from a medical facility; or
 - (ii) verification that Social Security disability benefits or SSI disability benefits are being received; or
 - (iii) a psychological examination; and
 - (iv) an examination of pertinent social factors.

- (b) Except for cases approved because Social Security disability or SSI disability benefits are being received by the incapacitated parent, a social history shall be completed.
- (c) The decision on incapacity shall be made by the county department of social services where possible. If not, the required information shall be forwarded to the Disability Determination Section of the Division of Social Services for evaluation;
- (3) Continued absence of parent. Verification shall be accomplished as follows:
 - (a) Divorce:
 - (i) use legal documents in the applicant's/recipient's possession; or
 - (ii) use court records; or
 - (iii) contact the attorney who handled the divorce;
 - (iv) at reviews, a collateral statement shall be obtained to show that the parents are not living together.
 - (b) Formal or legal separation;
 - (i) use legal documents in the applicant's/recipient's possession; or
 - (ii) use court records; or
 - (iii) contact the attorney who handled the divorce;
 - (iv) at reviews, a collateral statement shall be obtained to show that the parents are not living together.
 - (c) Informal separation; obtain a statement ~~statements~~ from ~~two~~ one non-relative collateral. ~~collaterals~~
 - (d) Desertion or abandonment; obtain a statement ~~statements~~ from ~~two~~ one non-relative collateral. ~~collaterals~~
 - (e) Long-term treatment in a hospital, skilled nursing or domiciliary care facility; the county department shall contact the facility to obtain a statement.
 - (f) Institutionalization; the county department shall contact the institution to obtain a statement.
 - (g) Incarceration:
 - (i) use court records; or
 - (ii) use penal institution records; or
 - (iii) obtain statement of police officer.
 - (h) A parent who is a convicted offender permitted by the court to live at home while serving an active court sentence to perform unpaid public work or unpaid community service during working hours; the county department shall contact the clerk of court to obtain statement that includes name of person convicted, date of sentence, and district of Superior Court in which the sentence was given.

- (i) The man in the home acknowledges paternity; the county department obtains a statement from the alleged father which indicates that he is the father of the child.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. 233.90.

TITLE II - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt rules cited as 11 NCAC 12 .0322, .0323, .0324, .0554, .0555, .0556, .0557, .0558, .0701, .0702, .0703, .0704, .0705, .0706, .0707, .0708, .0709, .0710, .0711; amend rules cited as 11 NCAC 12 .0101, .0307, .0308, .0312, .0407, .0420, .0421, .0424, .0427, .0428, .0429, .0431, .0436, .0441, .0446, .0447, .0504, .0514, .0543, .0544, .0551, .0604, .0605, .0607, .0608, .0609 and repeal rules cited as 11 NCAC 12 .0102, .0103, .0301, .0302, .0311, .0314, .0315, .0316, .0401, .0417, .0418, .0444, .0451, .0457, .0502, .0505, .0515, and .0547.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 10:00 a.m. on October 17, 1988 at Room 4085, 4th floor Conference Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Leonard Wood, Life, Accident & Health Division, P. O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Leonard Wood at (919) 733-5060.

CHAPTER 12 - LIFE: ACCIDENT AND HEALTH DIVISION

SECTION .0100 - GENERAL ORGANIZATION AND FUNCTIONS

.0101 GENERAL PROVISIONS

In this Chapter, unless the context otherwise requires:

- (1) "Deemer clause" or "deemer provision" shall mean any clause or provision which establishes a period of time certain, e.g. ~~30 days~~, 90 days, etc., within which time the commissioner must disapprove a particular matter before him or set a hearing and which if no action is taken by the commissioner

within the period of time certain, said matter before the commissioner is deemed approved.

- (2) "Division" shall mean the life, accident and health division of the North Carolina Department of Insurance.
- (3) "Form" shall consist of but not be limited to the application, rider, certificate, policy, etc.

Statutory Authority G.S. 58-9; 58-54; 58-254.7; 58-347.

.0102 PURPOSE OF DIVISION (REPEALED)

.0103 PERSONNEL OF DIVISION (REPEALED)

Statutory Authority G.S. 58-4; 58-9.

SECTION .0300 - GENERAL PROVISIONS

.0301 GENERAL PROVISIONS (REPEALED)

Statutory Authority G.S. 58-9.

.0302 APPLICATION FOR INSURANCE REQUIRED (REPEALED)

Statutory Authority G.S. 58-44.

.0307 FILING APPROVAL: LIFE: ACCIDENT AND HEALTH FORMS

(a) All life, accident and health forms must be filed with and approved by the commissioner before use.

(b) The following procedure should be used in filing life and accident and health forms for approval by this department:

- (1) Filing letter should be submitted in duplicate; list forms by number and descriptive title; indicate if new and briefly describe use of form; if revision identify form being replaced by number and approval date;
- (2) If riders, endorsements or certificates are filed separately, indicate policy forms with which they are used;
- (3) Only one copy of the form is required to be submitted unless the company desires a stamped copy;
- (4) All forms should be completed with specimen data;
- (5) Rates by age and mode of payment ~~should be attached to each form requiring a premium; including the actuarial memorandum should be attached to each form requiring a premium.~~
- (6) Submit evidence of approval of subject identical filing by the state of domicile;

(7) Submit a listing of states in which subject identical filing has been submitted and a listing of states which have:

- (A) approved; or
- (B) disapproved, including the reasons for disapproval;

(8) Submit copies of any endorsements, riders or changes in subject filing required by any jurisdiction as a condition of approval;

(9) Subparagraphs (6), (7), and (8) of this Paragraph shall not be applicable to domestic insurers.

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-195; 58-249.

.0308 BANK CREDIT CARD FACILITY AVAILABLE FOR PREMIUM PAYMENT

No insurer may solicit insurance under the provisions of G.S. 58-61.2 in such a way as to imply that the bank credit card facility is actually doing the solicitation. The following guidelines must be adhered to, by the insurer:

- (1) The colors used by the bank credit card facility may not be used in the solicitation material.
- (2) The solicitation material may refer to the bank credit card facility if it is operated by a bank corporation with principal domicile in North Carolina, only by making it one of the options to be used in paying the premium.
- (3) The bank credit card account number may not be shown on the address label of the individual being solicited.
- (4) With respect to the physical location where solicitations are conducted, solicitations and disclosures should not possess a capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a contract of insurance.

Statutory Authority G.S. 58-61.2.

.0311 LIMITATION ON AMOUNT OF CREDIT INSURANCE WRITTEN (REPEALED)

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-344.

.0312 ACCIDENTAL DEATH BENEFIT: INHALATION OF GAS: ETC.

A policy or rider providing benefits for accidental death may not exclude the involuntary inhalation of gas and fumes and involuntary taking of poison. Nor may it exclude accidental death as a result of involuntary exposure to nuclear explosion, nuclear energy or nuclear elements.

Statutory Authority G.S. 58-9(1).

- .0314 INSURER LIABILITY: PREMIUM ACCEPTED FROM INELIGIBLE DEBTOR (REPEALED)
- .0315 CALCULATION OF UNEARNED PREMIUM REFUNDS: CREDIT INSURANCE (REPEALED)
- .0316 MISSTATEMENT OF AGE: CREDIT (REPEALED)

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-344; 58-346; 58-351.

- .0322 REGULAR CARE AND ATTENDANCE OF A PHYSICIAN

As used in life, accident and health and disability policies, "regular care and attendance of a physician" shall not be construed to require insureds to see or be under the care of a physician on a regular basis if it can be shown that the insured has reached his maximum point of recovery yet is still disabled under the terms of the insurance contract. This requirement shall not, however, restrict the right of the company to periodically examine or cause to have examined the insured according to the terms of the contract of insurance.

Statutory Authority G.S. 57-1; 58-9; 58-249.

- .0323 COMPLICATION OF PREGNANCY

Complications of pregnancy may not be treated differently from any other illness or sickness under the contract.

Statutory Authority G.S. 58-9; 58-249.

- .0324 ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) AND AIDS RELATED COMPLEX (ARC)

AIDS and ARC must be treated as any other dread disease under policy provisions and applications. ARC must be defined within the form.

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

SECTION .0400 - LIFE: GENERAL NATURE

- .0401 LIFE: GENERAL NATURE (REPEALED)

Statutory Authority G.S. 58-9.

- .0407 GROUP LIFE INSURANCE: DEPENDENT BENEFIT

Dependent life insurance may be written in connection with group life insurance in amounts not in excess of the following schedule:

Dependent Spouse	\$10,000.00
Dependent Children	\$10,000.00

as allowed by an insurer's underwriting practices.

Statutory Authority G.S. 58-9; 58-210.

- .0417 REFUND OF UNEARNED PREMIUM AT DEATH: CREDIT INSURANCE (REPEALED)
- .0418 SUICIDE: CREDIT (REPEALED)

Statutory Authority G.S. 58-9; 58-349; 58-351.

- .0420 APPROVAL OF CONTRACTS: ADDITIONAL INFORMATION REQUIRED

A company submitting variable annuity contracts to the department for approval shall furnish the following information with each variable annuity contract filing:

- (1) a copy of all information filed with and approved by the Securities and Exchange Commission, evidence that a copy of all appropriate information has been registered with the Securities and Exchange Commission,
- (2) a copy of all sales promotion material to be used in North Carolina,
- (3) a copy of the variable annuity application form,
- (4) a copy of the "Suitability Questionnaire" form, and
- (5) a copy of all proposed riders to be used with the variable annuity contract.

Statutory Authority G.S. 58-79.2.

- .0421 PREPARATION OF VARIABLE ANNUITY CONTRACT FILINGS

A company submitting variable annuity contracts to the department for approval must prepare such filings in the following manner:

- (1) Separate filings should be made for individual and group contracts, with all supplementary material grouped accordingly.
- (2) The filing letter should include a listing of all form numbers and a description of the contracts being filed.
- (3) The filing letter should state whether or not the annuity mortality table developed from the company's experience is used, and if so,

a copy of such table should accompany the filing.

- (4) ~~The filing letter should clearly state that the contracts have been approved by the Securities Exchange Commission.~~
 (§ 4) The filing letter should clearly indicate the states in which the subject contract has been filed and approved.

Statutory Authority G.S. 58-79.2.

**.0424 LIFE INSURANCE ADVERTISING:
 DEFINITIONS**

For the purpose of 11 NCAC 12 .0424 to .0433:

- (1) "Policy" shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.
- (2) "Insurer" shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's, fraternal benefit society, and any other legal entity which is defined as an "insurer" in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy.
- (3) "Advertisement" shall be material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy including:
- (a) printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio, and television scripts, billboards, and similar displays;
- (b) descriptive literature and sales aids of all kinds issued by an insurer or agent, including but not limited to, circulars, leaflets, booklets, depictions, illustrations, and form letters;
- (c) material used for the recruitment, training, and education of an insurer's sales personnel, agents, solicitors, and brokers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy;
- (d) prepared sales talks, presentations and material for use by sales personnel, agents, solicitors and brokers.
- (4) "Advertisement" for the purpose of 11 NCAC 12 .0405 to .0433 shall not include:
- (a) communications or materials used within an insurer's own organization and not intended for dissemination to the public;

- (b) communications with policyholder other than material urging policyholders to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy;
- (c) a general announcement from a group ~~or blanket~~ policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.
- (5) "Nonguaranteed Policy Element" shall mean any premium, cash value, death benefit, endowment value, dividend or other policy benefit or pricing element or portion thereof whose amount is not guaranteed by the terms of the contract.

Statutory Authority G.S. 58-9; 58-54.4; 58-199.

**.0427 LIFE INSURANCE ADVERTISING:
 DISCLOSURE REQUIREMENTS**

- (a) The information required to be disclosed by 11 NCAC 12 .0424 to .0433 shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
- (b) No advertisement shall omit material information or use words or phrases in other than their customary insurance meaning or use words, phrases, statements, references or illustrations if such omission or such use has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.
- (c) In the event an advertisement uses "Non-Medical", "No Medical Examination Required" or similar terms where issue is not guaranteed, such terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions.
- (d) An advertisement shall not use as the name or title of a life insurance policy any phrase which does not include the words "life insurance" unless accompanied by other language clearly indicating it is life insurance.

(e) An advertisement shall prominently describe the type of policy advertised.

(f) An advertisement of a policy marketed by the direct response techniques shall not state or imply that because there is no agent or commission involved there will be cost saving to prospective purchasers unless such is the fact.

(g) An advertisement for a policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, such fact shall be prominently disclosed.

(h) An advertisement for a policy with non-level premiums shall prominently describe the premium changes.

(i) Dividends Nonguaranteed Policy Elements:

(1) An advertisement shall not utilize or describe dividends nonguaranteed policy elements in a manner which is misleading or has the capacity or the tendency to mislead.

(2) An advertisement shall not state or imply that the payment or amount of dividends nonguaranteed policy elements is guaranteed. If dividends nonguaranteed policy elements are illustrated, they must be based on the insurer's current dividend scale and the illustration must contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts dividends to be paid in the future.

(3) ~~An advertisement shall not state or imply that illustrated dividends under a participating policy or pure endowment will be or can be sufficient at any future time to assure, without the further payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains:~~

~~(A) what benefits or coverage would be provided at such time, and~~

~~(B) under what conditions this would occur.~~

(3) An advertisement that includes any illustrations or statements containing or based upon nonguaranteed elements shall set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed element.

(4) If an advertisement refers to any nonguaranteed policy element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way, such as, for example, if it has agreed to change these elements only at certain intervals or

only if there is a change in the insurer's current or anticipated experience, the advertisement may indicate any such limitation on the insurer's right.

(5) An advertisement shall not refer to dividends as "free" use words of similar import, unless the tax treatment of dividends is fully explained and the nature of the dividend as a return of premium is indicated clearly.

(j) An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.

(k) Testimonials or Endorsements by Third Parties:

(1) Testimonials used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced. In using a testimonial, the insurer makes as its own all of the statements contained therein, and such statements are subject to all provisions of 11 NCAC 12 .0424 to .0433.

(2) If the individual making a testimonial or an endorsement has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, such fact shall be disclosed in the advertisement.

(3) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the insurer, or receives any payment or other consideration from the insurer for making such endorsement or testimonial, such fact shall be disclosed in the advertisement.

(l) An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any such statistics used in an advertisement shall be identified therein.

(m) Introductory, Initial or Special Offers and Enrollment Periods:

(1) An advertisement of an individual policy or combination of such policies shall not state or imply that such policy or combination of such policies is an introductory,

initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing of its policies.

- (2) An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.
- (3) An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.
- (4) An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period with the number of enrollment periods being limited to no more than two in any one calendar year for a particular insurance product. The advertisement shall specify the date by which the applicant must mail the application, which shall not be later than 10 days and not more than 40 days on which such enrollment period is advertised for the first time. This shall apply to all advertising media--i.e., mail, newspapers, radio, television, magazines and periodicals--by any one insurer. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control. This does not apply to the use of a termination of cutoff date beyond which an individual application for a guaranteed is-

sue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his request. It is also inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the insurance code for group, ~~blanket or franchise~~ insurance. In cases where an insurance product is marketed on a direct mail basis to prospective insureds by reason of some common relationship with a sponsoring organization, this shall be applied separately to each such sponsoring organization.

(n) An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group or quasi-group and as such enjoy special rates, dividends or underwriting privileges unless such is the fact.

(o) An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates of other insurers. An advertisement shall not falsely or unfairly describe other insurers, their policies, services or methods of marketing.

Statutory Authority G.S. 58-9; 58-54.4; 58-199.

**.0428 LIFE INSURANCE ADVERTISING:
IDENTITY OF INSURER**

(a) The name of the insurer shall be clearly identified in all advertisements, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.

(b) No advertisement shall use any combination of words, symbols or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such nature that they

tend to mislead prospective insureds into believing that the solicitation is in some manner connected with such governmental program or agency.

Statutory Authority G.S. 58-54.4; 58-199.

**.0429 LIFE INSURANCE ADVERTISING:
LICENSING: STATUS OF INSURER**

(a) An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond such limits.

(b) An advertisement may state that an insurer is licensed in the state where the advertisement appears, provided it does not exaggerate such fact or suggest or imply that competing insurers may not be so licensed.

(c) An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or endorsed a policy form or plan, ~~such act may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement. such recommendation or endorsement may be stated if the entity authorizes such use.~~

Statutory Authority G.S. 58-54.4; 58-199.

**.0431 LIFE INSURANCE ADVERTISING:
ENFORCEMENT PROCEDURES**

(a) Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its ~~blanket, franchise and group policies~~, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to inspection by this department. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

(b) Each insurer subject to the provisions of 11 NCAC 12 .0424 to .0433 shall file with this department with its annual statement a certificate of compliance executed by an authorized officer of the insurer wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of such year when 11 NCAC 12 .0424 to .0433 were

in effect, complied or were made to comply in all respects with the provisions of 11 NCAC 12 .0425 to .0433 and the insurance laws of this state as implemented and interpreted by 11 NCAC 12 .0424 to .0433.

Statutory Authority G.S. 58-9; 58-54.4; 58-199.

.0436 INSURANCE POLICY REQUIREMENTS

The commissioner shall not approve any variable life insurance form filed pursuant to this Regulation unless it conforms to the requirements of this Section:

(1) Filing of Variable Life Insurance Policies.

All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to and made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him in writing prior to delivery or issuance for delivery in this state:

(a) The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this Regulation, the same as those otherwise applicable to other life insurance policies.

(b) The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this Regulation.

(c) The requirements of (3)(e) of this Rule shall not apply to variable life insurance policies and related forms issued in connection with pension, profit-sharing and retirement plans if separate accounts for such policies are exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940.

(2) Mandatory Policy Benefit and Design Requirements. Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

(a) The mortality and expense risk shall be borne by the insurer.

