

*The*  
**NORTH CAROLINA  
REGISTER**

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**ISSUE DATE: AUGUST 15, 1989**

**Volume 4 • Issue 10 • Pages 522-584**



# 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 one hundred and five dollars (\$105.00) 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 1 page 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.

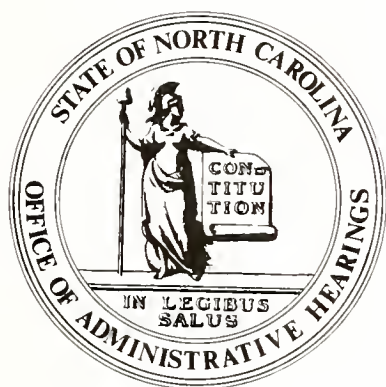
## CITATION TO THE NORTH CAROLINA REGISTER

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

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# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
*Publication Deadlines and Schedules*  
 (January 1989 - May 1990)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
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
04/03/89	03/10/89	03/17/89	05/03/89	08/01/89
04/14/89	03/23/89	03/31/89	05/14/89	08/01/89
05/01/89	04/10/89	04/17/89	05/31/89	09/01/89
05/15/89	04/24/89	05/01/89	06/14/89	09/01/89
06/01/89	05/10/89	05/17/89	07/01/89	10/01/89
06/15/89	05/24/89	06/01/89	07/15/89	10/01/89
07/03/89	06/12/89	06/19/89	08/01/89	11/01/89
07/14/89	06/22/89	06/29/89	08/13/89	11/01/89
08/01/89	07/11/89	07/18/89	08/31/89	12/01/89
08/15/89	07/25/89	08/01/89	09/14/89	12/01/89
09/01/89	08/11/89	08/18/89	10/01/89	01/01/90
09/15/89	08/24/89	08/31/89	10/15/89	01/01/90
10/02/89	09/11/89	09/18/89	11/01/89	02/01/90
10/16/89	09/25/89	10/02/89	11/15/89	02/01/90
11/01/89	10/11/89	10/18/89	12/01/89	03/01/90
11/15/89	10/24/89	10/31/89	12/15/89	03/01/90
12/01/89	11/07/89	11/15/89	12/31/89	04/01/90
12/15/89	11/22/89	12/01/89	01/14/90	04/01/90
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
01/16/90	12/20/89	12/29/89	02/15/90	05/01/90
02/01/90	01/10/90	01/18/90	03/03/90	06/01/90
02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90

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

## *EXECUTIVE ORDER*

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### **EXECUTIVE ORDER NUMBER 94**

#### **REISSUANCE OF EXECUTIVE ORDER NUMBER 15 AND EXTENSION OF EXECUTIVE ORDER NUMBER 71**

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

Executive Order Number 15 as amended by Executive Order Number 59 established the Ju-

venile Justice Planning Commission. Those orders are hereby reissued effective July 1, 1989. They shall remain in effect until June 30, 1993.

Executive Order Number 71 established the Governor's Task Force on Rail Passenger services. The expiration date of that Order is hereby extended until December 30, 1991.

Done in Raleigh, North Carolina this 14th day of July 1989.

**VOTING RIGHTS ACT FINAL DECISION LETTER**

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

U.S. Department of Justice  
Civil Rights Division

JPT:MAP:ST:gmh  
DJ 166-012-3  
Y6655  
Y7515

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

July 24, 1989

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

Dear Mr. Holec:

This refers to two annexations (adopted May 1, 1989) to the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on May 24 and June 9, 1989.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine this submission if additional information that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Barry H. Weinberg  
Acting Chief, Voting Section

*[The following Statements of Organization were submitted to the Director of the Office of Administrative Hearings for publication pursuant to G.S. 150B-10 and 26 NCAC 2B .0102.]*

**NORTH CAROLINA DEPARTMENT OF  
AGRICULTURE**

Blue Ridge Road Center  
Raleigh, NC 27611  
Telephone: (919) 733-2657

The North Carolina Department of Agriculture is a statutorily created agency G.S. 106-2, within the executive branch of the state government. The Commissioner of Agriculture, a statewide elected official as provided for in Article III, Section 7(1) of the North Carolina Constitution, is the head of the Department of Agriculture and is a member of the Council of State. The Department of Agriculture is organized into thirteen divisions. A number of boards and commissions are administratively located in the Department.

**A. Departmental Divisions:**

**1) Agricultural Statistics**

The Agricultural Statistics Division is responsible for collecting, preparing, and disseminating regular series of official crop, livestock and price estimates along with other statistics relative to agriculture in North Carolina and the nation.

Mailing Address:  
Agricultural Statistics Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7293

**2) Agronomic Services**

The Agronomic Services Division performs laboratory analysis of soil and plant samples for farmers and homeowners. Tests determine the fertility of soil and the nutrient quantity and balance of plants through tissue analysis. Nematodes are quantified from soil and plant root samples and diseases are diagnosed. Fertilizer application and nematode management recommendations are made based on test results. Growers are assisted in the field with problem diagnosis and optimum crop production strategies by Regional Agronomists.

Mailing Address:  
Agronomic Services Division  
N. C. Department of Agriculture

**3) Food Distribution**

The Food Distribution Division operates in cooperation with the USDA to provide food at no cost for distribution to schools of high school grade or under, charitable institutions and needy persons. It is the responsibility of this division to requisition, store, and deliver the food.

Mailing Address:  
Food Distribution Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7661

**4) Food and Drug Protection**

The Food and Drug Protection Division assures consumers that foods, feeds, drugs, cosmetics, pesticides, and automotive antifreezers are safe, wholesome and properly labeled. Statewide inspections and chemical analyses offer protection against unsafe, deceptive and fraudulent products. Annual registration of pesticides offered for sale within North Carolina and pesticide applicator licensing and certification is administered by the Pesticide Section.