(b) Gross premiums for death benefits shall be a level amount for the duration of the premium payment period, but this Subsection shall not be construed to prohibit temporary or permanent additional premiums for incidental insurance benefits or substandard risks. This Subsection shall not be deemed to prohibit the use of fixed benefit preliminary term insurance for a period not to exceed 120 days from

- the date of the application for a variable life insurance policy. The premium rate for such preliminary term insurance shall be stated separately in the application or receipt.
- (c) A minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid [subject to the provisions of (4)(b) of this Rule].
 - (d) The policy shall provide that the variable death benefit shall reflect the investment experience of the variable life insurance separate account established and maintained by the insurer and that the excess, positive or negative, of the net investment return over the assumed investment rate, as applied to the benefit base of each variable life insurance policy, shall be used to provide:
 - (i) fully paid-up variable life insurance providing coverage for the same period as the basic insurance under the policy or fully paid-up term insurance amounts for a term of annual periods of not less than one year nor more than five years, positive or negative, as the case may be, or a combination thereof; or
 - (ii) variable life insurance amounts, positive or negative, as the case may be, so that the reserve maintains the same percentage relationship to the variable death benefit as it would have on a corresponding fixed benefit policy; or
 - (iii) any other form of insurance benefits as the commissioner may approve.
 - (e) Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.
 - (f) Changes in variable death benefits of each variable life insurance policy shall be determined at least annually.
 - (g) The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other non-forfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values and other non-forfeiture benefits must be at least equal to the minimum values required by G.S. 58-201.2 of the insurance laws of this state (Standard Non-forfeiture Law) for a fixed benefit policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Non-forfeiture Law of this state. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.
- (h) The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.
 - (i) In determining the net investment return to be applied to the benefit base the insurer may deduct only the charges described in .0438(7)(a)(i), (ii), (iv), and (v) of this Section.
- (3) **Mandatory Policy Provisions.** Every variable life insurance policy filed for approval in this state shall contain at least the following:
- (a) The cover page or pages corresponding to the cover page of each such policy shall contain:
 - (i) a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type used in the text of any provision of that page, that the death benefit may be variable for fixed under specified conditions;
 - (ii) a prominent statement in either contrasting color or in boldface type at least four points larger than the type size of the largest type size used in the text of any provision on that page that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;
 - (iii) a statement that the minimum death benefit will be at least equal to the initial

face amount at the date of issue if premiums are duly paid and if there are no outstanding policy loans, partial withdrawals, or partial surrenders;

- (iv) the rule, or a reference to the policy provision which describes the method for determining the variable amount of insurance payable at death;
- (v) a captioned provision which provides that the policyholder may return the variable life insurance policy within 45 days of the date of the execution of the application or within 10 days of receipt of the policy by the policyholder, whichever is later, and receive a refund of all premium payments for such policy; and
- (vi) such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this Regulation;
- (vii) for all variable life insurance policies, which do not provide, while in force, a death benefit at least equal to the amount specified at issue or at the most recent policy change requested by the policyholder, must contain an endorsement or sticker, printed in contrasting type or color which contains sufficient cautionary languages such as: "THIS POLICY DOES NOT HAVE A MINIMUM GUARANTEED DEATH BENEFIT. THE DEATH BENEFIT IN THIS POLICY MAY BE LESS THAN OR MAY EXCEED THE PROJECTED BENEFITS REPRESENTED BY THE SOLICITING AGENT."
- (b) A provision for a grace period of not less than 31 days from the premium due date which shall provide that where the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date;
- (c) A provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and

payment of an amount not exceeding the greater of:

- (i) all overdue premiums with interest at a rate not exceeding eight percent per annum compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding eight percent per annum compounded annually; or
- (ii) 110 percent of the increase in cash surrender value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding eight percent per annum compounded annually;
- (d) A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;
- (e) A provision designating the separate account to be used and stating that:
 - (i) Such separate account shall be used to fund only variable life insurance benefits, except to the extent permitted by (5)(c)(vi) of this Rule;
 - (ii) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account; and
 - (iii) The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly;
- (f) A provision that at any time during the first 18 months of the variable life insurance policy, so long as premiums are duly paid, the owner may exchange the policy for a policy of permanent fixed benefit life insurance on the life of the insured for the same initial amount of insurance as the variable life insurance policy, and on a plan of insurance specified in the policy, provided that the new policy:
 - (i) shall bear the same date of issue and age at issue as the original variable life insurance policy;
 - (ii) issued on a substantially comparable plan of permanent insurance offered in this state by the insurer or an affiliate on the date of issue of the variable life insurance policy and at the premium rates in effect on that date for the same class of insurance;

- (iii) includes such riders and incidental insurance benefits as were included in the original policy if such riders and incidental insurance benefits are issued with fixed benefit policy;
- (iv) shall be issued subject to an equitable premium or cash value adjustment that takes appropriate account of the premiums and cash values under the original and new policies; A detailed statement of the method of computing such adjustment shall be filed with the commissioner;
- (v) shall not require evidence of insurability for this exchange;
- (g) A provision that the policy and any papers attached hereto by the insurer, including the application if attached, constitute the entire insurance contract;
- (h) A designation of the officers of the insurer who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on his behalf, shall be considered as representation and not warranties;
- (i) An identification of the owner of the insurance contract;
- (j) A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;
- (k) A statement of any conditions or requirements concerning the assignment of the policy;
- (l) A description of any adjustment in policy values to be made in the event of misstatement of age or sex of the insured;
- (m) A provision that the policy shall be incontestable by the insurer after it has been in force for two years during the life time of the insured;
- (n) A provision stating that the investment policy of the separate account shall not be changed without the approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state;
- (o) A provision that payment of variable death benefits in excess of the minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:
 - (i) for up to six months from the date of request, if such payments are based on policy values which do not depend on investment performance of the separate account; or
 - (ii) otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical;
- (p) A description of the basis for computing the cash surrender value under the policy shall be included; Such surrender value may be expressed as neither
 - (i) a schedule of cash value amounts per one thousand dollars (\$1,000) of variable face amount at each attained age or policy year for at least 20 years from issue, or for the premium paying period, if less than 20 years; or
 - (ii) one cash value schedule as described in (3)(p)(i) of this Rule for the death benefit, or for each one thousand dollars (\$1,000) of death benefit, which would be in effect if the net investment return is always equal to the assumed investment rate and a second schedule applicable to any adjustments to the death benefit (disregarding the minimum death benefit guarantee and term insurance amounts) if the net investment return does not equal the assumed investment rate at each age for at least 20 years from issue, or for the premium paying period if it is less than 20 years;
- (q) Premiums for incidental insurance benefits shall be stated separately;
- (r) Any other policy provisions required by this Regulation;
- (s) Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this Regulation.
- (4) Non-forfeiture, Partial Withdrawal, Policy Loan and Partial Surrender Provisions. Every variable life insurance policy delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholders than the following:
 - (a) a provision for non-forfeiture insurance benefits so that at least one such benefit is offered on a fixed basis from the due date of the premium in default:
 - (i) Variable extended term insurance may not be offered;
 - (ii) A given non-forfeiture option need not be offered on both a fixed and a variable basis;
 - (iii) The insurer may establish a reasonable minimum cash surrender value below

- which any such non-forfeiture insurance options will not be available;
- (b) a provision for policy loans (which may at the option of the insurer be entitled and referred to as a partial withdrawal provision) not less favorable to the policyholder than the following:
- (i) Up to 75 percent but if the loan is made from the general account not more than 90 percent of the policy's cash value may be borrowed;
 - (ii) The amount borrowed, or any repayment thereof, shall not affect the amount of the premium payable under the policy;
 - (iii) The amount borrowed shall bear interest at a rate not to exceed eight percent per year compounded annually;
 - (iv) Any indebtedness shall be deducted from the proceeds payable on death;
 - (v) Any indebtedness shall be deducted from the cash value upon surrender or in determining any non-forfeiture benefit;
 - (vi) Whenever the indebtedness exceeds the cash value, the insurer shall give notice of intent to cancel the policy if the excess indebtedness is not repaid within 31 days after the date of mailing of such notice;
 - (vii) The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policy holder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding 110 percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request;
 - (viii) The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision;
 - (ix) No policy loan provision is required if the policy is under the extended insurance non-forfeiture option;
 - (x) In addition to the foregoing, the policy may contain partial surrender provision; however, any such provision shall provide that the policyholder may request part of the cash value and both the variable and minimum death benefits will be reduced in proportion to the percentage of the cash value received by the policyholder and the premium for the remaining amount of insurance will also be reduced to the appropriate rates for the reduced amount of insurance. The policy may provide that a partial surrender provision shall not require the insurer to reduce the amount of the minimum death benefit to less than the lowest amount of minimum death benefit which would have been issued to the insured under the insurance plans of the insurer at the time the policy was issued. The policy must clearly provide that the policyholder has the option of electing to exercise the cash value privileges of the policy loan or partial withdrawal provision rather than the partial surrender provision;
 - (xi) All policy loan, partial withdrawal, or partial surrender provisions shall be constructed so that variable life insurance policyholders who have not exercised such provision are not disadvantaged by the exercise thereof;
 - (xii) Monies paid to the policyholders upon the exercise of any policy loan, partial withdrawal, or partial surrender provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that a stock insurer may provide the monies for policy loans from the general account.
- (5) Other Policy Provisions. The following provisions may in substance be included in a variable life insurance policy or related form delivered or issued for delivery in this state:
- (a) An exclusion for suicide within two years of the policy issue date;
 - (b) Incidental insurance benefits may be offered on a fixed basis only;
 - (c) Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options.
 - (i) The amount of the dividend may be credited against premium payments;
 - (ii) The amount of the dividend may be applied to provide paid-up amounts of additional fixed benefit whole life insurance;
 - (iii) The amount of the dividend may be applied to provide paid-up amounts of additional variable life insurance;
 - (iv) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;
 - (v) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;
 - (vi) The amount of the dividend may be deposited as a variable deposit in the sep-

arate account if the separate account is exempt pursuant to Section 3(c)(11) of the Investment Company Act of 1940;

- (d) A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans or partial withdrawals under (4) of this Rule except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed.

Statutory Authority G.S. 58-9(1); 58-79.2.

.0441 REPORTS TO POLICYHOLDERS

Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at his or her last known address the following reports:

- (1) within 30 days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to .0436(4) of this Section under the policy computed as of the policy anniversary date; provided, however, that such statement may be furnished within 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than 45 days prior to the mailing of such notice; This statement shall state in contrasting color or distinctive type that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this Rule. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate;
- (2) annually, if not already required by the Securities and Exchange Commission, a statement or statements including:
 - (a) a summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;
 - (b) the net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during

the last year with the investment rate during prior years, up to a total of five years where available;

- (c) a list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;
- (d) any charges, taxes, and brokerage fees determined on an accrual basis payable by the separate account during the previous year, each expressed as a dollar amount and a percentage and the total expressed as a dollar amount and as a percentage of the assets of the separate account;
- (e) a statement of the portfolio turnover rate as defined herein during the preceding fiscal year of investments allocated to the separate account:
 - (i) The rate shall be calculated by dividing "A," the lesser of purchases or sales of portfolio securities for the particular fiscal year, by "B," the monthly average of the value of the portfolio securities owned by the separate account during the particular fiscal year. Such monthly average shall be calculated by totaling the values of the portfolio securities as of the beginning and end of the first month of the particular fiscal year and as the end of each of the succeeding 11 months, and dividing the sum by 13, except that the average value of securities for which market quotations are not available may be based upon the value of such securities as of the end of the preceding fiscal quarters.
 - (ii) For the purposes of this Rule, there shall be excluded from both the numerator and the denominator all U.S. Government securities (short-term and long-term) and all other securities whose maturities at the time of acquisition were one year or less. Purchases shall also include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of redemptions of portfolio securities by call or maturity.
 - (iii) The insurer shall show, in addition to the calculated portfolio turnover rate, both the amount of the purchases and the amount of the sales [calculated as prescribed in (2)(e)(ii) of this Rule] and the monthly average (but not the individual monthly figures) of the value of the port-

folio securities owned by the separate account during the fiscal year.

- (iv) The insurer may, if it wishes, make any statement or explanation with respect to any significant variations in the portfolio turnover rate during the three fiscal years next preceding.
 - (f) a statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account, or in the investment adviser or the separate account;
 - (g) the name of each broker or dealer handling portfolio transactions on behalf of the separate account in which the insurer or an affiliate has any material direct or indirect interest and the nature of such transactions and the amount of compensation received by each such broker or dealer from business originating with the separate account during the preceding fiscal year;
 - (h) the names and principal occupations of each principal executive officer and each director of the insurer; and
 - (i) the names of all parents of the insurer and the basis of control of the insurer, and the name of any person who is known to own, of record or beneficially, 10 percent or more of the outstanding voting securities of the company
- (3) monthly, a report which describes the value of the insured's death benefits to policyholders whose policies, while in force do not provide a death benefit at least equal to the amount specified at issue or at the most recent policy change requested by the policyholder.

Statutory Authority G.S. 58-9(1); 58-79.2.

.0444 SEPARABILITY ARTICLE (REPEALED)

Statutory Authority G.S. 58-9(1); 58-79.2.

.0446 SOUND HEALTH

No policy of life insurance shall contain a provision that the policy will be voided if the insured is not in sound good health on the effective date of the policy or date of reinstatement unless such provision contains the following:

- (1) The burden of proof as to whether the condition was material lies solely with the insurer;

- (2) If voided, there will be a full refund of premium;

- (3) Reference to such condition was not contained in the written application.

Statutory Authority G.S. 58-9; 58-195.

.0447 FREE LOOK PROVISION

An insurer, prior to the time that any life insurance or annuity policy is issued for delivery or delivered, shall ensure that a provision is displayed by sticker or printed on the face of each life insurance or annuity policy, containing the following as appropriate:

- (1) if there is replacement of existing life insurance by an insurer not utilizing an agent in the sale or delivery of its policies, a "Thirty Day Free Look" provision;
- (2) in all other cases, a "Ten Day Free Look".

Statutory Authority G.S. 58-9; 58-195.

.0451 POLICY LOAN INTEREST RATES (REPEALED)

.0457 CREDIT INSURANCE: AUTOMOBILE LEASES (REPEALED)

Statutory Authority G.S. 58-9; 58-9(1); 58-79.2; 58-195.

SECTION .0500 - ACCIDENT AND HEALTH: GENERAL NATURE

.0502 RATE INCREASES FOR INDIVIDUAL AND BLANKET POLICIES (REPEALED)

Statutory Authority G.S. 58-251.2.

.0504 APPROVAL OF FILING: 90 DAY DEEMER NOT IN EFFECT

A request for additional information by the department within ~~30~~ 90 days after filing of an accident and health form, stays the deemer provision in G.S. 58-254.7 until such time as the information is received and acknowledged.

Statutory Authority G.S. 58-254.7; 58-370(a).

.0505 MAIL ORDER APPLICATION: ACCIDENT AND HEALTH (REPEALED)

Statutory Authority G.S. 58-257.

.0514 COORDINATION: GROUP A/H CONTRACT BENEFITS: GROUP COVERAGES

Purpose. In order to promote consistency in liability for claims and claims determination for Group Accident and Health coverage, the de-

partment shall require a uniform order of benefits determination as follows:

(1) Applicability:

(a) This Coordination of Benefits ("COB") provision applies to this plan when an employee or the employee's covered dependent has health care coverage under more than one plan. "Plan" and "This Plan" are defined in (2)(a) and (b) of this Rule.

(b) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of this plan are determined before or after those of another plan. The benefits of this plan:

(i) Shall not be reduced when, under the order of benefit determination rules, this plan determines its benefits before another plan; but

(ii) may be reduced when, under the order of benefit determination rules, another plan determines its Section (IV) Effect on the Benefits of this plan.

(2) Definitions:

(a) A "Plan" is any of these which provides benefits or services for, or because of, medical or dental care or treatment.

(i) True group insurance, whether insured or self-insured. This includes prepayment, group practice or individual practice coverage. It does not include school accident-type coverage, blanket, franchise or individual coverage, individual, automobile and homeowner coverage.

(ii) Coverage under a governmental plan or required or provided by law. This does not include a state plan under Medicaid (Title XIX, Grants to States for Medical Assistance Programs, of the United States Social Security Act as amended from time to time). It also does not include any plan when, by law, its benefits are excess to those of any private insurance program or other non-governmental program.

Each contract or other arrangement for coverage under (2)(a) (i) or (ii) is a separate plan. Also, if an arrangement has two parts and COB rules apply only to one of the two, each of the parts is a separate plan.

(b) "This Plan" is the part of the group contract that provides benefits for health care expenses.

(c) "Primary Plan" "Secondary Plan". The order of benefit determination rules state whether this plan is a Primary Plan or Secondary Plan as to another plan covering the person. When this plan is a Pri-

mary Plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When there are more than two plans covering the person, this plan may be a Primary Plan as to one or more other plans, and may be a Secondary Plan as to a different plan or plans.

(d) "Allowable Expense" means a necessary, reasonable, and customary item of expense for health care, when the item of expense is covered at least in part by one or more plans covering the person for whom the claim is made. When a plan provides benefits in the form of services, the reasonable cash value of each service rendered will be considered both an allowable expense and a benefit paid. Total benefits paid must be equal 100 percent of necessary medical expenses covered by both plans.

(e) "Claim Determination Period" means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan, or any part of a year before the date this COB provision or a similar provision takes effect.

(3) Order of Benefit Determination Rules

(a) General. When there is a basis for a claim under this plan and another plan, this plan is a Secondary Plan which has its benefits determined after those of the other plan, unless:

(i) the other plan has rules coordinating its benefits with those of this plan; and

(ii) both those rules and this plan's rules, in (3)(b)(ii)(B) of this Rule, require that this plan's benefits be determined before those of the other Plan.

(b) Rules. This plan determines its order of benefits using the first of the following rules which applies:

(i) Non-dependent Dependent. The benefits of the plan which covers the person as an employee, member or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent.

(ii) Dependent Child Parents Not Separated or Divorced. Except as stated in (3)(b)(iii)(B) of this Rule, when this plan and another plan cover the same child as a dependent of different persons, called "parents":

(A) the benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of

the parent whose birthday falls later in that year; but

- (B) if both parents have the same birthdays, benefits of the plan covered the parent longer are determined before those of the plan which covered the other parent for a shorter period of time.

However, if the other plan does not have the rule described in Paragraph (3)(a) in this Rule, but instead has a rule based upon the gender of the parent, and if, as a result, the plans do not agree on the order of benefits, the rule in the other plan will determine the order of benefits.

- (iii) Dependent Child/Separated or Divorced Parents. If two or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

- (A) first, the plan of the parent with custody of the child;
- (B) then, the plan of the spouse of the parent with custody of the child; and
- (C) finally, the plan of the parent not having custody of the child.

However, if the specific terms of a court decree state that one of the parents is responsible for the health pay or provide the benefits of the plan of that parent has actual knowledge of those terms, the benefits of that plan are determined first. In this Rule, (3)(b)(iii)(C) does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has

that actual knowledge.

- (iv) Active Inactive Employee. The benefits of a plan which covers a person as an employee who is neither laid off nor retired (or as that employee's dependent) are determined before those of a plan which covers that person as a laid off or retired employee (or as that employee's dependent). If the other plan does not have (3)(b)(iv), and if, as a result, the plans do not agree on the order of benefits, (3)(b)(iv) is ignored.

- (v) Longer/Shorter Length of Coverage. If more of Paragraph (3) of this Rule determines the order of benefits, the benefits of the plan which covered an employee, member or subscriber longer are determined before those of the plan which covered that person for the shorter time.

Statutory Authority G.S. 57-1; 57-4; 57B; 58-9(1); 58-249.

.0515 COUNTERSIGNATURE BY AGENT (REPEALED)

Statutory Authority G.S. 58-9(1); 58-44.

.0543 POLICIES CONTAINING A PRE-EXISTING CONDITION EXCLUSION

All individual or franchise insurance policy forms and group certificates containing an exclusion for pre-existing conditions, or other language substantially similar to that set forth in form 11 NCAC 12 .0201, shall display a sticker or printed notice on the face of the policy and the outline of coverage. Such sticker shall be in red bold face type the size of which shall not be less than 14 point. The use of a rubber stamp will not satisfy this requirement.

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-249.

.0544 POLICIES RENEWABLE AT THE OPTION OF THE COMPANY

All individual or franchise insurance policy forms and group certificates that are renewable at the option of the company or other language substantially similar to that set forth in form 11 NCAC 12 .0201 shall display a sticker or printed notice on the face of the policy and the outline of coverage. Such sticker or notice shall be in red bold face type the size of which shall not be less than 14 point. The use of a rubber stamp will not satisfy this requirement.

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-249.

.0547 WAITING PERIOD (REPEALED)

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-249; 58-252.

.0551 CANCER INSURANCE-REQUIREMENTS

Cancer policy requirements. Cancer policies approved in this state must comply with the following items:

- (1) The policy must have a pre-existing conditions sticker that complies with 11 NCAC 12 .0543 and reads as follows:

**NO RECOVERY FOR PRE-EXISTING
DIAGNOSED CANCER - READ
CAREFULLY**

No benefits will be provided during the first two years of the policy for cancer diagnosed prior to the 30th day following the effective date shown in the policy schedule.

- (2) In the definition of cancer, clinical diagnosis of cancer must be accepted as evidence that cancer exists in an insured when a pathological diagnosis cannot be made provided such medical evidence substantially documents the diagnosis of cancer and the insured received definitive treatment for cancer. Whenever the requisite pathological clinical diagnosis can only be made postmortem, liability should be assumed retroactively beginning with the date of the terminal admission to the hospital for no less than 45 days prior to the date of death.
 - (3) A cancer policy cannot have a waiting period any longer than 30 days from the effective date.
 - (4) Benefits must be provided for unrelated cancers diagnosed after the effective date of the policy.
 - (5) Under the benefits provisions of the policy, provided the contract offers these benefits, our minimum standards are as follows:
 - (a) Benefits for blood and plasma, the benefits should cover actual charges incurred, including fees for administering the blood.
 - (b) The word "In-patient" should precede drugs and medicines if the policy is an in-hospital indemnity contract or does not provide out-patient benefits.
 - (c) Ambulance benefits should include transportation from one medical facility to another.
 - (6) Cancer coverage may include other diseases or conditions, however, it must be properly labeled -- CANCER AND SPECIFIED DISEASE(S).
 - (7) Cancer and dread disease policies are defined as "Medical Expense" policies in regard to loss ratio requirements as set forth in the NAIC guidelines.
- (1) Long-Term Care Insurance is defined as any contract of insurance offering institutional or noninstitutional support in order to restore deteriorating health and to maintain functional independence. Such services for an acute or chronic physical mental impairment, or short term illness or injury, include but are not limited to assistance with daily living, medical or rehabilitative care, and home health care.
 - (2) In regard to Skilled, Intermediate, Custodial, or Home Health Care, when the insured receives definitive treatment for these services regardless of the type of facility or setting the insured is confined in, benefits are payable for the service received based on the benefits of the contract for that service.
 - (3) Custodial or Domiciliary Home facilities will be considered the same for insurance purposes.
 - (b) The following provisions are required:
 - (1) Prior skilled nursing home confinement may not be required to satisfy eligibility for benefits in lower levels of care.
 - (2) Prior hospitalization may not be required to satisfy eligibility for long-term care benefits.
 - (3) Long-term care insurance policies must provide benefits for at least three levels of care and provide the same duration for each level of care for a minimum of 12 months.
 - (4) Coordination or nonduplication of benefits is permitted between true group long-term care policies only.
 - (5) The loss ratio is required to be at least 60 percent for individual policies and at least 75 percent for group policies.
 - (6) Unless the solvency of the insurer is at risk all individual Long-Term Care policies must be guaranteed renewable.

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

.0554 STOP-LOSS COVERAGE: REQUIREMENTS

Stop-loss coverage benefits begin only after a minimum of five thousand dollars (\$5,000) coverage benefits per member are paid or incurred. The stop-loss policy may not be sold to employers with less than 50 employees.

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

.0555 LONG TERM CARE INSURANCE - REQUIREMENTS: LONG TERM CARE POLICY REQUIREMENTS

- (a) Definitions:

Statutory Authority G.S. 58-9; 58-249; 58-254.7; 58-545.

.0556 HOME HEALTH CARE POLICY REQUIREMENT

All Home Health Care Policies shall have the notice printed in contrasting type or color on the face of the policy as follows: "This Is Not A Long-Term Care Policy - This Policy Provides Home Health Care Benefits Only - Read Carefully" Home health care policies must comply with G.S. 58-252.

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

**.0557 POLICIES CONTAINING A
TERMINATION OR CANCELLATION
PROVISION**

Any policy or certificate of insurance which may be terminated for reasons other than non-payment of premium or the insured's stated age must be affixed with a notice referring the insured to the renewal provision. Such notice must appear in 14 point bold red print and read as follows: Important Cancellation Information - Please Read The Provision Entitled, ".....", Found On Page "...".

Statutory Authority G.S. 58-9; 58-249.

.0558 PREMIUM REVISION

At least 30 days notice for individual insurance policies and at least 60 days notice for payroll deductible and group insurance policies must be given the insured in writing prior to the effective date of any rate increase and any policy benefit revision.

Statutory Authority G.S. 58-9; 58-249; 58-254.7.

**SECTION .0600 - REPLACEMENT
REGULATIONS**

.0604 EXEMPTIONS

Unless otherwise specifically included, this Regulation shall not apply to transactions involving:

- (1) Credit life insurance; G.S. 58-341 through 359;
- (2) Group life insurance or group annuities; G.S. 58-195 through 213;
- (3) An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised, where replacing and existing insurer are same, or subsidiaries or affiliates under common ownership or control;
- (4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- (5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, agents or brokers proposing replacement shall comply with the requirements of ~~Section 5-A,~~ .0605(2) ;
- (6) Registered Contracts shall be exempt from the requirements of ~~Sections 7-B.2,~~ .0607(2)(b) and ~~7-B.3,~~ .0607(2)(c) requiring provision of Policy Summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or

offering circular shall be required in lieu thereof;

- (7) Life insurance policies and annuities issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility under the provisions of Sec. 401 of the Internal Revenue Code; provided, however, that full and complete disclosure of all material facts shall be given to the administrator or policyowner, if other than the insured, of any plan to be replaced.

Statutory Authority G.S. 58-9; 58-42.1; 58-195; 58-199.

.0605 DUTIES OF AGENTS AND BROKERS

(a) Each agent or broker who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

- (1) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction;
 - (2) A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction; and
 - (3) The requirements of ~~5-A(1)~~ .0605(a)(1) and (2) may be satisfied by suitable questions on the application.
- (b) Where a replacement if involved, the agent or broker shall:

- (1) Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, or other substantially similar form approved by the Commissioner. The Notice shall be signed by both the applicant and the agent or broker and a copy left with the applicant. The agent or broker shall obtain with or as part of each application a list of all existing life insurance and/or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
- (2) Leave with the applicant the original or a copy of any written or printed marketing communications used for the presentation to that specific applicant, including but not limited to ledger statements, brochures, sales proposals or any other materials necessary for the buyer to make an informed purchase decision.
- (3) Submit to the replacing insurer with the

application a copy of the Replacement Notice provided pursuant to ~~Section 5-B.1. .0605(b)(1).~~

(c) Each agent or broker who uses written or printed marketing communications in a conversation shall leave with the applicant the original or a copy of such materials used.

Statutory Authority G.S. 58-9; 58-42.1; 58-195; 58-199.

.0607 DUTIES OF INSURERS THAT USE AGENTS OR BROKERS

Each insurer that uses an agent or broker in a life insurance or annuity sale shall:

- (1) Require with or as part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.
- (2) Where a replacement is involved:
 - (a) Require from the agent or broker with the application for life insurance or annuity:
 - (i) a list of all of the applicant's existing life insurance or annuity to be replaced; and
 - (ii) a copy of the Replacement Notice provided the applicant pursuant to ~~Section 5-B.1. .0605(b)(1).~~ Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
 - (b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to ~~Section 7-B.1. .0607(2)(a)~~ and a Policy Summary, Contract Summary or ledger statement containing Policy Data ~~on the proposed life insurance~~ as required by N.C.G.S. 58-213.6-213.12 and for an annuity a contract summary as required in ~~Section 7-B.2. .0607(2)(c).~~ Cost indices and equivalent level annual dividend figures need not be included in the Policy Summary or ledger statement. The aforementioned Policy Summary, Contract Summary or ledger statement shall be based upon the EXACT face amount, plan, premium and supplemental riders or agreements, if any, contained in the applicant's application to the replacing insurer. In the event that multiple applications are made by or for an applicant, Policy Summary, Contract Summary or ledger statement shall be provided for

each. All required items shall be sent within five working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

- (c) Where annuities are involved, the Contract Summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. "Contract Summary" means a written statement describing the elements of the annuity contract and deposit fund, including but not limited to where applicable, the following items:
- (i) One of the options under the contract available for annuity payout.
 - (ii) A prominent statement that the contract does not provide cash surrender values if such is the case.
 - (iii) The following amounts, where applicable, for the first ten contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to, the twentieth contract year and at least one year from 60-70 and at the scheduled commencement of annuity payments:
 - (A) The gross annual or single consideration for the annuity contract. Any additional considerations for optional benefits, such as disability premium waiver, should be shown separately.
 - (B) Scheduled annual or single deposit for the deposit fund, if any.
 - (C) The total guaranteed death benefit and cash surrender value at the end of the year or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for deposit fund must be shown separately from those for a basic contract.
 - (D) The total illustrative benefit and cash surrender value or paid-up annuity at the end of the year, not greater in amount than that based on:
 - (I) the current dividend scale and the interest rate credited by the insurer, and
 - (II) current annuity purchase rates. A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be

considered a current dividend scale or current excess interest rate.

- (iv) A Contract Summary which includes values based on the current dividend scale or the current dividend accumulation or excess interest rate, a statement that such values are for illustration and are not guaranteed.
 - (v) A statement of the interest rates used in calculating the guaranteed and illustrative contract or fund values.
 - (vi) The date on which the Contract Summary is prepared.
 - (vii) Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year.
 - (viii) Amounts in items (2)(c)(i) and (iii) in this Rule, in the case of flexible premium annuity contracts, shall be determined either according to an anticipated pattern of consideration payments or on the assumption that considerations payable will be one hundred dollars (\$100.00) a month or one thousand dollars (\$1,000) a year.
- (d) Each existing insurer or such insurer's agent or broker that undertakes a conservation shall furnish the policy-owner with a Policy Summary for the existing life insurance or ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of N.C.G.S. 58-213.6 through 213.12, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in Subparagraph (2)(c) in this Rule. The replacing insurer may ~~74-18~~ request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be within five working days of the receipt of the request.
- (3) The replacing insurer shall maintain evidence of the "Notice Regarding Replace-

ment", the Policy Summary, the Contract Summary and any ledger statements used, and a replacement register, listing the replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries, Contract Summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.

- (4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy.

Statutory Authority G.S. 58-9; 58-42.1; 58-195; 58-199.

.0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES

(a) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner. In such instances the insurer may delete the last sentence and the references to signatures from Exhibit A without having to obtain approval of the form from the Commissioner.

(b) If the insurer proposed the replacement it shall:

- (1) Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner.
- (2) Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.
- (3) Comply with the requirements of ~~Section 7-B-2~~, .0607(2)(b) and (c), if the applicant furnishes the names of the existing insurers, and the requirements of ~~Section 7-C~~, .0607(3), except that it need not maintain a replacement register.

Statutory Authority G.S. 58-9; 58-42.1; 58-195; 58-199.

.0609 PENALTIES

(a) A violation of this Regulation shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this Regulation shall be subject to such penalties as may be appropriate under the Insurance Laws, provided for in N.C.G.S. 58-42 and 58-44.6.

(b) Patterns of action by policyowners who purchase replacing policies from the same agent or broker, after indicating on applications that replacement is not involved, shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this Regulation.

(c) This Regulation does not prohibit the use of additional material other than that which is required that is not in violation of this Regulation or any other statute or regulation.

Statutory Authority G.S. 58-9; 58-42.1; 58-195; 58-199.

SECTION .0700 - CREDIT INSURANCE AND CREDIT LIFE; ACCIDENT AND HEALTH INSURANCE

.0701 LIMITATION ON AMOUNT OF CREDIT INSURANCE WRITTEN

The amount of credit insurance to be written by any insurer may be limited by its underwriting practices.

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-344.

.0702 INSURER LIABILITY: PREMIUM ACCEPTED FROM INELIGIBLE DEBTOR

If any premium is received for credit insurance on an insured debtor who is not eligible under the terms of the policy, or for excess insurance not covered by the policy, the liability of the insurer may be limited to a refund of the premium or excess premium to the creditor policyholder or the insured debtor. Such refund shall be promptly paid or credited to the person entitled thereto, and the insured debtor shall be

notified of such refund and termination of such excess or ineligible insurance; provided, however, that the insurer shall be liable for any valid claims arising prior to such refund of premium and notification to the insured debtor.

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-344.

.0703 CALCULATION OF UNEARNED PREMIUM REFUNDS: CREDIT INSURANCE

For the purpose of calculating refunds on credit insurance no charge for credit insurance may be made for the first 15 days of a loan month and a full may be charged for 16 days or more of a loan month; or a refund may be made on a pro rate basis for each day within the loan month.

Statutory Authority G.S. 58-351.

.0704 MISSTATEMENT OF AGE: CREDIT LIFE AND HEALTH INSURANCE

The provision on misstatement of age is subject to the incontestible period of the policy.

Statutory Authority G.S. 58-346.

.0705 REFUND OF UNEARNED PREMIUM AT DEATH: CREDIT INSURANCE

A refund of unearned premium is required in the event of death of an insured debtor under a life certificate or policy and such refund shall be made in accordance with the provisions of N.C.G.S. 58-351.

Statutory Authority G.S. 58-351.

.0706 SUICIDE: CREDIT LIFE INSURANCE

In the event of the suicide of the insured debtor or the joint insured debtor, if any, sane or insane, within one year after the effective date of this certificate, the insurer shall have no liability with respect to such death except for a refund of the premium paid, provided, that in the event of joint life coverage a refund of premiums shall be forty percent of the premium paid.

Statutory Authority G.S. 58-9; 58-349.

.0707 NOTICE OF CLAIM: CREDIT INSURANCE

The claimant shall have a minimum of 30 days to give written notice of claim.

Statutory Authority G.S. 57-1; 57-4; 58-9; 58-346.

.0708 AMOUNT OF CREDIT INSURANCE ON

TRANSACTIONS OF GREATER THAN 120 MONTHS IN DURATION

For transactions of greater than 120 months in duration, the initial amount of credit life insurance shall not exceed the amount of contractual indebtedness.

Statutory Authority G.S. 58-344.

.0709 UNIFORM DECREASING COVERAGE: CREDIT LIFE

No policy written, on transactions of 60 months or greater in duration, shall incorporate a schedule of benefits which does not follow an amortization schedule.

Statutory Authority G.S. 58-344.

.0710 ACTUARIALLY EQUIVALENT: CREDIT LIFE

With respect to G.S. 58-349 entitled "Credit Life Insurance Rate Standards", for credit life insurance on a basis other than the foregoing, premiums charged shall be actuarially equivalent, is interpreted by the department to mean that the actuarially equivalent rates must maintain a sixty percent loss ratio and must exhibit a composite rate equal to the appropriate prima facie rate. The loss ratio shall be calculated by dividing the present value of future benefits by the present value of future premiums. In calculating the present value both interest and mortality rate used should reflect anticipated company experience.

Statutory Authority G.S. 58-349.

.0711 MOTOR VEHICLE LEASES

(a) A motor vehicle lease is eligible for Credit Life and Credit Accident and Health insurance if:

- (1) the lessee has assumed a contractual obligation to make payments as compensation for use of the leased vehicle,
- (2) the total of all payments which the lessee is contractually obligated to make for such use either exceeds or is substantially equal to the value of the property when leased, and
- (3) the term of the lease does not exceed 15 years.

(b) Where the lessee's contractual obligation includes paying or guaranteeing a lump sum (the "residual amount") at the end of the periodic payment schedule, the insurance may cover the sum of all periodic payments plus the residual amount. The residual amount will be included in determining the total of all payments for purposes of (a) - (b) in this Rule.

(c) Where upon the lessee's death the lessee's estate is obligated to purchase the leased vehicle at a price stated in or determinable under the lease, Credit Life insurance may be written to provide a death benefit equal to:

- (1) the sum of all remaining periodic payments required under the lease plus any residual amount stated in or determinable under the lease; or
- (2) the purchase price at the time of the lessee's death as stated in or determinable under the lease. The sum of all periodic payments together with any lump sum residual amount will be included in determining with the total of purposes of (a) - (b) in this Rule.

(d) Where neither the lessee's nor the lessee's estate has any obligation with regard to purchase of the leased vehicle or payment or guarantee of any residual amount, Credit Life insurance may be written to provide a death benefit which is equal to the sum of all remaining periodic installments required under the terms of the lease.

(e) Credit Accident and Health insurance may be written to cover only the periodic payments required under the lease.

(f) In addition to all other applicable requirements for Credit Life insurance and Credit Accident and Health insurance, and subject to (a) - (e) in this Rule, the following information must be fully disclosed in the certificate or the policy of insurance and the lease contract when Credit Life or Credit Accident and Health insurance is provided in connection with a leasing contract:

- (1) the identity of the lessee, designated as such;
- (2) the identity of any co-lessee, designated as such;
- (3) the identity of the lessor, designated as such;
- (4) the amount of the periodic lease payment being insured;
- (5) the residual amount, if any, insured for Credit Life insurance;
- (6) the premium for Credit Life insurance on periodic payments under the lease (if provided);
- (7) the premium for Credit Life insurance on any residual amount (if provided);
- (8) the premium, if any, for Credit Accident and Health insurance under the lease (if provided).

(g) Whenever a Credit Life insurance certificate or policy provides or may provide Credit Life insurance applicable to a residual amount, such policy or certificate shall include a disclosure as to whether Credit Life insurance is or is not applicable to the residual amount or a statement

describing the conditions under which Credit Life insurance will apply to the residual amount.

Statutory Authority G.S. 58-341; 58-342; 58-342(9).

TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend rule(s), cited as 15 NCAC 10F .0330.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 9:00 a.m. on October 17, 1988 at Room 386, Archdale Building, 512 North Salisbury Street, Raleigh, N.C.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from October 1 to November 1, 1988. Such written comments must be delivered or mailed to the Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0330 CARTERET COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Carteret County:

- (1) that portion of the Intracoastal Waterway within 200 feet on each side of the entrance to Sea Gate Marina;
(2) the waters of Money Island Slough beginning at the east end of Money Island near the Anchorage Marina Basin and ending at the west end of Money Island where Brooks Avenue deadends at the slough;
(3) the waters of Taylor Creek located within the territorial limits of the Town of Beaufort;
(4) the waters of Pelletier Creek beginning at the entrance to Pelletier Creek at the

Intracoastal Waterway and ending at U.S. Highway 70;

- (5) the waters of Bogue Sound in Morehead City between Sugar Loaf Island and the seawall on the south side of Evans, Shepard and Shackelford Streets and bounded on the east by the State Ports Authority and on the west by the eastern right-of-way margin of South 13th Street extended;

- (6) the waters of Cedar Island Bay and Harbor from U.S. 70 to Cedar Island Bay Channel Light 8.

Statutory Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-12 that the NRCD - Division of Community Assistance intends to amend rule(s) cited as 15 NCAC 13L .0907(f).

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 10:00 a.m. on October 19, 1988 at Ground Floor Conference Room, Archdale Building, 512 N. Salisbury Street, Raleigh, N.C.

Comment Procedures: Comments may be presented at the hearing or submitted by mail to:

Robert E. Chandler, Director
Division of Community Assistance
P.O. Box 27687
Raleigh, N.C. 27611-7687

CHAPTER 13 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 13L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .0900 - GRANT ADMINISTRATION

.0907 PROGRAM INCOME

(f) Program Income generated by grants made in 1986 or afterwards shall be returned to NRCD except when:

- (1) the recipient shall, at the time of application, propose a use or uses for the projected program income, and
(2) NRCD determines that, at the time of application, the proposed use of the projected program income meets federal re-

quirements prohibiting the state from recapturing the program income; or (3) the recipient, designated at the time of the preliminary grant award as a "severely distressed county" pursuant to G.S. 105-130.40(c), or a city in such a county, wishes to retain the program income to establish a local economic development revolving loan fund. Any activities that are eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and that meet at least one of the three national objectives of the Housing and Community Development Act may be undertaken. If the designation, pursuant to G.S. 105-130.40(c), as a "severely distressed county" is removed from a county, projects having received at least a preliminary grant award prior to the removal of the designation may continue to retain program income resulting from that grant as provided in this subsection. Provisions of 15 NCAC 13L .0913 apply at the time of closeout.

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).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Natural Resources and Community Development - Division of Economic Opportunity intends to adopt rule(s) cited as 15 NCAC 16C .0113; and amend rule(s) cited as 15 NCAC 16D .0201.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 10:00 a.m. on October 18, 1988 at Ground Floor Hearing Room, Archdale Bldg., 512 N. Salisbury St., Raleigh, North Carolina 27611.

Comment Procedures: All interested persons 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 amendments may be obtained by writing or calling: Mr. James L. Forte Director, Division of Economic Opportunity, Post Office

Box 27687, Raleigh, NC 27611. Phone: (919) 733-2633.

CHAPTER 16 - DIVISION OF ECONOMIC OPPORTUNITY

SUBCHAPTER 16C - COMMUNITY SERVICES BLOCK GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0113 ADMINISTRATION COSTS

(a) Eligible grant recipients may expend CSBG funds for the administration of agency programs. Such programs must have purposes consistent with those of the Community Services Block Grant.

(b) The maximum amount of CSBG funds that may be used for agency programs shall be limited to ten percent of the total annual budget of the eligible grant recipient, as certified in the prior year's audit.

(c) Administration costs shall include direct and indirect costs associated with general management and support functions of a specific program, project or agency. Such costs must:

- (1) be necessary and reasonable for the proper and efficient administration of the program, project or agency;
(2) conform to any limitations or exclusions set forth in this Subchapter;
(3) be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances; and
(4) not be included as a cost to any other program financed with federal, state, or local funds in either the current or a prior period.

(d) Eligible grant recipients shall provide the division the following information, initially and on a quarterly basis when funds are being utilized for agency administration costs:

- (1) the total agency budget by program funding source;
(2) the amount of administration funds provided by each program;
(3) the criteria for determining the amount of funds used for administrative expenses; and
(4) the number of persons served by each program.

Statutory Authority G.S. 113-28.21, et. seq.; 143-323(d); 143B-10; 143B-276; 143B-277.

SUBCHAPTER 16D - COMMUNITY ACTION PARTNERSHIP PROGRAM

SECTION .0200 - ADMINISTRATIVE POLICIES AND PROCEDURES

.0201 GENERAL PROVISION

(a) The provisions of Subchapters 16B, C, and D of this Chapter shall govern administration of funds by grant recipients under the Community Action Partnership Program, except that in the case of conflicts among the provisions of Subchapters 16B, 16C and 16D, the provisions of Subchapter 16D shall govern.

(b) Funds shall not be used to purchase or improve land or to purchase, construct, or permanently improve buildings or facilities, other than for low-cost residential weatherization or energy-related home repairs.

(c) ~~A maximum of fifty percent of funds allocated to an eligible agency may be used to defray the administrative expense of programs other than those operated with Community Services Block Grant funds. Such programs must have purposes consistent with those of the Community Services Block Grant.~~

Administrative expense of other programs shall include direct or indirect costs associated with general management and support functions of a specific program or project. Such costs must:

- (1) be necessary and reasonable for the proper and efficient administration of the program or project;
- (2) conform to any limitations or exclusions set forth in this Subchapter;
- (3) be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances; and
- (4) not be allocable to or included as a cost to any other program financed with federal, state, or local funds in either the current or a prior period.

(c) No funds allocated to an eligible agency under this subtitle may be used to defray administration costs of this or other programs. Administration costs are direct or indirect costs associated with general management and support functions of a specific program, project or agency.

Statutory Authority: G.S. 113-28.21, et. seq.; 143B-10.

TITLE 23 - STATE BOARD OF COMMUNITY COLLEGES/DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Community

Colleges/Department of Community Colleges intends to amend rule(s) cited as 23 NCAC 2D .0301 and 23 NCAC 2D .0328.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 10:00 a.m. on October 25, 1988 at First Floor, State Board Conference Room, Caswell Building, 200 W. Jones Street, Raleigh, N.C. 27603-1337.

Comment Procedures: A ten-minute time limit per person may be imposed for oral presentations. The number of persons making oral presentations may be limited in order to stay within the time available. Individuals who plan to make oral presentations must submit their remarks in writing to the hearing officer. This procedure will assist the hearing officer in organizing and reporting information to the SBCC. Written statements not to be presented at the hearing should be directed to Mr. Larry Morgan, Hearing Officer, Department of Community Colleges, 200 W. Jones Street, Raleigh, N.C. 27603-1337 by October 17, 1988.

CHAPTER 2 - COMMUNITY COLLEGE

SUBCHAPTER 2D - INSTITUTIONS: FISCAL AFFAIRS

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

.0301 OPERATING BUDGET REQUESTS: DISTRIBUTION OF FUNDS

(a) General:

- (1) One full-time equivalent (FTE) student represents sixteen student membership hours per week for 11 weeks or 176 student membership hours for each quarter enrolled. Refer to 23 NCAC 2D .0323(a) for additional information regarding calculating and reporting student membership hours.
- (2) Rule 23 NCAC 2D .0324 sets forth the specific categories for which FTE shall be calculated. The operating budget funds referred to in this Rule refer only to the following "regular budget" categories:

- (A) curriculum:
 - (i) college transfer;
 - (ii) general education;
 - (iii) technical;
 - (iv) vocational.
- (B) continuing education:
 - (i) adult high school;
 - (ii) occupational extension.

- (iii) other extension;
- (iv) adult basic education.
- (3) Projections of full-time equivalent (FTE) students will be based on the following:
 - (A) Curriculum FTE projections will be based on the three-quarter academic year (fall, winter, spring).
 - (B) Continuing education FTE projections will be based on the full four-quarter fiscal year (summer, fall, winter, spring).
 - (C) Projections will be made, program by program, utilizing actual FTE for the most recent five-year period.
 - (D) The State Board may adjust the projections based on additional factors brought to its attention.
 - (E) The State Board will adopt an official projection of FTE.
- (b) Appropriation Requests:
 - (1) Continuation Budget Requests. The continuation budget request will be based on the number of FTE and amount per FTE currently appropriated and increases in the continuation budget as directed by the Office of State Budget and Management. Also included in the continuation budget requests will be continuing programs that are funded apart from the formula budget such as new industry, human resources development, etc.
 - (2) Expansion Budget Requests. The expansion budget requests may consist of, but is not limited to, the following items:
 - (A) an adjustment in the number of FTEs in existing programs based on the difference between the official FTE projections of the State Board and the existing level of FTEs requested in the continuation budget,
 - (B) an adjustment in expenditure per FTE,
 - (C) additional funding for new and special programs of instruction.
 - (c) Allotment Reserve. A reserve will be requested from the General Assembly and shall be retained by the State Board for the purpose of making later allocations for enrollment growth, innovative programs, new concepts, etc.
 - (d) Formula distribution of funds for the operating budget will be based on the following factors:
 - (1) Base Allotments
 - (A) Base budgets for the coming fiscal year for curriculum programs shall be based on the actual fall FTE, actual winter FTE, and the projected spring FTEs from the current fiscal year. The projected spring FTE will be certified by the institutional president at the end of the 20 percent re-

porting date. Continuing education programs' base budget for the coming year shall be based on the actual spring FTE, actual summer FTE, actual fall FTE, and actual winter FTE for the latest available quarters. If sufficient FTE is not provided by the General Assembly, each institution will receive a prorata reduction.

- (B) Additional FTE available shall be distributed to each institution by curriculum or continuing education program area on a prorata basis of the institution's actual FTE as compared to the total system FTE.
- (C) To the extent the projected curriculum FTE for the spring quarter does not reflect the actual spring quarter FTE, adjustments will be made to increase or decrease the FTE by the conclusion of the fall academic quarter.
- (D) In the event sufficient FTE is not provided to meet all the above provisions in Parts A-C of this Rule, the department will first apply Part A.
- (2) Funds will be allotted to each institution on the following formula:
 - (A) instruction:
 - (i) curriculum:
 - (I) instructional unit—one per 22 FTE rounded to the nearest 1/10 unit at the currently appropriated salary unit value;
 - (II) employee benefits—based on appropriated levels for social security, retirement, and hospitalization;
 - (III) other costs per curriculum FTE based on appropriated levels for travel and supplies and materials;
 - (ii) continuing education:
 - (iii) Adult Basic Education:
 - (I) instructional unit—one per 22 FTE rounded to the nearest 1/10 unit at the currently appropriated salary unit value;
 - (II) employee benefits—based on appropriated levels for social security, retirement, and hospitalization;
 - (III) other costs per curriculum FTE based on appropriated levels for travel and supplies and materials;
 - (iv) Other Continuing Education
 - (I) instructional unit—one per 22 FTE rounded to the nearest 1/10 unit at the currently appropriated salary unit value;
 - (II) employee benefits—based on appropriated level for social security;

- (III) other costs per continuing education FTE based on appropriated levels for travel and supplies and materials;
- (B) instructional support and administration;
- (i) A base allotment for each institution:
 - (I) salaries—president (1.0) on president's salary schedule; senior administrators (1.0) at the current salary unit value; instructional support (3) at the current salary unit value; clerical personnel (3) at the current salary unit value;
 - (II) employee benefits based on appropriated levels for social security, retirement and hospitalization;
 - (III) other costs—the current approved base amount for travel for trustees, president, administrators, and support personnel; institutional dues; graduation expenses; etc.;
- (ii) An additional allotment for each curriculum and continuing education FTE for each institution will be based on the following:
 - (I) salaries: Senior Administrators - (.04) Positions per 100 FTE } Current Salary Scale; Administrators of Programs - (.173) Positions per 100 Curriculum FTE } Current Salary Scale and (.030) Positions per 100 Continuing Education FTE } Current Salary Scale; Instructional Support - (.775) Positions per 100 Curriculum FTE } Current Salary Scale and (.552) Positions per 100 Continuing Education FTE } Current Salary Scale; Tech-Paraprofessionals - (.50) Positions per 100 FTE } Current Salary Scale; Clerical Personnel - (.70) Positions per 100 FTE } Current Salary Scale.
 - (II) employee benefits based on appropriated levels for social security, retirement and hospitalization;
 - (III) other costs per FTE based on appropriated levels for travel, supplies and materials, postage, printing and binding, magazines and newspapers, equipment repairs, service and maintenance contracts, advertising and publicity, etc.

(d) Formula distribution of funds for the current operation budget. Funds appropriated to the State Board of Community Colleges for current operation shall be allocated to the system colleges in accordance with formulas and procedures established by the State Board of Com-

munity Colleges, or as directed by the General Assembly. Formulas and procedures to allocate funds shall be published in the Accounting Procedures Manual, North Carolina Department of Community Colleges.

(e) JTPA Administrative Allotment. Student class hours for class size projects funded by the Job Training Partnership Act (JTPA) may not be included in the full-time equivalent (FTE) formula for earning Budget FTE. Administrative funds for operating these class size projects shall be allocated on the same basis as all other administrative formula funds.

Statutory Authority G.S. 115D-3; 115D-5; 115D-54.

.0328 THE FULL-TIME EQUIVALENT (FTE) SYSTEM

The following categories of FTE will be calculated by the Department:

- (1) college transfer education curriculum programs,
- (2) general education curriculum programs,
- (3) technical education curriculum programs,
- (4) vocational education curriculum programs,
- (5) academic extension programs,
- (6) adult high school extension programs,
- (7) a vocational extension programs,
- (8) occupational extension programs,
- (9) practical skills extension programs,
- (10) state funded ABE Adult Basic Education programs,
- (11) learning laboratory,
- (12) federal funded ABE programs,
- (12) (13) comprehensive employment and training job training partnership act programs,
- (13) (14) new and expanding industry programs,
- (14) (15) human resources development programs,
- (15) (16) self-supporting and recreational programs.

Statutory Authority G.S. 115D-5; S.L. 1981 c. 859 s.32, 33; S.L. 1981 c. 1282 s.36.

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, adopt, and or repeal rule(s) cited as 25 NCAC 1D .1201, .1202(f), (g), .1203(b), .1204(e), (g), (h), .1207, .1401, .1901 - .1950, .2001 - .2004; 1E .1005; 1J .0801 - .0809; 1K .0603 - .0615.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 9:00 a.m. on October 18, 1988 at Office of State Personnel Development Center, 101 West Peace Street, Raleigh, North Carolina 27611.

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 W. Jones Street, Raleigh, N.C. 27611.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .1200 - LONGEVITY PAY

.1201 POLICY

Longevity pay is to recognize long-term service of permanent full-time and permanent part-time (half-time or more) employees who have served at least ten years with the state.

Statutory Authority G.S. 126-4.

.1202 TIME AND METHOD OF PAY

(f) If an employee transfers between state agencies any time during the month or at the end of the month in which eligibility requirements are met, the receiving agency shall make the longevity payment based on the salary in effect on the eligibility date.

(g) If an eligible employee goes on extended military leave without pay, a longevity payment computed on a prorata basis shall be paid the same as if the employee is separating. The balance will be paid when the employee returns and completes a full year. Then, a full payment will be made on the employee's longevity date that was established before going on leave without pay.

Statutory Authority G.S. 126-4.

.1203 AMOUNT OF LONGEVITY PAY

(b) For an otherwise eligible employee who separates or goes on extended military leave without pay before the date of annual eligibility, a prorated longevity payment will be made. The longevity pay amount shall be computed on the salary as of the last day worked; then it is prorated by an amount equal to the proportion of the year worked toward the annual eligibility date. The employee will receive 1/12 if the an-

nual amount for each month worked toward the next longevity payment. For example, if an employee received longevity on January 1 and separates on July 31, 7/12 of the full longevity payment would be paid. The payment should be made to the nearest cent rather than the nearest dollar.

Statutory Authority G.S. 126-4.

.1204 ELIGIBILITY REQUIREMENTS FOR PERMANENT FULL-TIME EMPLOYEES

(c) Upon change of appointment to temporary, ~~part-time~~, or exempt, the employee is ineligible for continued longevity pay; hence, if the employee has worked part but not all of one year since the last annual longevity payment, a pro rata payment shall be made as if the employee were separating from State service provided the change is not of a temporary nature. If an employee goes on leave without pay (except extended military leave without pay in which case a prorated amount is paid, and workers' compensation leave in which case longevity is paid to the employee as if working), longevity would not be paid until the employee returns and completes the full year. If, however, the employee should resign while on leave without pay, then the pro rata amount for which eligible is paid.

(g) Aggregate service is the time for full-time or part-time (half-time or over) permanent, trainee, probationary or provisional employment, whether subject to or exempt from the State Personnel Act. If ~~an~~ a permanent full-time employee is in pay status (working, exhausting vacation or sick leave, or drawing worker's compensation) or is on authorized military leave for one-half or more of the regularly scheduled workdays in a month, credit shall be given for the entire month. Permanent part-time employment is credited as aggregated service on a pro rata basis - it is computed as a percentage of the amount the employee would be credit if permanent full-time.

(h) Credit shall also be given for:

- (1) Employment with other governmental units which are now state agencies (Examples: county highway maintenance forces, War Manpower Commission, Judicial System).
- (2) Authorized military leave from any of the governmental units for which service credit is granted provided the employee is reinstated within the time limits outlined in the state military leave policies.
- (3) Employment with the county Agricultural Extension Service; Community College System and the public school system of

North Carolina, with the provision that a school year is equivalent to one full year (credit for a partial year is given on a month-for-month basis for the actual months worked).

- (4) Employment with a local Mental Health, Public Health, Social Services or Emergency Management agency in North Carolina if such employment is subject to the State Personnel Act.
- (5) Employment with the General Assembly (except for participants in the Legislative Intern Program and pages). All of the time, both permanent and temporary, of the employees will be counted; and the full legislative terms of the members.

Statutory Authority G.S. 126-4(5), (10); Sec. 46, Chapter 1282, 1981 Session Laws.

.1207 SPECIAL PROVISIONS FOR PART-TIME EMPLOYEES

(a) Permanent part-time (one-half time or more) shall be eligible for prorated longevity pay based on total state service. For example, if an employee has ten years of half-time employment, he would be eligible for 1.50 percent (or one-half of 1.50 percent of a full-time longevity payment).

(b) If the employee changes to full-time employment, the service will have to be converted to aggregate service (five years in the example above); however, the employee shall continue to receive the pro-rated payment until he has completed sufficient time to qualify for a full-time payment.

(c) Total State Service Defined. Total state service is the time of full-time or part-time (half-time or over) permanent, trainee, probationary or provisional employment whether subject to or exempt from the State Personnel Act. If an employee so appointed is in pay status (working, exhausting vacation or sick leave, or on Workers' Compensation Leave) or is on authorized military leave for one-half or more of the regularly scheduled workdays in a month, credit shall be given for the entire month. Permanent part-time employees are credited with total state service on a month for month basis the same as permanent full-time employees. They will receive a full month of credit for each month they work one half or more of their scheduled workdays.

Statutory Authority G.S. 126-4.

SECTION .1400 - SHIFT PREMIUM PAY

.1401 POLICY

It is a policy of the state to provide additional compensation for non-medically related employees through salary grade 69 and for medically related employees through salary grade ~~73~~ 75 who are regularly scheduled to work on either an evening or night shift:

- (1) A permanent, probationary or trainee employee who is eligible for shift premium pay shall receive premium pay for ~~any~~ all hours in a worked ~~if~~ in which more than half of the scheduled working hours occur between 4:00 p.m. and 8:00 a.m. on a regular recurring basis.

(Exception: Employees on a permanent twelve-hour day shift shall be paid shift pay for the hours actually worked between 4:00 p.m. and 8:00 a.m.)

Interpretation: "Regularly recurring" shall be interpreted to mean a position that requires a daily schedule that is repeated at specified intervals for an indefinite period of time. In addition, an employee required to substitute in a position because of vacancy or the incumbent's absence that is eligible for shift premium shall receive such payment for time worked in that position.

- (2) The premium pay for any one shift shall apply to all hours worked although all hours worked during that shift may not fall within the stated period.
- (3) (2) Employees shall not receive shift premium pay for hours not actually worked. This exclusion includes such time periods as annual leave, holidays, illness, jury duty and military leave.
- (4) (3) Shift premium pay shall be granted in addition to any other premium pay to which the employee may be entitled, such as holiday pay.
- (5) (4) Shift premium pay is not considered as a part of annual base pay for classification and pay purposes, nor is it to be recorded in personnel records as a part of annual base salary. However, under the state's policy on hours of work and overtime compensation, shift premium pay must be included in the calculation of the regular hourly rate of pay for the purposes of computing overtime.
- (5) Split Shifts. An employee working a regularly recurring split shift shall receive premium pay in accordance with this Rule if more than half of the hours occur between 4:00 p.m. and 8:00 a.m. If, however, only half or less of the hours are in the stated period, the employee will receive shift premium pay only for the actual hours worked between 4:00 p.m. and 8:00 a.m.

Statutory Authority G.S. 126-4; Session Laws 1987, Chapter 738, Section 9; Session Laws 1988, Chapter 1086, Section 100.

SECTION .1900 - HOURS OF WORK AND OVERTIME COMPENSATION

- .1901 MINIMUM WAGE (REPEALED)
- .1902 OVERTIME COMPENSATION (REPEALED)
- .1903 EXEMPT EMPLOYEES (REPEALED)
- .1904 SALARY (REPEALED)
- .1905 COMPENSATION (REPEALED)
- .1906 HOURLY RATE OF PAY (REPEALED)
- .1907 NON-OVERTIME WORKWEEKS (REPEALED)
- .1908 THE WORKWEEK (REPEALED)
- .1909 HOURS WORKED (REPEALED)
- .1910 UNAUTHORIZED WORK (REPEALED)
- .1911 ON CALL (REPEALED)
- .1912 VACATION: SICK LEAVE: HOLIDAYS (REPEALED)
- .1913 MEAL PERIOD (REPEALED)
- .1914 GRIEVANCE TIME (REPEALED)
- .1915 TRAINING TIME (REPEALED)
- .1916 TRAVEL TIME (REPEALED)
- .1917 RECORDKEEPING (REPEALED)
- .1918 ENFORCEMENT (REPEALED)
- .1919 EXECUTIVE: ADMINISTRATIVE: PROFESSIONAL EMPLOYEES (REPEALED)
- .1920 EXECUTIVE EMPLOYEES (REPEALED)
- .1921 ADMINISTRATIVE EMPLOYEES (REPEALED)
- .1922 PROFESSIONAL EMPLOYEES (REPEALED)
- .1923 SPECIAL PROVISIONS (REPEALED)

Statutory Authority G.S. 126-4.

.1924 MINIMUM WAGE

Employees must be paid not less than three dollars and thirty-five cents (\$3.35) per hour minimum wage. A review of all payrolls should be made to assure that all employees are receiving at least the statutorily required rate.

Statutory Authority G.S. 126-4.

.1925 OVERTIME COMPENSATION

(a) The payment of premium time and one-half rates in form of monetary compensation or time off is required for hours worked in excess of 40 within a work week, with exception of those considered exempt as Executive, Administrative, or Professional employees.

(b) Agency heads and supervisors shall hold hours worked by the employee to the state's established 40-hour workweek standard except in those cases where excess hours of work are necessary because of weather conditions, necessary

seasonal activity or emergencies. It shall be a responsibility of each agency or executive head to determine that the provisions of the state's policy on overtime pay are administered in the best interest of the state.

(c) Although each agency head is responsible for the manner in which overtime is authorized, it is equally important to control unauthorized overtime. Unauthorized work shall be counted as hours worked if the employer should have stopped it but did not, or if the employer knows or has reason to know of this practice. Each agency is responsible for internal controls which will provide a means of reviewing and evaluating the use of overtime.

(d) The practice of overtime work will be subject to review by the Office of State Personnel. Such review will take into consideration organizational structure, scheduling of work, position complement, and personnel classifications.

Statutory Authority G.S. 126-4.

.1926 EXEMPT EMPLOYEES

Each agency head has the responsibility to determine which employees are exempt from hours of work and overtime pay rules and procedures under the terms of exemptions as set out in this Section. The Office of State Personnel will provide advice, technical assistance and oversight to agencies and universities on this responsibility.

Statutory Authority G.S. 126-4.

.1927 SALARY

The annual and monthly salary rates of an employee are established under current personnel policy for each position. This salary is to represent the employees' straight-time (as opposed to overtime) pay for standard 40-hour workweek.

Statutory Authority G.S. 126-4

.1928 COMPENSATION

(a) The employee is to receive straight-time pay for a standard 40-hour workweek, with the provision that an additional amount equal to time and one-half the employee's regular hourly rate multiplied by the number of hours worked in excess of 40 will be added to the base pay. Such payment must be made in form of monetary compensation or compensable time off. It is the policy of the State of North Carolina, whenever possible, to give compensatory time off, in lieu of monetary compensation for hours worked in excess of 40 hours per work week. The decision as to whether to give compensatory time off, rather than monetary compensation, for overtime

worked is solely within the discretion of management. Compensatory time off shall be scheduled by management, although reasonable effort should be made to accommodate the employee as to such scheduling.

(b) An employee shall be given compensatory time off on the basis of one and one-half times the amount of time worked beyond 40 hours during a week; but such time off must be taken within 30 days from the date the overtime is performed or by the end of the following pay period, whichever is longer. If compensatory time off is not given by the end of the pay period following the 30-day period, the overtime pay must be included in the employee's next regular paycheck. Overtime worked shall be recorded and compensated in units of one-tenth of an hour. NOTE: The preceding provisions are not applicable to persons in law enforcement or fire protection activities and in-residence employees.

(c) Prior to employment, each successful candidate for state employment in a position subject to hours of work and overtime pay standards must sign a form acknowledging that it has been explained to him that it is the state's policy to give time off in lieu of monetary compensation, wherever possible, for hours worked beyond 40 in a work week. Agreement to this is a condition of employment with the state; failure or refusal to sign such agreement will prevent employment of that person. This signed form shall be a part of the employee's personnel file; it must be kept for at least three years following that person's separation from state employment.

(d) Upon termination of employment, an employee shall be paid for unused compensatory time off at a rate of compensation not less than either the average regular rate received by such employee during the last three years of the employee's employment or the final regular rate received by such employee, whichever is higher.

Statutory Authority G.S. 126-4.

.1929 HOURLY RATE OF PAY

(a) The hourly rate of pay is the rate published by the Office of State Personnel and is obtained by dividing the annual salary by 2080 hours (52 weeks multiplied by 40 hours per week).

(b) The rate that must be used in computing overtime is referred to as the regular hourly rate. The regular hourly rate must include all remuneration for employment paid to, or on behalf of, the employee, except payments specifically excluded by the Act. Payments that are not excluded and must be included in the hourly rate are:

- (1) Shift Premium Pay;

- (2) Longevity Pay;

- (3) On-Call Compensation.

These payments must be included in order to comply with the provisions of the Fair Labor Standards Act (FLSA).

(c) Longevity pay must be included in the regular rate when computing overtime. However, to avoid recomputations when overtime is due, the following procedure may be used: At the end of each calendar year, the total dollar amount of overtime paid is determined and this amount is multiplied by the percent of the employee's longevity pay rate.

(d) Overtime for an employee working in two positions with different rates of pay is paid at the average of the two rates of pay for each position.

Statutory Authority G.S. 126-4.

.1930 NON-OVERTIME WORKWEEKS

When an employee works 40 hours or less during a workweek because of vacation, holidays, or sick leave, the regular weekly salary is paid in accordance with established personnel policies.

Statutory Authority G.S. 126-4.

.1931 THE WORKWEEK

A workweek is a regularly recurring period of 168 consecutive hours. The workweek need not coincide with the calendar week. It may begin any day of the week and any hour of the day, but it must be in each case be established in advance. The workweek may be changed, but only if the change is intended to be permanent and is not made to evade the overtime policy. Any change in the established workweek must be approved in advance by the Office of State Personnel.

Statutory Authority G.S. 126-4.

.1932 HOURS WORKED

Generally, all time during which an employee is required, suffered, or permitted to be on the employer's premises on duty or at a prescribed work place, except for meals or other periods when the employee is free from duty, is considered as hours worked. This is so even if the duties are pleasurable rather than burdensome and even if no productive work is actually performed. In the large majority of cases, the determination of an employee's working hours will be easily calculable under this formula and will include, in the ordinary case, all hours from the beginning of the work day to the end, with the exception of periods when the employee is relieved of all duties for the purpose of eating meals.

Statutory Authority G.S. 126-4.

.1933 UNAUTHORIZED WORK

Hours worked by an employee without the employer's permission or contrary to instructions may or may not be considered as hours worked. Unrecorded hours worked during a workweek by an employee at the job site or at home must be counted as hours worked if the employer knows or has reasons to know of such practice. The employer must enforce the no-work rule and may not unjustly benefit from work performed without knowledge of this Rule.

Statutory Authority G.S. 126-4.

.1934 ON CALL

(a) Time spent by an employee who is required to remain on call on the employer's premises or so close thereto that the time cannot be used for the employee's own purposes is considered working time. Employees who are merely required to leave word as to where they may be reached are not on call in this sense.

(b) The fact that an employee lives on the employer's premises and is on call for 24 hours a day does not mean that the employee is entitled to pay for all those hours. Such an employee has regular duties to perform, but is subject to work at any time in the event of an emergency. Ordinarily, employees have a normal nights sleep, ample eating time and may, during certain periods, come and go as the employee pleases.

(c) An agreement should be reached with an employee in this category as to the extent of duty which will make clear the time that should be considered as hours not worked. As a rule, allowance for eight hours sleep and three hours for meal periods would be reasonable, plus any other hours that the employee may be free of unnecessary restrictions of use of the time.

Statutory Authority G.S. 126-4.

.1935 VACATION: SICK LEAVE AND HOLIDAYS

(a) In determining the number of hours worked by an employee within a given week, time spent on vacation, sick leave, and holidays will not be counted as time worked.

(b) Such time off must be included in straight-time pay, but is not included in computing hours of work for overtime pay.

Statutory Authority G.S. 126-4.

.1936 MEAL PERIOD

A bona fide meal period is a span of at least 30 consecutive minutes (never less) during which an employee is completely relieved of duty and free to use the time for his own purposes. It is not counted as hours worked or paid time. Any so-called "meal period" of less than 30 consecutive minutes must be paid as hours worked.

Statutory Authority G.S. 126-4.

.1937 GRIEVANCE TIME

The time an employee spends during a regular work schedule in adjusting a grievance under the state procedure on Employee Appeals and Grievances is work time. Such time spent outside the employee's regular work schedule is work time only if the employee's attendance is required by the agency or the state.

Statutory Authority G.S. 126-4.

.1938 TRAINING TIME

Required attendance at training sessions, workshops and other meetings, whether before, during or after the employee's regular work schedule, is work time. Voluntary attendance at training sessions, workshops and other meetings is not work time. Attendance is voluntary only if the employee is not led to believe that working conditions or continued employment would be adversely affected by nonattendance.

Statutory Authority G.S. 126-4.

.1939 TRAVEL TIME

(a) Whether travel time is considered as hours worked depends on the circumstances and should be determined on a case by case basis.

(b) Home to Work. An employee who travels from home before the regular workday and returns home at the end of the workday is engaged in ordinary home to work travel which is a normal incident of employment. This is true whether the employee works at a fixed location or at different job sites. Normal travel from home to work is not work time.

(c) Home To Work On Special One-Day Assignments in Another City. When an employee who regularly works at a fixed location in one city is given a special one-day assignment in another city, such travel cannot be regarded as home-to-work travel.

(d) Travel That Is All In The Day's Work. Time spent by an employee in travel as part of the employee's principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. When an employee is required to report at the employer's

premises, or at a meeting place, to receive instructions or to perform other work there, the travel time from this designated place to the work place is part of the day's work and must be counted as hours worked.

(e) Travel Away From Home Community. Travel that keeps an employee away from home overnight is travel away from home. Travel time away from home community is work time when it cuts across the employee's regular scheduled workdays. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Therefore, if an employee regularly works from 8:30 a.m. to 5:30 p.m., from Monday through Friday, the travel time during these hours is work time on Saturday and Sunday as well as on the other days. Regular meal period time is not counted. That time spent in travel away from home outside of regular working hours (8:30 - 5:30) as a passenger on airplane, train, bus, or automobile is not considered as work time.

(f) Administrative, Executive, and Professional employees may be granted hour for hour time off as a result of travel in accordance with the agency leave policy.

Statutory Authority G.S. 126-4.

.1940 RECORDKEEPING

Records of hours worked and wages paid are required to be kept for each employee subject to this policy. Records must be preserved for at least three years. Each agency head is responsible for making available the following information for review by Federal and State auditors and the Office of State Personnel:

- (1) Name;
- (2) Home address;
- (3) Date of birth, if under 19;
- (4) Sex and position classification in which employed (sex may be indicated by use of prefixes Mr., Mrs. or Ms.);
- (5) Time and day of week the workweek or work period begins;
- (6) Total wages paid each pay period;
- (7) Date of payment and pay period covered;
- (8) Basis on which wages are paid [such four dollars (\$4.00) hr., three hundred dollars (\$300) wk., or nine hundred fifty dollars (\$950) a month];
- (9) Regular hourly rate of pay for any work week or work period in which overtime is worked;
- (10) Amount and nature of each payment excluded from regular rate;

- (11) Hours worked each workday and total hours worked each workweek or work period;
- (12) Total daily or weekly straight-time earnings or wages;
- (13) Total overtime earnings for the workweek;
- (14) Total additions to or deductions from wages paid each pay period plus the dates, amounts and nature of the items which make up the total additions and deductions;
- (15) Compensatory time accrued, used or paid.

Statutory Authority G.S. 126-4.

.1941 EXECUTIVE: ADMINISTRATIVE AND PROFESSIONAL EMPLOYEES

The exempt or non-exempt status of any particular employee must be determined on the basis of whether duties, responsibilities and salary meet the requirements for exemption. The employee's title or classification is of no significance in determining whether the criteria for exemption under the executive, professional or administrative exemptions are met. It shall be the responsibility of the agency head to decide whether the exemption is applicable to particular employees. The Office of State Personnel shall review, for each state agency and university, a list of the exempt and non-exempt employees by name and classification title and make recommendations to the agency head for any changes to that list. However, the agency head has the final decision as to the exempt or non-exempt status of any employee or position in that particular agency.

Statutory Authority G.S. 126-4.

.1942 EXECUTIVE EMPLOYEES

Following is an outline of the terms and conditions to be followed in determining those employees exempt from this Section under the Executive exemption.

- (1) An employee is exempt as an executive, if these conditions are met:
 - (a) His primary duty is managing or directing operation of an agency, institution or school, or a customarily recognized department or subdivision thereof;
 - (b) He customarily and regularly directs the work of two or more full-time employees, if equal to 80 hours total;
 - (c) He has authority to hire and fire, or suggestions on hiring, firing, promotions, or changes of employees status carry particular weight;
 - (d) He customarily and regularly exercises discretionary powers in carrying out the position responsibilities;

- (e) He does not devote more than 20 percent of the hours worked during a workweek in non-exempt work;
- (f) He is paid on salary or fee basis of at least one hundred fifty-five dollars (\$155) a week, exclusive of board, lodging, or other purposes.

Exception: An executive employee who is paid at least two hundred fifty dollars (\$250) a week thirteen thousand dollars (\$13,000) annual rate on a salary or fee basis and who meets the first two conditions above is exempt. The percentage tests set out in Subsection (10) for non-exempt work do not apply to such employees.

All these conditions must be met in order for the exemption to be granted; if any one of the conditions is not met, the exemption must fail.

- (2) Primary Duty and Management - The executive exemption requires that the primary duty of an employee or position exempted as executive must be management.
- (3) Managerial duties take into consideration the frequency of the employee's use of discretion and relative freedom from supervision. This rule does not define management. However, these functions come within the scope of management: Interviewing, selecting and training of employees; setting and adjusting rates of pay and hours of work; directing work; maintaining production records for use in supervision or control; appraising productivity and efficiency for recommending promotions or other changes in status; handling complaints, disciplining employees; planning work; determining work techniques, controlling the flow and distribution of materials and supplies, and providing for the safety of workers and property.
- (4) If the executive employee is in charge of a division, rather than of the entire department, the division must be formally established, not simply a group of employees assigned to a job. Usually, the division has a specific title, like Shipping Division or Accounting Division.
- (5) Supervision of Other Workers - An executive employee must direct the work of two or more employees, that is, the employee must direct at least two full-time workers or the equivalent. For example, the test would be met if the employee directs:
 - (a) one full-time and two part-time workers, if total is 80 hours, one of whom works mornings and the other afternoons; or,

- (b) four part-time workers, two of whom work mornings and the others afternoons, if the total hours worked for all four positions is 80 hours or more. The workers who are supervised must be employed in the department or sub-division that the executive employee is managing.

- (6) An executive employee must be directly concerned either with the hiring or the firing and other change of status of the employees under the employee's supervision, whether by direct action or by recommendation to those delegated to hire and fire.
- (7) Use of Discretion - The policy requires that an executive employee customarily and regularly exercises discretionary powers. "Customarily and regularly" is interpreted to mean a frequency that must be greater than occasional, but may be less than constant. The requirement is met by the employee who normally and recurrently is called upon to use and does use discretion in the day-to-day performance of duties. Of course, an employee whose work is so routine that there is no discretion does not qualify for the executive exemption.
- (8) Salary Requirement - Salaries paid monthly or semi-monthly which are equivalent to one hundred fifty-five dollars (\$155) a week three hundred ten dollars [(\$310) bi-weekly, three hundred thirty-five dollars and eighty-three cents (\$335.83) semi-monthly, or six hundred seventy-one dollars and sixty-seven cents (\$671.67) monthly] are within the requirement. However, the shortest period of payment which will meet the requirement of pay on a salary basis is a week. Employees paid by the hour are not included in this exemption regardless of the fact that the amount paid them weekly far exceeds one hundred fifty-five dollars (\$155); they are not paid on a salary basis. But a guarantee of one hundred fifty-five dollars (\$155) a week in any week in which any work is performed will meet the salary requirement even though additional wages are paid on an hourly basis.
- (9) Salary Basis - Executive employees have to be paid on a salary basis to be exempt. The meaning of salary basis is most important. Salary basis means that an employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the compensation and the amount is not subject to reduction because of variations in the number of hours worked in the workweek or in

the quality or quantity of the work performed.

- (10) Non-exempt Work/Percentage Rule - If an employee with executive duties works for more than 20 percent of the workweek on non-exempt work the exemption fails.
- (11) Work which tends to destroy the executive exemption is work which does not contribute to the executive's supervisory status, regardless of whether the same type of work is done by employees under their supervision or by other employees of the employer. For example, in an operation not large enough to employ a timekeeper or in which the timekeeping function has been decentralized, the supervisor of each department can keep basic time records of the supervisor's subordinates and count the work as exempt. However, the preparation of the payroll by a supervisor - even of the employees under the employee's supervision - would be non-exempt work. The reason for this is that the preparation of a payroll does not aid in the supervision of employees or the management of the department.
- (12) The mere fact that certain work may be too difficult to be performed by anyone in the department other than the employee who heads the department does not prevent work from being non-exempt. Regardless of importance or degree of difficulty, if work is not part of the supervisory duties and does not directly affect the continued operation of the department it must be counted as non-exempt work.
- (13) An executive employee may perform non-exempt duties for the purpose of instructing new employees without losing the exemption. Such work is considered a part of the supervisory duties and is exempt. But if the employee performs non-exempt duties to fill in time between supervisory duties or to assist other employees, such work is non-exempt and subject to the percentage limitation set out above.
- (14) Emergencies - If an executive employee does non-exempt work during an emergency, this particular work does not have to be counted in computing the percent limit on non-exempt work.
 - (a) Example 1: The occasional performance of repair work in case of a breakdown of machinery can be considered exempt work if the breakdown is one that the employer cannot reasonably anticipate.
 - (b) Example 2: Relieving subordinates during rest or vacation periods cannot be con-

sidered exempt emergency work since the need for replacements can be anticipated.

- (15) Exceptions - The 20 percent limit on non-exempt work does not apply to executive employees in sole charge of an independent establishment or a physically separated branch establishment. The term independent establishment has to be given full weight. The establishment must have a fixed location and must be geographically separated from other company property. The management of operations within one or among several buildings located on a single or adjoining tracts of company property does not qualify for the executive exemption. In the case of a branch, there must be a true and complete physical separation from the main office.

Statutory Authority G.S. 126-4.

.1943 ADMINISTRATIVE EMPLOYEES

(a) An employee is exempt as an administrative employee, if all of these conditions are met:

- (1) primary duty consists of performing office or non-manual work directly related to management policies or general business operations of agency, institution, school, or any department or sub-division thereof;
- (2) customarily and regularly exercises discretion and independent judgement, as distinguished from using skills or following procedures;
- (3) regularly and directly assists an agency head, or an executive, administrative, or professional employee, or performs under only general supervision work along specialized and technical lines requiring special training, experience or knowledge, or in the performance of functions in administration of a school system or educational institution in work directly related to academic instruction or training;
- (4) does not devote more than 20 percent of the hours worked during a workweek in non-exempt work;
- (5) is paid on salary or fee basis of at least one hundred fifty-five dollars (\$155) a week, exclusive of board, lodging, or other purposes.

Exception: An administrative employee who is paid on salary or fee basis of at least two hundred fifty dollars (\$250) a week [thirteen thousand (\$13,000) dollars annual rate] and who meets first two conditions above is exempt. The percentage tests for non-exempt work do not apply.

(b) Types of Administrative Employees - There are three types of employees who are exempt as administrative employees if they meet all the other conditions. These employees are:

- (1) Executive and administrative assistants. This first type is the assistant to a proprietor or to an executive or administrative employee. Typical of this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, and administrative assistant. These assistants are usually found in large establishments where the official assisted has so many duties that some must be delegated.
- (2) Staff employees. Employees in the second group are staff rather than line employees (functional, rather than departmental heads). They include employees who act as advisory specialists to the management. Examples are tax experts, insurance experts, research experts, wage rate analysts, investment consultants, foreign exchange consultants, and statisticians. Also included are those in charge of a so-called functional department that may frequently be a one-person department. Examples are purchasing agents, buyers, safety directors, and personnel directors.
- (3) Special assignment employees. The third group consists of persons who perform special assignments. Among them are persons who work away from their employer's place of business. Examples are traveling auditors, buyers, and traveling inventory employees. The group also includes employees whose special assignments are performed entirely or partly inside their employer's place of business.

(c) Employees possibly qualifying for the administrative employee exemption have extremely diverse functions and a wide variety of titles. A title alone is of little or no assistance in determining an employee's exempt or non-exempt status. The status of the employee should be determined on the basis of whether duties, responsibilities and salary meet all the requirements of the rules.

(d) Primary Duty - To qualify for exemption as an administrative employee, an employee must have as a primary duty office or non-manual work directly related to management policies or general business operations of the employer or the employer's programs. This condition is met only only by employees who participate in the formulation of management policies or in the operation of the business as a whole - it is also met by employees whose work affects policy or

who execute policy and by employees whose work affects business operations to a substantial degree even though their assignments are only for a particular segment of the business.

(e) Discretion and Independent Judgement - These terms are interpreted to mean the authority to make an independent choice, free from immediate supervision, in significant matters. They should not be confused with the use of skill in applying techniques, procedures, or specific standards.

- (1) Example 1: Inspectors normally do specialized work along standardized lines involving well established techniques and procedures that may have been catalogued and described in manuals or other sources. These inspectors use skill rather than discretion and judgement.
- (2) Example 2: A shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders, and a bookkeeper may usually decide whether the employee will post first to one ledger rather than another. These decisions do not deal with significant matters.

(f) Decisions by an employee need not have a finality that goes with unlimited authority and a complete absence of review. It is acceptable for the decisions to consist of recommendations for action or to be subject to review.

(g) Salary Requirement - The one hundred fifty-five dollars (\$155) weekly salary requirement for administrative exemption is met if the employee is compensated bi-weekly on a salary basis of three hundred ten dollars (\$310), semi-monthly on a salary basis of three hundred thirty-five dollars and eighty-three cents (\$335.83) or monthly on a salary basis of six hundred seventy-one dollars and sixty-seven cents (\$671.67).

(h) Non-exempt Work/Percentage Rule - If an employee with some administrative duties works for more than 20 percent of the workweek on non-exempt work, the exemption fails.

Statutory Authority: G.S. 126-4.

.1944 PROFESSIONAL EMPLOYEES

(a) An employee is exempt as a professional employee, if these conditions are met:

- (1) The primary duty must consist of performance of: work requiring knowledge of an advanced type in the field of science or learning, customarily acquired by prolonged specialized instructions and study, as distinguished from general academic education (such as doctors, lawyers, engineers, chemists, nurses, etc.); or work that

is creative and original (such artists, writers, architects, designers, musicians, actors, certain radio and television announcers, etc.); or activities of imparting knowledge such as teaching, tutoring, instructing, lecturing, etc.;

- (2) work requires the consistent exercise of discretion and judgement in its performance;
- (3) does not devote more than 20 percent of hours worked during workweek in performance of duties which are not an essential part of and necessarily incident to work described in (a)(1) of this Rule;
- (4) is paid on salary or fee basis of not less than one hundred seventy dollars (\$170) a week. (This salary or fee requirement does not apply to an employee who is the holder of valid license or certificate permitting practice of law or medicine, or in the case of interns or resident physicians, or employees employed and engaged as teachers in activities referred to in (a)(1) in this Rule).

Exception: An employee employed in a bona fide professional capacity under above terms who is paid salary or fee of at least two hundred fifty dollars (\$250) a week thirteen thousand dollars (\$13,000) annual rate is exempt. The percentage test for non-exempt work does not apply to such an employee.

(b) Learned Professions - The learned professions are described as those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. These points should be noted:

- (1) The knowledge has to be a type that must be attained at least at or above the collegiate level.
- (2) The word customarily implies that in the vast majority of cases, specific academic training is necessary for entrance into the profession. However, the exemption is available to employees who have gained their knowledge by home study and experience such as lawyers who have not gone to law school.
- (3) The exemption does not apply to entire occupational groups regardless of the specific duties of the particular individual. For example, exemption of accountants must be determined on the basis of the individual accountant's duties and other qualifications.

(c) Artistic Professions - The requirements for the artistic type of professional work are that the work has to be original and creative in character

in a recognized artistic field and the result of which must depend primarily on the invention, imagination, or talent of the employee. This exemption includes such fields as music, writing, the theater, and the plastic and graphic arts. In addition, the requirements of (a)(2) through (4) must also be met.

Statutory Authority G.S. 126-4.

.1945 SPECIAL PROVISIONS

(a) Child Labor:

- (1) Sixteen years is the minimum age for most employment covered by the FLSA. This includes employment in agriculture during school hours or in any occupation in agriculture declared hazardous by the Secretary of Labor.
- (2) Eighteen years is the minimum age for employment in a nonagricultural occupation declared hazardous by the Secretary of Labor. Of particular interest to all agencies are Hazardous Orders of the Secretary, U.S. Department of Labor, prohibiting the employment of minors between 16 and 18 years of age such as motor vehicle drivers and helpers, operators of elevators and in occupations involving the operation of certain power driven woodworking and bakery machines.
- (3) The state's present policy on employment under age 18 will continue to be: "The minimum at which minors may be employed is 18 years of age. Exceptions are provided under the law if the employing department procures an Employment Certificate from the County Social Services Department." (Ref. G.S. 110, Article 1). A further determination is still necessary under Federal standards as to the suitability of the work being required of the minor. The Office of State Personnel will make available upon request an interpretive bulletin explaining the child labor standards of employment.
- (4) Minors will be paid the same rate of pay as other employees doing similar type work, including overtime premium pay for hours worked in excess of 40 per week. The only exception is for agricultural workers (see (b)(1) and (2) of this Rule).

(b) Agricultural Workers:

- (1) The FLSA exempts agricultural employees from overtime compensation; however, it is state policy that due to the highly variable nature of work of these employees during seasonal periods, the hours worked

may be averaged over a 12-month period, but shall not exceed 2080 hours. Upon leaving state service, an agricultural employee shall be paid for any accumulated overtime balance remaining in the time records.

- (2) Agricultural workers are defined as workers who cultivate the soil or grow or harvest crops, engage in dairying, or who raise livestock, bees or poultry, or perform closely related research.

(c) Student Workers:

- (1) The employment of students by the institutions in which they are enrolled is designed primarily to constitute one type of student financial aid. Such employment usually is characterized by flexible accommodation of the student's primary involvement in educational pursuits. Thus, in terms of hours worked, scheduling of work and required skill and productivity, such student workers are materially distinguishable from regular career employees.

- (2) Any person who during any period of enrollment as a student in a public educational institution concurrently is employed by that institutions shall be considered an employee subject to the State Personnel Act and within the meaning of that Act only if the student-employee is employed by the institution on a full-time permanent basis (as defined by rules of the State Personnel Commission) in a permanent position established and governed pursuant to requirements of the State Personnel Commission.

(d) In-Resident Employment:

- (1) This includes, but is not limited to, employees such as Cottage Parents and Dormitory Directors who reside at, or spend a substantial amount of time on the employer's premises, who are usually on duty or subject to call at all times except when the facility is closed. It is necessary that these employees be required to work irregular schedules on a five, six, or seven-day workweek. Where this type of employment arrangements are necessary, the hours of work and overtime procedures must be established so as to accommodate work requirements.
- (2) While it will be difficult to determine the exact number of hours worked by such employees, it is permissible, under ruling of the U.S. Department of Labor, Wage and Hour Division, to arrive at an agreement with the employee as to what con-

stitutes the normal number of hours worked during a given workweek, taking into consideration the time that the employee engages in private pursuits such as eating, sleeping, entertaining and the time they are able to be away from the facility for personal reasons. The following basis of pay may be adopted for employees in such categories:

- (A) Salary - The annual salary and monthly salary rates of an employee are established under current personnel policy for each position to which the appointment is made. With the employee's agreement, this salary is to represent the employee's straight-time pay for the agreed upon normal number hours on duty per week. The hourly rate of pay is to be determined by dividing the stated annual salary by 52 to obtain the weekly salary and dividing this amount by 40 to obtain the hourly rate.

- (B) Overtime Compensation - Under this plan it is anticipated that weekly schedules will fluctuate and workweek schedules will be provided on a 40-45, 55, etc. basis. The employee is to receive straight-time pay for the established workweek with the proviso that where the agreed upon workweek exceeds 40 hours and additional amount equal to one-half of the hourly rate times the number of hours in excess of 40 will be added to the base pay. When it is necessary to work in excess of the agreed upon workweek hours, the employees will be paid time and one-half the hourly rate for all hours worked in excess of the normal workweek.

(e) Registered Nurses:

- (1) When it is necessary for an employee in a professional nursing class to work more than a regularly scheduled 40 hour workweek the excess hours shall be subject to hours of work and overtime compensation. When possible, the compensation should be in the form of time off. When the person in the position normally has 24 hours responsibility, (as in the case of some supervisors and most directors), overtime compensation provisions shall not be applicable.
- (2) The overtime premium pay will be based on the employee's regular hourly rate of pay, except in cases where an employee may be assigned duties at a lower classification level; in such cases the base rate of pay may not exceed the maximum rate of the lower level assignment.

(f) Law Enforcement Activities.

- (1) The term law enforcement activities refers to any employee who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, or who has the power of arrest, or who is presently undergoing or has undergone or will undergo on-the-job training and or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethnics.
- (2) Employees who meet these tests are considered to be engaged in law enforcement activities regardless of their rank or of their status as "trainee", "probationary", or "permanent" employee, and their assignment to duties incidental to the performance of their law enforcement activities.
- (3) The term "employees in law enforcement activities" also includes "security personnel in correctional institutions". This includes any government facility maintained as part of a penal system for the incarceration or detention of persons suspected or convicted of having breached the peace or committed some other crime. Such facilities include penitentiaries, prisons, prison farms, county, city and village jails, precinct house lockups and reformatories. Employees of correctional institutions who qualify are those who have responsibility for controlling and maintaining custody of inmates and of safeguarding them from other inmates or for supervising such functions regardless of whether their duties are performed inside the correctional institution or outside the institution (as in the case of road gangs). These employees are considered to be engaged in law enforcement activities regardless of their rank. Law enforcement employees may include, for example, fish and game wardens or criminal investigative agents assigned to the attorney general's staff or any other law enforcement agency concerned with keeping public peace and order and protecting life and property.
- (A) Not included in the term "employee in law enforcement activities" are the so-

called "civilian" employees of law enforcement agencies or correctional institutions who engage in such support activities as those performed by dispatcher, radio operators, apparatus and equipment maintenance and repair workers, janitors, clerks and stenographers. Nor does the term include correctional program assistants, directors or supervisors or employees in correctional institutions who engage in building repair and maintenance, culinary services, teaching or in psychological, medical and paramedical services. This is so even though such employees may, when assigned to correctional institutions, come into regular contact with the inmates in the performance of their duties, or may be required by statute or rule to be certified by the Criminal Justice Training and Standards Council.

- (4) Because of the varied nature of law enforcement activities throughout the state, it may not be possible for all law enforcement classifications to be considered under the same plans for overtime. Under the Wage and Hour Law two options are permissible.
 - (A) For schedules requiring a 40-hour workweek, the policies on hours of work and overtime pay for a 40-hour workweek will apply.
 - (B) For schedules requiring more than 40 hours in a workweek the following is permissible. The "work period" will consist of 28 consecutive days. In the workweek period of 28 consecutive days the employee shall receive, for tours of duty which in the aggregate exceed 171 hours, compensation at a rate of one and one-half times the regular hourly rate at which employed. (The regular hourly rate is the rate computed on a 40-hour basis and published in the Salary Plan by the Office of State Personnel, plus shift premium pay, if any.)
- (5) The exempt or non-exempt status of law enforcement personnel will be determined under the terms of the exemption for Executive, Professional and Administrative Employees as set out previously in this Section.
 - (g) Employees engaged in law enforcement activities may also engage in some non-law enforcement work as an incident to or in conjunction with their law enforcement activities. The performance of such work will not cause the employee to lose law enforcement status unless

such work exceeds 20 percent of the total hours worked by that employee during the workweek or the applicable work period. A person who spends more than 20 percent of his working time in non-law enforcement activities shall not be considered as being engaged in law enforcement activities for coverage under this portion of this Section.

Statutory Authority G.S. 126-4.

.1946 OVERTIME/COMPENSATORY TIME OFF OPTION FOR LAW ENFORCEMENT; FIRE PROTECTION AND EMERGENCY RESPONSE PERSONNEL

The following provisions are applicable only to agencies who employ persons in nonexempt law enforcement fire protection emergency response positions. Such agencies may, by letter to the State Personnel Director, choose to utilize the following overtime compensation provisions in lieu of the customary overtime compensation provisions elsewhere in this Section:

- (1) Under these provisions, nonexempt persons in law enforcement positions who work more than 171 hours (or 212 hours for nonexempt persons in fire protection or emergency response positions) in a 28 consecutive day work period may be given compensatory time off in lieu of cash payment for those overtime hours worked.
- (2) Compensatory time off earned must be used no later than 180 days from the date the compensatory time off was earned.
- (3) Compensatory time off earned, but not used within 180 days from its being earned must be paid for in cash in the first pay period following the expiration of the 180 days.
- (4) Overtime earned under these provisions must be compensated at the rate of one and one-half times the regular hourly rate or one and one-half hours of compensatory time off for each hour of overtime earned.
- (5) If an employee under these provisions has a positive balance of earned compensatory time off and is promoted to an exempt position, the accumulation of earned compensatory time off must be paid in cash before the employee goes into the exempt position.
- (6) Employees cannot accumulate more than 320 overtime hours (480 straight-time hours). Any overtime earned in excess of 320 hours must be paid in cash as earned.

Statutory Authority G.S. 126-4.

.1947 TOUR OF DUTY AND COMPENSABLE HOURS OF WORK

The term "tour of duty" is a unique concept applicable only to employees in law enforcement and fire protection activities. This term means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Scheduled periods also include time spent in work outside the "shift" which the public agency employer assigns to the employee. Unscheduled periods include time spent in court by officers, time spent handling emergency situations and time spent working after a shift to complete an assignment. Such time must be included in the compensable tour of duty even though the specific work performed may not have been assigned in advance. The tour of duty does not include time spent working on an occasional or sporadic and part-time basis in a different capacity from the regular work. Neither does it include time spent substituting for other employees by mutual agreement. The tour of duty also does not include time spent in volunteer law enforcement and fire protection activities performed for a different jurisdiction.

Statutory Authority G.S. 126-4.

.1948 OCCASIONAL OR SPORADIC EMPLOYMENT IN A DIFFERENT CAPACITY

(a) Where employees, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment, the hours worked in the different jobs shall not be combined for the purpose of determining overtime compensation under this Section.

(b) "Occasional or Sporadic" - The term "occasional or sporadic" means infrequent, irregular or occurring in scattered instances. There may be an occasional need for additional resources in the delivery of certain types of services which is at times best met by the part-time employment of an individual who is already employed by the state. Where employees freely and solely at their own option enter into such activity, the total hours worked will not be combined for purposes of determining any overtime compensation due on the regular, primary job. However, in order to prevent overtime abuse, such hours worked are to be excluded from computing overtime compensation due only where the occasional or sporadic assignments are not within the same general occupational category as the employee's regular work.

(c) In order for hours of such work not to be combined with hours worked on the primary, regular job, the employee's decision to work in a

different capacity must be made freely and without coercion. The employee's decision to perform such work will be considered to have been made at his sole option when it has been made without fear of reprisal or promise of reward.

(d) Typically, recreation and park facilities, university athletic facilities or other public events may need to utilize employees in occasional or sporadic work. Employment in such activity may be considered occasional or sporadic for regular state employees even when the need for such work can be anticipated because it recurs seasonally (the State Fair, for example).

(e) In order to be "occasional or sporadic" it is essential that the character of the activity be intermittent and irregular, rather than continuous or regular.

(f) In order for employment in these occasional or sporadic activities not be considered subject to the overtime provisions of this Section, the regular state employment of the individual must also be in a different capacity; that is, it must not fall within the same general occupational category.

Statutory Authority G.S. 126-4.

.1949 SUBSTITUTION

(a) Two persons employed by the same agency may agree, solely at their option and with the approval of the agency, to substitute for one another during scheduled work hours in performance of work in the same capacity. The hours worked in a substituting capacity shall be excluded from the calculation of hours for which the substituting employee is entitled to overtime compensation under this policy. This provision will apply only if the employees' decisions to substitute for one another are made freely and without coercion, direct or implied. An agency may suggest that an employee substitute or "trade time" with another employee working in the same capacity during regularly scheduled hours, but each employee must be free to refuse to perform such work without sanction, and without being required to explain or justify that decision. Such a decision will be considered voluntary when it has been made without fear of reprisal or promise of reward and for the employee's convenience, rather than the convenience of the agency's operations.

(b) Agencies whose employees engage in substitute work under this provision are not required to keep a record of the hours of the substitute work. However, it is strongly recommended that records of this type of arrangement be kept as a matter of good personnel practice. There is also no limit on the period of time during which

hours worked may be traded or paid back among employees. Any agreement between employees to substitute for one another at their own option must be approved by the agency; this approval must be prior to the substitution and the agency must know what work is being done, who is doing the work, and when and where the work is being done. The type of approval (formal, informal, oral, written or otherwise) is left to the decision of the agency.

Statutory Authority G.S. 126-4.

.1950 VOLUNTEERS

(a) Volunteer work does not create an employer-employee relationship so as require coverage under wage and hour and overtime compensation standards. This rule is intended to provide guidance to agencies in determining whether service performed is voluntary, and thus exempt from treatment under this Section.

(b) A volunteer is one who performs hours of service for a state agency for civic, charitable or humanitarian reasons without promise or expectation of compensation for services provided. Service provided by a volunteer is not subject to the provisions of this Section. However, an individual shall not be considered a volunteer if the person is otherwise employed by the same agency to perform the same type of services as those for which the person proposes to volunteer. Volunteers may receive expenses, reasonable benefits, a nominal fee or any combination thereof without losing their status as volunteers.

Statutory Authority G.S. 126-4.

SECTION .2000 - UNEMPLOYMENT INSURANCE

.2001 COVERAGE

Effective January 1, 1978, the North Carolina General Assembly provided unemployment insurance coverage for all temporary and permanent state employees except those exempted by G.S. 96-8(6)i.

Statutory Authority G.S. 96-8(6)j; 96-8(6)i.

.2002 POLICY

The Employment Security Commission (ESC) has sole jurisdiction over decisions concerning unemployment insurance (UI) claims adjudication and benefit rights, and has adopted regulations in conjunction with Employment Security Law for claims processing and benefits administration. It is the policy of the state to comply with Employment Security law and ESC regulations in a cooperative and expeditious manner. The pur-

pose of this policy is to assure employees the benefits provided by law while protecting the state from undue benefit charges.

Statutory Authority G.S. 126-4(10).

.2003 ADMINISTRATION

(a) The Office of State Personnel shall design, effect, and maintain a centralized unemployment insurance cost management program, which shall have as its goal effective claims administration and the control of benefit costs. This goal shall be accomplished by improved communications and agency training on unemployment insurance issues and procedure, conscientious monitoring and administration of individual claims and benefit charges, examination of payment options, the creation and maintenance of a comprehensive unemployment insurance database, and related efforts. When it is determined advantageous and cost effective, the Office of State Personnel may engage the services of a qualified service firm to provide claims administration support.

(b) The Office of State Personnel shall designate an UI Coordinator, whose responsibility it shall be to coordinate the overall program. The duties of the UI Coordinator shall include:

- (1) Development and distribution of a UI Cost Management Procedures Manual.
- (2) Contract oversight to assure the delivery of services, where a third party firm is engaged to establish and carry out a centralized claims administration system.
- (3) Action as an intermediary between state agencies and the claims services firm, if such a firm is retained.
- (4) Development and delivery of agency training programs on UI administration.
- (5) Service as a technical resource to the agencies on UI matters.
- (6) Assimilation of a comprehensive UI data base, which accurately records claims activity and benefit charges to state accounts, and provides the basis for sound reports that can be used to guide management decisions on the UI Program.
- (7) Initiation of studies, recommendations, and reports relevant to UI cost management.
- (8) Recommendations concerning the design and cost effectiveness of the centralized UI Program.
- (9) Coordination with the Office of State Budget where there is a need to examine costing methods or financial aspects.
- (10) The monitoring of legislative actions concerning UI law and benefits, and service as spokesperson before legislative

committees when it is within program interests.

- (11) Coordination with the Employment Security Commission on relevant questions and issues.

Statutory Authority G.S. 126-4(10).

.2004 AGENCY RESPONSIBILITIES

Each agency and institution shall designate an employee, preferably with working knowledge of the unemployment insurance function, to coordinate the flow of necessary information between the agency, the Office of State Personnel and any claims administrator retained by the Office of State Personnel. The specific responsibilities of the Agency UI Coordinator are as follows:

- (1) Participate in the UI training opportunities offered by the Office of State Personnel or its designated claims administration firm. Develop a working knowledge of the procedures outlined in the Procedures Manual for the centralized cost control program.
- (2) Ensure that agency hiring authorities maintain adequate documentation to provide and support the separation information required by the ESC on individual claims.
- (3) Provide detailed and timely wage and separation information, as necessary for the ESC to properly adjudicate an individual's claim for benefits, and to protect the state's interests against undue benefits.
- (4) Work with the Office of State personnel or its designated claims administrator to coordinate attendance of necessary witnesses and to assure the availability of documentation for UI hearings.
- (5) Communicate to the Office of State Personnel or its designee any agency issue or action which may affect an individual's benefit entitlement.
- (6) Act as agency liaison for obtaining other information which may become relevant and valuable to the interests of the central UI cost management program.

Statutory Authority G.S. 126-4(10).

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1000 - LEAVE: GENERAL PROVISIONS

.1005 LEAVE: ADVERSE WEATHER CONDITIONS

(a) The geographical location and diversity of state services and programs make it impossible to apply a uniform statewide policy regarding how operations will be affected in times of ad-

verse weather conditions. Therefore, the following policy will apply when decisions must be made to either continue or temporarily suspend services as a result of adverse weather conditions:

- (1) Within Wake County: The Governor in cooperation with the Office of State Personnel will determine and announce when administrative offices in Wake County will be closed due to adverse weather. It is recognized that some operations must continue to provide services without regard to weather conditions. Therefore, agency heads will predetermine and designate the mandatory operations which will remain open.
- (2) Areas Outside Wake County: Agency heads, or their designated representatives, will determine the operations that will remain open and to what extent other operations may be temporarily closed in areas outside Wake County.

The administrative offices of State Government in Wake County must be open during normal business hours to serve local governments and the citizens of North Carolina and to provide support services to business and industry. These offices will remain open, even in adverse weather, and it is the responsibility of employees to make a good faith effort to come to work during these times. It is recognized that some other operations in and out of Wake County must continue to provide services without regard to weather conditions. Therefore, agency heads shall predetermine and designate the mandatory operations which will remain open. Agency heads, or their designated representatives, may determine to what extent any other operations may be suspended or temporarily closed.

(b) When it has been determined that services will be suspended, time lost will be charged to vacation. If offices remain open, Employees, not working in mandatory operations, who anticipate problems in transportation should be permitted and encouraged to adjust their work schedule when possible or to avail themselves of vacation leave privileges when encountering difficulty in reporting for work or when leaving early. Employees who are on prearranged vacation leave or on sick leave will charge leave to the appropriate account with no provision for makeup time. In either of the above, employees may be allowed to make up time in accordance with this Rule.

(c) When employees are away from work because of adverse weather conditions, where operational needs allow, management may must make every reasonable effort to arrange schedules

whereby employees may will be given an opportunity to make up time not worked (either by suspension of services or voluntary action by employee) rather than charging it to leave.

There are very few opportunities for such time to be made up without the employee working more than 40 hours during a work week. Since the opportunity to make up the time lost is a benefit for the employee, it will be permissible, therefore, for such makeup time to occur in excess of forty hours in a work week without the time being subject to overtime compensation, provided that the employee has requested the opportunity to make up lost time subject to the condition that overtime compensation will not be made. Since hours worked in excess of 40 during a work week would constitute overtime under Federal regulations, it will be necessary for make-up time for employees subject to overtime to be limited to the work week in which the time is lost or in a week when the employee has not worked a full work schedule due to such absences as holidays, vacation, sick leave, civil leave, etc. Time must be made up within 12 months from the occurrence of the absence. If it is not made up within 12 months, vacation leave must be charged.

(d) Special Provision. When catastrophic, life-threatening weather conditions occur, as created by hurricanes, tornadoes, or floods, and it becomes necessary for authorities to order evacuation from the place of employment, the following provisions will prevail:

- (1) Employees who are required to evacuate will not be required to make up time that is lost from work during the period officially declared hazardous to life and safety. Employees required to remain at work may be relieved administratively for a period of time necessary to assure the safety of their family.
- (2) Employees required to work in such emergency situations will be paid in accordance with the state's policy on Hours of Work and Overtime Compensation. Every effort should be made to compensate overtime by additional payment rather than compensatory time.

Statutory Authority G.S. 126-4(10).

SUBCHAPTER 11 - EMPLOYEE RELATIONS
SECTION .0800 - GOVERNOR'S AWARD FOR EXCELLENCE

.0801 PURPOSE

The State of North Carolina has long been noted for loyal, efficient and dedicated employees

who provide valuable services in all areas of state government. The Governor's Award for Excellence was created to acknowledge and express appreciation for outstanding achievements made by the employees of the state. This award is the highest honor that a state employee may receive for dedicated service to state government and the people of North Carolina.

Statutory Authority G.S. 126-4(13).

.0802 AWARDS COMMITTEE

The Awards program is administered by the State Personnel Commission, with one member of the commission serving as chairperson for the Awards Committee. The Governor will make other appointments to the committee to assist the commission in the selection of the final awards. The duties of the committee are as follows:

- (1) Each year the committee shall recommend to the Governor the week to be proclaimed as "North Carolina State Employees Appreciation Week."
- (2) The committee shall make annual selection of those state employees to receive the Governor's Award for Excellence.

Statutory Authority G. S. 126-4(13).

.0803 NOMINATIONS

(a) Nomination may be made for meritorious or distinguished accomplishments made by any permanent state employee at any level of employment with consideration given to the relative opportunities for accomplishment afforded by the individual's position. A prescribed nomination form will be furnished to each department and university to be used to submit their nominations for the Governor's Awards. A deceased employee, a retired employee, or an employee on leave-without-pay may also be nominated. Employees may nominate peers and/or managers and vice versa. Employees who were nominated, but who did not receive the Governor's Award of Excellence, may be nominated again in a succeeding year.

(b) This program is for all permanent employees including the managerial and administrative levels such as:

- (1) Deputy and Assistant Department Head;
- (2) Division Directors;
- (3) Deputy and Assistant Directors of major divisions in the larger departments;
- (4) Key assistants to the Department Head or University Chancellor who exert major policy influence.

However, it does not include elected officials and University Chancellors. It does not include those employees who work in the public school system or community colleges.

(c) The accomplishments need not fall entirely within the scope of normal duties, but shall be in the nature of a major contribution reflecting credit on the person and state service. The meritorious service or accomplishment must be so singularly outstanding that special recognition is justified.

Statutory Authority G.S. 126-4(13).

.0804 AWARDS CATEGORIES

Awards may be made in the following categories:

- (1) Devotion to Duty. Through unselfish devotion to duty, far and above normal requirements, employee has contributed significantly to the advancement of state service to the citizens of the state.
- (2) Innovations. Through fruitful study and investigation employee has initiated and successfully established new and outstanding methods, practices, plans or designs having fundamental values. (Such as pioneering or research and development work in administration, engineering, productivity, agriculture, medicine, natural resources, the social sciences, etc.)
- (3) Public Service. Employee has made outstanding contributions to the public service.
- (4) Safety/Heroism. Employee has demonstrated outstanding judgement, courage, self-possession or ability in an emergency, meritorious action to prevent injury, loss of life or to prevent damage to or loss of property.
- (5) Human Relations. Employee has made outstanding contributions to the field of human relations, employee-management relations, or any of the allied fields.
- (6) Other Achievements. Employee has made other significant achievements for services which deserve recognition.

Statutory Authority G.S. 126-4(13).

.0805 DEPARTMENT/UNIVERSITY ADMINISTRATION

Each department or university shall adopt policies and procedures monitored by the State Personnel Commission that will:

- (1) Establish a program to recognize annually within the department or university outstanding and meritorious achievements within the six categories set out under the

Awards section. The program may provide for one or more awards depending on the organizational structure and size of divisions or major programs within the department or university.

- (2) Provide for an Awards Committee to be responsible for the processing of awards; suitable ceremonies for presentation of awards; and, to promote participation in the program by all eligible employees.

Statutory Authority G.S. 126-4(13).

.0806 NUMBER OF NOMINATIONS

The number of nominations that may be submitted from each department or university for the Governor's Awards for Excellence is based on the total number of permanent employees in the classes that are eligible as of the end of the last calendar year.

Statutory Authority G.S. 126-4(13).

.0807 CRITERIA FOR SELECTION

(a) The criteria for the Governor's Award are outstanding service, accomplishment, and contribution to the state. The performance upon which the selection is based must be clearly above and beyond that which would be expected from dedicated employees who are fully and competently discharging all of the duties and satisfying all of the requirements of their job.

(b) Outstanding performance is performance which surpasses the range of normally expected performance. The possibilities for varying levels of performance above normal expectations are infinite. An employee might be superior as to quality of work and be satisfactory in all other respects; or be superior on quality and quantity and be satisfactory in meeting other requirements. When the employee becomes superior in all factors, performance is in the upper range of superior and may be considered in the area of "outstanding" performance; for example, a level of performance in all aspects of work which exceeds normal requirements to such an extent that each is considered worthy of special commendation.

(c) Establishing the upper limit of performance beyond which awardable performance begins can seldom be done with a precision which will substitute for human judgement in each specific instance. It can be said in general that the minimum required level should not be so high as to be unattainable by employees who are generally recognized as performing in an outstanding manner, nor so low that awards lose their significance by being easily obtainable.

(d) A special act or service is a singular contribution which may be relatively easy to identify and relate to generally known human experience and standards of public service. This might be an act of heroism. A definition of a standard would not be necessary for such cases, and it should not be difficult for a person having knowledge of the accomplishment to prepare a recommendation for consideration.

(e) When the accomplishment is closely connected with the performance of normal duties, it will be necessary to consider how it was beyond the scope of normal activity.

(f) It is evident that administration of a program of awards for superior performance cannot be reduced to an absolute science. Adherence to certain principles will tend toward more successful results, but precise methods for applying them to specific situations are seldom possible. A large measure of good and consistent judgement is essential.

Statutory Authority G.S. 126-4(13).

.0808 TYPE OF AWARD

The award will be a mounted plaque inscribed with an appropriate message of recognition and appreciation signed by the Governor and displaying the Seal of The State of North Carolina. Each will receive an appropriately designed piece of personal jewelry which can be worn as a recipient of the Governor's Award for Excellence.

Statutory Authority G.S. 126-4(13).

.0809 PROCEDURES

(a) Nominations will be ranked independently by each member of the committee. Selection of the award recipients will then be made by majority vote of the committee after complete evaluation of all eligible candidates.

(b) The committee will recommend an appropriate ceremony in keeping with the significance of the awards. Awards will be presented annually by the Governor at a ceremony during the week proclaimed by the Governor as "North Carolina State Employees Appreciation Week".

Statutory Authority G.S. 126-4(13).

SUBCHAPTER 1K - PERSONNEL TRAINING

SECTION .0600 - WORK PLANNING/PERFORMANCE REVIEW

- .0603 POLICY (REPEALED)
- .0604 GOALS (REPEALED)
- .0605 COMPONENTS OF THE SYSTEM (REPEALED)

- .0606 DOCUMENTATION (REPEALED)
- .0607 RELATIONSHIP OF WORK PLANNING AND PERFORMANCE REVIEW (REPEALED)
- .0608 PROGRAM ACCOUNTABILITY; MONITORING; ASSESSMENT; AND IMPROVEMENT (REPEALED)
- .0609 RESPONSIBILITIES OF THE OFFICE OF STATE PERSONNEL (REPEALED)
- .0610 RESPONSIBILITIES OF DEPARTMENTS; AGENCIES; INSTITUTIONS (REPEALED)
- .0611 RESPONSIBILITIES OF MANAGERS AND SUPERVISOR (REPEALED)

Statutory Authority G.S. 126-4.

.0612 PURPOSE

The purpose of Work Planning and Performance Review is to assist management in making sound decisions for granting salary increases so as to provide a fair and equitable system for recognizing and rewarding deserving employees. This policy recognizes that personnel management decisions must take into consideration other variables along with performance appraisal. The purpose of W.P.P.R. is to assist management in achieving consistent and equitable treatment among employees. An equitable plan for evaluating employee performance is also needed for the following:

- (1) a basis for initiating various personnel actions such as training, development, promotion, reassignments, separation, demotions, reduction-in-force;
- (2) to provide employees with a clear understanding of what performance is acceptable and unacceptable;
- (3) to improve supervisory and employee communications;
- (4) to provide a mechanism to determine areas needing improvement so that in the position, the employee may continue to grow in their position.

Statutory Authority G.S. 126-4(8).

.0613 RESPONSIBILITY OF DEPARTMENTS; AGENCIES AND INSTITUTIONS

Consistent with this policy and Chapter 126-4(8), every state agency, department or institution shall establish a Work Planning and Performance Review Program which includes these basic components:

- (1) Identification of Primary Duties: Each supervisor is responsible for determining what each employee does in their position. This consists of determining the Primary Duties and Critical Tasks and Behaviors for a position. This requires a mutual understanding

of: the Primary Duties and Critical Tasks and Behaviors; the relative importance of the employee's duties in relation to each other; the relationship of those duties to the goals of the work unit and the agency.

- (2) Identifying Performance Expectations: Performance Expectations are the measures or factors which will be used to appraise an employee's performance. The immediate supervisor is responsible for determining performance expectations and should always involve the employee in the process. Performance expectations shall be developed or updated at least once a year. This requires a mutual understanding of what represents "Meets Expectations" and what represents "Does Not Meet Expectations".
- (3) Coaching: Coaching is a responsibility of the supervisor in directing an employee's performance while work is in progress. Coaching duties include: monitoring or keeping up-to-date on an employee's performance through observation, discussions, or reports; reinforcing good performance by giving the employee immediate, positive feedback; correcting poor performance through immediate feedback and helping the employee improve; reaching agreement with an employee on modified performance expectations if changed conditions so require.
- (4) Performance Appraisal. At the end of the performance appraisal cycle, every employee with his/her supervisor shall: review the employee's performance expectations and actual performance; discuss whether the employee Exceeded, Met, or Did Not Meet Expectations; review any materials the employee may have regarding each expectation; rate each expectation as to whether the employee Exceeded, Met or Did Not Meet Expectations; determine the overall performance as to whether the employee Exceeded, Met, or Did Not Meet Expectations.
- (5) Performance Increase Determinations. Based on the overall performance appraisal rating, the supervisor will determine the appropriate salary increase. Performance increases shall be considered on the following basis: employees whose performance does not meet expectations shall not receive a salary increase; a salary increase will be allowed in graduated amounts for degrees at or above a meets expectations. Increases must be within the provisions of the approved standards and availability of funds. Any proposed personnel action shall be consistent with a current (within 12 months) appraisal of the employee's performance.

(6) Developmental. The supervisor determines whether the employee needs additional knowledge, skills, ability, or education and experience in order to meet expectations in the future. Every supervisor is responsible for determining what employees weaknesses attributed to not meeting expectations. Once that determination has been made, then both the supervisor and the employee should mutually agree upon an action plan that will assist the employee's improved performance during the next work cycle. The supervisor shall identify good performance and which performance needs improvement; agree on a plan for improvement.

Statutory Authority G.S. 126-4(8).

.0614 DOCUMENTATION

Effective supervision requires documentation of significant performance agreements between employee and supervisor at all stages of the Work Planning and Performance Review process.

- (1) Departments, agencies, and universities shall require supervisors to document, in writing, primary duties and responsibilities, agreed upon performance expectations, work plans, performance evaluations, performance increase determinations, and developmental plans and agreements.
- (2) An official Performance Appraisal Form, which includes an overall performance appraisal rating, shall be maintained for every employee. This Performance Appraisal Form shall be approved by the Office of State Personnel. At the beginning of the performance appraisal cycle, the supervisor shall record in the Performance Appraisal Form the employee's performance expectations. At the end of the performance appraisal cycle, the supervisor shall record in the Performance Appraisal Form for each Expectation, whether the employee Exceeded, Met, or Did Not Meet Expectations. The performance Appraisal Form shall be signed by the employee, the supervisor, and the supervisor's manager and treated confidentially. Performance Appraisal Form evaluation must be completed at least annually on all employees.
- (3) Any proposed personnel action shall be consistent with a current (within 12 months) appraisal of the employee's performance.
- (4) Performance Appraisal forms shall be kept for three years and disposed of according to G.S. 121-5 (b), (c).

Statutory Authority G.S. 126-4(8); G.S. 121-5(b), (c).

**.0615 PROGRAM ACCOUNTABILITY:
MONITORING: ASSESSMENT
AND IMPROVEMENT**

A monitoring program for W.P.P.R. shall be provided to insure that department and agency programs are in compliance with policy provisions; to identify needs for program revisions and improvements; and to develop plans to bring about improvements.

- (1) Responsibilities of the Office of State Personnel:
 - (a) develop and interpret policy and procedures;
 - (b) review and approve agency policies, procedures, and forms;
 - (c) assist agencies in developing guidelines for making assessments and developing plans for improvement;
 - (d) conduct annual assessments to determine both compliance and effectiveness of the Work Planning and Performance Review Program;
 - (e) provide training and assistance to agency W.P.P.R. coordinators;
 - (f) provide annual Summary reports to the State Personnel Commission.
- (2) Responsibilities of Departments, Agencies, and Institutions:
 - (a) develop, implement, and administer policy and procedures consistent with state policy;
 - (b) provide on a continuing basis for the training of supervisors and managers in the supervisory skills and the procedures necessary for effective Work Planning and Performance Review;
 - (c) assist the Office of State Personnel in conducting an annual audit; submit to the State Personnel Commission through the Office of State Personnel an annual status report including actions taken, assessment of effectiveness and improvements planned.

Statutory Authority G.S. 126-4(8).

**TITLE 26 - OFFICE OF ADMINISTRATIVE
HEARINGS**

Notice is hereby given in accordance with G.S. 150B-12 that the Office of Administrative Hearings intends to adopt and amend rule(s) cited as 26 NCAC 1 .0001; 26 NCAC 2A .0205, .0210, .0211, .0212, .0302, .0403, .0405; 26 NCAC 2B

.0104, .0203; 26 NCAC 3 .0001, .0002, .0014, .0022, .0026 and .0030.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 9:00 a.m. on October 17, 1988 at Hearing Room 1, Lee House, 422 North Blount Street, Raleigh, North Carolina.

Comment Procedures: Comments may be submitted in person or in writing at the public hearing or in writing prior to October 17, 1988, to Robert A. Melott, Chief Administrative Law Judge, P. O. Drawer 11666, Raleigh, NC 27604.

CHAPTER 1 - GENERAL

.0001 COST FOR COPIES

(a) Copies in looseleaf form of any public documents as filed in the Office of Administrative Hearings, are available at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$.15) per page for each page in excess of ten.

(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to the copying cost set out in Paragraph (a) of this Rule.

(c) Transcripts are available of contested case hearings. Reference should be made to Rule 26 NCAC 3 .0022 for procedures for requesting and costs of transcripts.

Statutory Authority G.S. 150B-62(b); 150B-63(f).

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

SECTION .0200 - GENERAL FILING REQUIREMENTS

.0205 SUBMISSION FOR FILING FORM

(a) The completed Submission for Filing form certifies that the rule being filed has been officially adopted, amended, or repealed. Identifies the rule by citation in the North Carolina Administrative Code, and indicates under what authority the rule has been adopted. All Submission for Filing forms shall be signed by the agency head or a subordinate officer or employee designated by the agency head in writing under G.S. 143B-10(a).

(b) More than one rule may be listed on a single form if the same procedure (adoption,

amendment, or repeal) is being done on several rules in the same chapter ~~for the same reason~~ and the filing dates and effective dates are the same.

Statutory Authority G.S. 150B-60.

.0210 ACCEPTANCE OF RULES FILED

(a) When an action is accepted for filing by the Office of Administrative Hearings, the agency will be sent a completed copy of the Submission for Filing form which indicates that the action is acceptable for filing.

(b) When the rule has been printed by the Office of Administrative Hearings, the agency head or a subordinate officer or employee designated by the agency head in writing under G.S. 143B-10(a) will receive one copy of the document at no charge.

Statutory Authority G.S. 150B-60; 150B-61; 150B-63.

.0211 AGENCY FINAL COPY

Each department, agency, board and commission shall be responsible for proofing the final computer copy of its rules as provided in G.S. 150B-61(c).

Statutory Authority G.S. 150B-60; 150B-61(c).

.0212 MAILING LIST

OAH will distribute information of a general nature concerning rule filings and related matters to the APA Coordinator(s) designated in writing by the agency head. It is the responsibility of the agency to keep such designations current with OAH.

Statutory Authority G.S. 150B-60.

SECTION .0300 - TEMPORARY RULEMAKING

.0302 SUBMISSION FOR FILING FORM

Each temporary rule that is filed shall be accompanied by a Submission for Filing form; provided that, more than one temporary rule may be included on the same form if they are filed ~~for the same reason~~, to be effective on the same date and for the same period of time.

Statutory Authority G.S. 150B-60.

SECTION .0400 - PHYSICAL FORMAT

.0403 INTRODUCTORY STATEMENT

(d) When part of a rule is to be amended, the agency shall cite the smallest portion of the rule which is changed. This is so the agency does not have to retype the entire rule when only a portion

is being changed. ~~When a rule is amended by the addition or deletion of a paragraph, the introductory statement should read as follows: "Rule (full citation) has been amended by the addition/deletion of Paragraph (c) as follows:"~~ In this case, only the paragraph which is being rewritten needs to be typed. Other paragraphs will be renumbered accordingly.

Note: For example, when a rule is amended by the addition or deletion of a paragraph, the introductory statement should read as follows: "Rule (full citation) has been amended by the (addition) (deletion) of Paragraph (c) as follows:"

Statutory Authority G.S. 150B-60.

.0405 HISTORY NOTE

(c) Authorities cited in history notes shall be cited according to the most current edition of the rules of citation contained in "A Uniform System of Citation", a copy of which is available in the Office of Administrative Hearings, except that the General Statutes of North Carolina shall be identified by the ~~designated~~ designation "G.S." rather than "N.C. Gen. Stat."

Statutory Authority G.S. 150B-60.

SI CHAPTER 2B - NORTH CAROLINA REGISTER

SECTION .0100 - PUBLICATION

.0104 AVAILABILITY OF THE NORTH CAROLINA REGISTER

The North Carolina Register is published twice monthly by the Office of Administrative Hearings and is available at a cost of ~~ninety five dollars (\$95.00)~~ one hundred and five dollars (\$105.00) per year subscription. Requests for subscriptions should be directed to the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, N. C. 27604, (919) 733-2678.

Statutory Authority G.S. 150B-63.

SECTION .0200 - GENERAL FILING REQUIREMENTS

.0203 ACCEPTANCE FOR PUBLICATION

When a submission is accepted for publication by the Office of Administrative Hearings, the agency will be ~~given a~~ sent a completed copy of the Submission for Notice form which indicates that the submission is acceptable for publication.

Statutory Authority G.S. 150B-60.

CHAPTER 3 - HEARINGS DIVISION

.0001 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1, ~~and~~ the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes and Canons 1, 2 and 3 of the Code of Judicial Conduct adopted in accordance with G.S. 7A-10.1 shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.
- (2) The Office of Administrative Hearings may supply, at the cost of reproduction, forms for use in contested cases. These forms will conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.
- (3) Every document filed with the Office of Administrative Hearings shall be signed by the attorney who prepared the document, if it was prepared by an attorney, and shall contain his name, address, telephone number, and North Carolina State Bar number.
- (4) Except as otherwise provided by statutes or by rules promulgated under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

Statutory Authority G.S. 7A-750; 150B-11; 150B-40(c).

.0002 DEFINITIONS AND CONSTRUCTION

(a) The definitions contained in G.S. 150B-2 are incorporated herein by reference. In addition, the following definitions apply:

- (1) "Chief Administrative Law Judge" means the ~~Director of the Office of Administrative Hearings~~ person appointed according to G.S. ~~Chapter 7A Article 60~~ 7A-751.
- (2) "File or Filing" means to place the paper or item to be filed into the care and custody of the Chief Hearings Clerk of the Office of Administrative Hearings, and acceptance thereof by him, except that the administrative law judge may permit the papers to be filed with him in which event the administrative law judge shall note thereon the filing date. All documents

filed with the Office of Administrative Hearings, except exhibits, shall be in letter size 8 1/2" by 11".

- (3) "Service or Serve" means personal delivery or, unless otherwise provided by law or rule, delivery by first class United States Postal Service mail or a licensed overnight express mail service, postage prepaid and addressed to the party at his or her last known address. A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service.

(b) The rules of statutory construction contained in Chapter 12 of the General Statutes shall be applied in the construction of these Rules.

Statutory Authority G.S. 7A-751; 150B-11.

.0014 SANCTIONS

(a) If a party fails to appear at a hearing or fails to comply with an interlocutory order of an administrative law judge, the administrative law judge may:

- (1) Find that the allegations of or the issues set out in the notice of hearing or other pleading may be taken as true or deemed proved without further evidence;
- (2) Dismiss or grant the motion or petition;
- (3) Suppress a claim or defense; or
- (4) Exclude evidence.

(b) In the event that any party or attorney at law or other representative of a party engages in behavior that obstructs the orderly conduct of proceedings or would constitute contempt if done in the General Court of Justice, the administrative law judge presiding may apply to the enter a show cause order returnable in Superior Court for contempt proceedings in accordance with G.S. 150B-33(b)(8).

Statutory Authority G.S. 150B-25(a); 150B-33(b)(4),(8).

.0022 OFFICIAL RECORD

The official record of a contested case is available for public inspection upon reasonable request. An administrative law judge may, upon

good cause shown and consistent with law, order part or all of an official record sealed.

(1) The official record shall be prepared in accordance with G.S. 150B-37(a).

(2) Contested case hearings are recorded either by a four-track recording system or a professional court reporter using stenomask or stenotype. All costs incurred when using a professional court reporter shall be divided pro-rata among the party(ies) requesting a transcript. A 24 hour cancellation notice is required in all cases. The party(ies) responsible for the cancellation shall be liable for any cancellation fees.

(2) (3) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. The requesting party shall pay the cost of such transcript or copy thereof that the party orders and this cost shall include the cost of an original for the Office of Administrative Hearings. Cost shall be determined under supervision of the Chief Administrative Law Judge who, in cases deemed appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party which submitted it.

Statutory Authority G.S. 150B-37.

.0026 ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION

(a) Except as provided in 26 NCAC 3 .0030, an administrative law judge shall issue a recommended decision or order in a contested case within 45 days after the later of the date the administrative law judge receives all proposed findings of fact and written arguments submitted by the parties and the date the contested case hearing ends. The administrative law judge shall serve a copy of the decision on each party. Service shall be in the manner specified in 26 NCAC 3 .0009(b). When an administrative law judge issues a recommended decision, the Office of Administrative Hearings shall promptly forward the official record in the case to the agency making the final decision.

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

- (1) competent evidence and arguments presented during the hearing and made a part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed;

- (4) proposed findings of fact and written arguments submitted by the parties under G.S. 150B-34(b); and
 - (5) other items in the official record that are not excluded by G.S. 150B-29(b).
- (c) A recommended decision shall fully dispose of all issues required to resolve the case and shall contain:
- (1) an appropriate caption;
 - (2) the appearances of the parties;
 - (3) a statement of the issues;
 - (4) references to specific statutes or rules at issue;
 - (5) findings of fact;
 - (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or federal regulations;
 - (7) in the discretion of the administrative law judge, a memorandum giving reasons for his findings of fact and conclusions of law;
 - (8) a statement identifying the agency that will make the final decision; and
 - (9) a statement that each party has the right to file exceptions to the recommended decision with the agency making the final decision and has the right to present writ-

ten arguments on the decision to the agency making the final decision.

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

Statutory Authority G. S. 150B-34.

.0030 FINAL DECISIONS IN CONTESTED CASES

An administrative law judge shall enter a final decision in a contested case:

- (1) When he determines that the Office of Administrative Hearings lacks jurisdiction;
- (2) When he dismisses a case based on the authority in G.S. 1A-1 or in this Chapter;
- (3) When he determines that a rule is void as applied and there are no issues of fact to be determined; or
- (4) In deferred cases as provided in G.S. 7A-759.

Statutory Authority G.S. 7A-759(e); 150B-33(b)(9)(10); 150B-36.

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 7 - SALES AND USE TAX

SUBCHAPTER 7B - STATE SALES AND USE TAX

**SECTION .0800 - ADJUSTMENTS:
REPLACEMENTS; ALTERATIONS AND
INSTALLATION SALES**

.0803 CABINETMAKERS

(a) Cabinetmakers who fabricate and sell cabinets to homeowners, contractors and others for use in this state are liable for collecting and remitting the three percent state and two percent local sales or use tax on the sales price of such property, including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Any cost of labor or services rendered in installing or affixing such property when separately stated on sales invoices given to customers at the time of sale shall not be included as a part of the sales price.

(b) Cabinetmakers who, pursuant to a construction or performance-type contract with or for the benefit of the owner of real property, install or affix tangible personal property, including cabinets, in or to real property are liable for tax on the cost or purchase price of materials and other such property used in performing the contract.

History Note: Statutory Authority

*G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1988.*

**SECTION .1100 - SALES OF BULK TOBACCO
BARNs; FARM MACHINES AND MACHINERY**

.1122 RIGHT-OF-WAY EQUIPMENT

Sales of tractors and bush-cutting equipment to power companies, railroad companies, counties, cities, and contractors for use in cutting and maintaining rights-of-way are subject to the three percent rate of tax.

*History Note: Statutory Authority
G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1988.*

**SECTION .3500 - MACHINISTS;
FOUNDRYMEN; AND PATTERN MAKERS**

.3502 MOLDS; DIES; MILL MACHINERY

Sales of molds, patterns or dies by machinists, foundrymen, pattern makers or others to manufacturing industries and plants for their use as mill machinery or mill machinery parts and accessories are subject to the one percent state rate of sales or use tax with an eighty dollar (\$80.00) maximum tax per article. Sales of molds, patterns or dies to other users or consumers in this state are subject to the three percent state and two percent local sales or use tax.

*History Note: Statutory Authority
G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1988.*

**.3505 MOLDS; DIES; NONMANUFACTURERS'
USE**

Manufacturers making retail sales of molds, patterns or dies to nonmanufacturing users or consumers within and without this state, with right of possession and title thereto passing to such customers, are liable for collecting and remitting the three percent state and two percent local tax on such sales, when the manufacturers selling the molds, patterns or dies retain them in their possession within this state for use in manufacturing tangible personal property for sale to such customers.

*History Note: Statutory Authority
G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1988.*

LIST OF RULES AFFECTED

NORTH CAROLINA ADMINISTRATIVE CODE

EFFECTIVE: September 1, 1988

AGENCY	ACTION TAKEN
<u>DEPARTMENT OF COMMERCE</u>	
4 NCAC 2R .0820	Amended
3B .0104	Repealed
.0204	Amended
7 .0504	Amended
<u>DEPARTMENT OF CORRECTION</u>	
5 NCAC 2G .0301 - .0303	Amended
.0304 - .0313	Adopted
<u>GOVERNOR'S OFFICE</u>	
9 NCAC 2 Executive Order Number 74	
Eff. April 27, 1988	
Executive Order Number 75	
Eff. August 12, 1988	
<u>DEPARTMENT OF HUMAN RESOURCES</u>	
10 NCAC 26G .0511	Amended
43L .0201	Amended
<u>DEPARTMENT OF INSURANCE</u>	
11 NCAC 1 .0103	Amended
.0404	Repealed
.0406	Repealed
<u>DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT</u>	
15 NCAC 1B .0204	Amended
2C .0118	Amended
211 .0114	Amended
2I .0302	Amended
3B .0102	Amended
.0105	Amended
.0308	Amended
.0401	Amended
.0404	Amended
.0501	Amended
.0504	Amended
.0701	Amended
.0801	Amended
.0901	Amended
.0905	Amended
.1109	Amended
.1504	Amended
3C .0203	Amended
6B .0003	Amended
711 .0104	Amended
.0208	Amended

LIST OF RULES AFFECTED

		.0405	Amended
		.1505	Amended
	7B	.0405	Amended
	7J	.0402	Amended
	12B	.0101	Amended
		.0302	Amended
	13L	.0907	Temp. Amended Expires 02-15-89
	22A	.0001	Amended

SECRETARY OF STATE

18	NCAC	1	.0101	Amended
			.0102	Repealed
			.0201 - .0203	Repealed
			.0301 - .0302	Repealed
		2	.0101	Repealed
			.0103	Amended
			.0105	Amended
			.0201	Amended
		3	.0101	Amended
			.0102 - .0103	Repealed
			.0602	Amended
			.0701	Amended
		4	.0101	Amended
			.0402	Amended
		5	.0101	Amended
			.0203	Amended
			.0207	Amended

DEPARTMENT OF STATE TREASURER

20	NCAC	7	.0102 - .0103	Amended
			.0105 - .0106	Amended
			.0107	Adopted
			.0202	Amended
			.0304	Amended
			.0501 - .0502	Amended
			.0504	Amended
			.0505	Adopted

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21	NCAC	8A	.0308	Adopted
		8F	.0302	Amended
			.0401	Amended
		8G	.0107	Amended
			.0401	Amended
			.0407	Amended
		8J	.0006	Amended

BOARD FOR CONTRACTORS

21	NCAC	12	.0606	Repealed
			.0816	Repealed
			.0817 - .0819	Adopted
			.0821	Adopted
			.0824	Adopted
			.0828 - .0830	Adopted

LIST OF RULES AFFECTED

BOARD OF COSMETIC ART EXAMINERS

21 NCAC 14C .0503 Amended

BOARD OF DENTAL EXAMINERS

21 NCAC 16A .0001 Amended
16H .0104 Amended

BOARD OF LANDSCAPE ARCHITECTS

21 NCAC 28 .0102 Repealed
.0103 Amended
.0104 - .0105 Repealed
.0106 - .0107 Amended
.0202 Repealed
.0205 Amended
.0206 Repealed
.0301 Amended
.0302 - .0303 Repealed
.0401 Amended

BOARD OF PHARMACY

21 NCAC 46 .2004 Adopted

BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS

21 NCAC 54 .1608 Amended
.2301 Amended
.2602 Adopted

BOARD OF REFRIGERATION EXAMINERS

21 NCAC 60 .0207 Amended

COMMUNITY COLLEGES

23 NCAC 2C .0208 Adopted
2D .0204 Amended
.0323 - .0324 Amended
.0325 - .0327 Adopted
2E .0303 Amended
.0305 Adopted

HOUSING FINANCE AGENCY

24 NCAC 1K .0601 - .0605 Adopted
1M .0101 Adopted

OFFICE OF STATE PERSONNEL

25 NCAC 1J .0610 - .0611 Amended
2D .0301 Temp. Amended
Expires 02-20-89

LIST OF RULES AFFECTED

[In accordance with G.S. 150B-59(c) the following rules were Repealed Eff. July 16, 1988.]

DEPARTMENT OF ADMINISTRATION

1 NCAC 33 .1204

DEPARTMENT OF COMMERCE

4	NCAC	1B	.0109 - .0110	Departmental Rules
		2R	.0803 - .0804	ABC Commission
		5B	.0201 - .0203	Cemetery Commission
			.0206	
		6B	.0102 - .0104	Credit Union
		8	.0103 - .0106	Rural Electrification Authority
			.0402 - .0403	
			.0405	
		12D	.0020 - .0030	Energy Division
		14A	.0005 - .0006	Economic Development
		15	.0029	Navigation and Pilotage
		17	.0201 - .0202	Seafood Industrial Park

DEPARTMENT OF JUSTICE

12	NCAC	1	.0105	Departmental Rules
		2H	.0202	Torrens Act Rules
		3B	.0202 - .0203	SBI
			.0301	
		4C	.0204	Police Information Network
		8	.0101 - .0102	General Statutes Commission
			.0106 - .0108	

DEPARTMENT OF PUBLIC INSTRUCTION

16 NCAC 1 .0002

OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 2A .0601 - .0602

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration, Department of
2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

CHAPTER	LICENSING BOARDS
2	Architecture, Board of
4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Martial & Family Therapy Certification Board
32	Medical Examiners, Board of
33	Midwifery Joint Committee
34	Mortuary Science, Board of
36	Nursing, Board of
37	Nursing Home Administrators, Board of
38	Occupational Therapists, Board of
40	Opticians, Board of
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
60	Refrigeration Examiners, Board of
62	Sanitarian Examiners, Board of
63	Social Work, Certification Board for
64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

CUMULATIVE INDEX

CUMULATIVE INDEX
(April 1988 - March 1989)

1988 - 1989

Pages	Issue
1 - 25.....	1 - April
26 - 108.....	2 - April
109 - 118.....	3 - May
119 - 145.....	4 - May
146 - 184.....	5 - June
185 - 266.....	6 - June
267 - 294.....	7 - July
295 - 347.....	8 - July
348 - 400.....	9 - August
401 - 507.....	10 - August
508 - 523.....	11 - September
524 - 593.....	12 - September

- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- E - Errata
- FO - Executive Order
- FDL - Final Decision Letters
- FR - Final Rule
- GS - General Statute
- JO - Judicial Orders or Decision
- LRA - List of Rules Affected
- M - Miscellaneous
- NP - Notice of Petitions
- PR - Proposed Rule
- SO - Statements of Organization
- TR - Temporary Rule

ADMINISTRATION

- Administrative Analysis Division, 447 PR
- Auxiliary Services, 270 PR
- Departmental Rules, 270 PR
- State Construction, 187 PR
- Youth Advocacy and Involvement Office, 148 PR

ADMINISTRATIVE HEARINGS

- General, 579 PR
- Hearings Division, 76 PR, 581 PR
- Rules Division, 580 PR

ADMINISTRATIVE ORDER

- Administrative Order, 369 AO

AGRICULTURE

Food and Drug Protection Division, 271 PR
N.C. Pesticide Board, 524 PR
N.C. State Fair, 451 PR
Plant Industry, 453 PR
Standards Division, 452 PR
Structural Pest Control Committee, 296 PR

COMMERCE

Alcoholic Beverage Control Commission, 276 PR
Milk Commission, 120 PR, 190 PR

COMMUNITY COLLEGES

Community Colleges, 287 PR, 557 PR

CORRECTION

Division of Prisons, 490 FR

CRIME CONTROL AND PUBLIC SAFETY

Alcohol Law Enforcement, 47 PR

ELECTIONS

State Board of Elections, 120 PR

EXECUTIVE ORDERS

Executive Orders 68 - 71, 1 EO
72, 119 EO
73, 146 EO
74 - 75, 508 EO

FINAL DECISION LETTERS

Voting Rights Act, 5 FDL, 26 FDL, 185 FDL, 267 FDL, 295 FDL, 370 FDL, 401 FDL, 511 FDL

GENERAL STATUTES

Chapter 7A, 348 GS
Chapter 143B, 350 GS
Chapter 150B, 352 GS

HUMAN RESOURCES

Division of Aging, 229 PR
Drug Commission, 113 FR
Facility Services, 455 PR, 524 PR
Health Services, 7 PR, 220 PR, 296 PR
Medical Assistance, 7 PR, 30 PR, 109 PR, 121 PR, 237 PR, 303 PR, 461 PR
Mental Health: General, 457 PR, 530 PR
Mental Health: Other Programs, 530 PR
Mental Health: Hospitals, 459 PR
Office of the Secretary, 31 PR
Social Services Commission, 27 PR, 531 PR
Vocational Rehabilitation Services, 371 PR

INDEPENDENT AGENCIES

Housing Finance, 21 PR, 134 PR, 255 PR, 518 PR

INSURANCE

Agent Services, 238 PR
Company Operations Division, 470 PR
Fire and Casualty Division, 32 PR, 461 PR
Fire and Rescue Services Division, 122 PR, 149 PR

Life: Accident and Health Division, 534 PR

JUSTICE

Criminal Justice Education and Training Standards, 304 PR
Private Protective Services, 303 PR

LICENSING BOARDS

Cosmetic Art Examiners, 283 PR, 473 PR
CPA, 73 PR, 472 PR
Examiners of Electrical Contractors, 151 PR
Hearing Aid Dealers, 77 FR
Nursing, 376 PR, 477 PR
Podiatry Examiners, 377 PR

LIST OF RULES AFFECTED

April 1, 1988, 102 LRA
May 1, 1988, 137 LRA
June 1, 1988, 260 LRA
July 1, 1988, 335 LRA
August 1, 1988, 496 LRA
September 1, 1988, 585 LRA

NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Coastal Management, 11 PR, 67 PR, 254 PR, 281 PR
Community Assistance, 69 PR, 555 PR
Division of Economic Opportunity, 556 PR
Environmental Management, 241 PR, 278 PR
Forest Resources, 68 PR
Marine Fisheries, 62 PR
Soil and Water Conservation, 111 PR
Wildlife Resources and Water Safety, 111 PR, 282 PR, 470 PR, 513 PR, 555 PR

REVENUE

License and Excise Tax, 113 FR
Motor Fuels Tax, 258 FR
Sales and Use Taxes, 386 FR, 584 FR

SECRETARY OF STATE

Securities Division, 125 PR

STATE PERSONNEL

State Personnel Commission, 135 PR, 333 PR, 559 PR

STATE TREASURER

Escheats and Abandoned Property, 328 PR
Local Government Commission, 18 PR
Retirement Systems, 513 PR

STATEMENTS OF ORGANIZATION

Statements of Organization, 403 SO

TRANSPORTATION

Division of Motor Vehicles, 172 FR, 258 FR

NOW AVAILABLE

NORTH CAROLINA ADMINISTRATIVE CODE

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 starting January 1, 1989.

PRICE LIST FOR THE 1987-88 SUBSCRIPTION YEAR

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
1 - 52	Full Code		All titles	\$750.00	_____	_____
1	1	1 - 37	Administration	90.00	_____	_____
2	2	1 - 24	Agriculture	75.00	_____	_____
3	2	25 - 52	Agriculture	75.00	_____	_____
4	3	1 - 4	Auditor	10.00	_____	_____
5	4	1 - 2	Commerce (includes ABC)	45.00	_____	_____
6	4	3 - 17	Commerce	90.00	_____	_____
7	5	1 - 2	Corrections	60.00	_____	_____
8	5	3 - 4	Corrections	30.00	_____	_____
9	6	1 - 4	Council of State		_____	_____
	7	1 - 11	Cultural Resources	60.00	_____	_____
10	8	1 - 9	Elections	10.00	_____	_____
11	9	1 - 4	Governor	45.00	_____	_____
12	10	1 - 2	Human Resources	30.00	_____	_____
13	10	3A - 3K	Human Resources	90.00	_____	_____
14	10	3L - 3R	Human Resources (includes CON)	45.00	_____	_____
15	10	3S - 3U	Human Resources	30.00	_____	_____
16	10	4 - 6	Human Resources	30.00	_____	_____
17	10	7	Human Resources (includes Breathalyzer)	30.00	_____	_____
18	10	8 - 9	Human Resources	60.00	_____	_____
19	10	10	Human Resources	90.00	_____	_____
20	10	11 - 14	Human Resources	60.00	_____	_____
21	10	15 - 17	Human Resources	45.00	_____	_____
22	10	18	Human Resources	75.00	_____	_____
23	10	19 - 30	Human Resources	90.00	_____	_____
24	10	31 - 33	Human Resources	30.00	_____	_____
25	10	34 - 41	Human Resources	60.00	_____	_____
26	10	42	Human Resources	45.00	_____	_____
27	10	43 - 50	Human Resources	90.00	_____	_____
28	11	1 - 15	Insurance	90.00	_____	_____

Continued

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
29	12	1 - 12	Justice	90.00		
30	13	1 - 6	Labor	30.00		
31	13	7	OSHA	45.00		
32	13	8 - 15	Labor	45.00		
33	14A	1 - 11	Crime Control and Public Safety	45.00		
34	15	1 - 2	NRCD (includes EMC)	90.00		
35	15	3 - 6	NRCD	45.00		
36	15	7	Coastal Management	45.00		
37	15	8 - 9	NRCD	30.00		
38	15	10	Wildlife	45.00		
39	15	11 - 22	NRCD	60.00		
40	16	1 - 6	Education	30.00		
41	17	1 - 6	Revenue	75.00		
42	17	7 - 11	Revenue	60.00		
43	18	1 - 7	Secretary of State	30.00		
44	19	1 - 6	Transportation	90.00		
45	20	1 - 9	Treasurer	45.00		
46	21	1 - 16	Licensing Boards	75.00		
47	21	17 - 37	Licensing Boards	75.00		
48	21	38 - 70	Licensing Boards			
	22	1 - 2	Administrative Procedures	75.00		
49	23	1 - 2	Community Colleges	10.00		
50	24	1	Housing Finance	10.00		
51	25	1	State Personnel	60.00		
52	26	1 - 4	Administrative Hearings	10.00		
				Total		

(Make checks payable to Office of Administrative Hearings.)

* This price includes the title in its current form plus supplementation for the subscription year.

Subscription years are January 1 through December 31.

MAIL TO:

OFFICE OF ADMINISTRATIVE HEARINGS
 POST OFFICE DRAWER 11666
 RALEIGH, NORTH CAROLINA 27604

Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, North Carolina 27604

PLACE
STAMP
HERE

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

- Please enter my subscription for the *North Carolina Register* to start with the _____ issue (\$95.00)/year subscription)
- Renew *North Carolina Register*
- Check Enclosed Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

(Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS:

1. Present Address

NAME

ADDRESS

CITY

STATE

ZIP

2. New Address

NAME

ADDRESS

CITY

STATE

ZIP

Office of Administrative Hearings
P. O. Drawer 11666
Raleigh, North Carolina 27604

FIRST CLASS

612
UNIV. OF NORTH CAROLINA
AT CHAPEL HILL LIB.
VAN HECKE-WETTACH BLDG. 064 A
CHAPEL HILL NC 27514