Mailing Address:  
Food and Drug Protection Division  
N. C. Department of Agriculture  
4000 Reedy Creek Road  
Raleigh, NC 27607  
Telephone: (919) 733-7366

Mailing Address:  
Pesticide Section  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3556

**5) Marketing**

The Marketing Division promotes the sale of North Carolina agricultural products, reports farm prices on major commodities and determines and certifies the official grade of farm products. The Marketing Division also organizes special livestock sales, arranges buyer-seller contacts, provides marketing advice and assistance to producers, processors and handlers and administers the N. C. Egg Law and the Farm Products marketing and branding law. Regional Farmers Markets in Raleigh, Charlotte and Asheville are also operated by the Marketing Division.

Mailing Address:  
Marketing Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7887

6) Museum of Natural Sciences

The Museum of Natural Sciences Division maintains collections and disseminates knowledge concerning the natural history (flora, fauna, minerals, fossils and ecology) of North Carolina through (1) temporary and permanent exhibits; (2) systematic collections and data files in the charge of taxonomic specialists trained to solve problems of identification and classification; (3) ecological and other field studies of southeastern biota; (4) educational services including teacher education programs, vocational training, curriculum and program development, classes, lectures and preparation of popular and educational materials on natural history topics; (5) publication of natural history books, papers, articles, pamphlets, and similar materials; and (6) operation of the N. C. Maritime Museum.

Mailing Address:  
Museum of Natural Sciences Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7450

Mailing Address:  
N. C. Maritime Museum  
N. C. Department of Agriculture  
315 Front St.  
Beaufort, NC 28516  
Telephone: (919) 728-7317

7) North Carolina State Fair

The North Carolina State Fair Division is responsible for the annual North Carolina State Fair in October. During non-Fair time, the North Carolina State Fair rents various Fair Facilities to the general public for special events.

Mailing Address:  
North Carolina State Fair Division  
N. C. Department of Agriculture  
1025 Blue Ridge Blvd.  
Raleigh, NC 27607  
Telephone: (919) 733-2145

8) Plant Industry

The Plant Industry Division performs fertilizer and seed examinations to check for accuracy in labeling and product quality. The Division also administers plant pest laws and the Plant Protection and Conservation Act.

Mailing Address:  
Plant Industry Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3930

9) Public Affairs

The Public Affairs Division is responsible for disseminating pertinent information to the public through news releases and other media contacts. The division is also responsible for publishing "Agriculture Review." Media questions may be directed to the Division, and they will be channeled to the proper individual if further expertise is required.

Mailing Address:  
Public Affairs Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-4216

10) Research Stations

Fifteen research stations and four state farms comprise the Research Stations Division of the Department of Agriculture. The research stations cooperate with scientists at the land-grant universities to develop new agronomic products and trends, working in conventional crops but

also working in crops new to the State. Research is also conducted on the state farms, whose primary purpose is to produce food for state institutions.

Mailing Address:  
Research Stations Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3236

#### 11) Standards

The Standards Division administers the weights and measures program which includes the verification of the accuracy of commercial weighing and measuring devices and the inspection of packaged items for compliance with net contents statements. The Division also tests petroleum products and inspects LP Gas installations.

Mailing Address:  
Standards Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3313

#### 12) Structural Pest Control

The Structural Pest Control Division is responsible for licensing commercial pest control operators within North Carolina. It is also the responsibility of the Division to inspect the quality of work performed by licensed operators, and to enforce pesticide safety requirements.

Mailing Address:  
Structural Pest Control Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-6100

#### 13) Veterinary

The Veterinary Division monitors all animal disease outbreaks and administers animal health programs in North Carolina. The Division also provides veterinary diagnostic services and animal health inspections. All processing and slaughter facilities in the State are inspected by the Division to insure cleanliness of the operation and wholesomeness of the finished product. The

Division also regulates dog and cat dealers under the Animal Welfare Act.

Mailing Address:  
Veterinary Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7601

Mailing Address:  
Rollins Diagnostic Laboratory  
2101 Blue Ridge Road  
P. O. Box 12223,  
Cameron Village Station  
Raleigh, NC 27605  
Telephone: (919) 733-3986

#### B. Boards and Commissions

##### 1) North Carolina Agricultural Hall of Fame Board of Directors

The North Carolina Agricultural Hall of Fame Board of Directors was created by G.S. 106-568.14. The eight-member Board of Directors is composed of the Commissioner of Agriculture, the Director of the North Carolina Extension Service, the State Supervisor of Vocational Agriculture, the President of the North Carolina Farm Bureau, and the Master of the State Grange, as ex officio members, and three members appointed by the Governor.

The Board of Directors is authorized to adopt rules and regulations which govern the acceptance and admission of candidates to the North Carolina Agricultural Hall of Fame Rules promulgated by the Board are codified in 2 NCAC 31.

Mailing Address:  
Public Affairs Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-4216

##### 2) Board of Agriculture

The Board of Agriculture was created by G.S. 106-2. The eleven-member Board of Agriculture is composed of the Commissioner of Agriculture, an ex officio member who serves as the Board's

Chairman, and ten members appointed by the Governor.

The Board of Agriculture is a policymaking body with respect to the improvement of agriculture and a rulemaking body with respect to all programs administered by the Department of Agriculture, exclusive of Pesticides, Plant Conservation, Gasoline and Oil Inspection and Structural Pest Control promulgated by the Board are codified in 2 NCAC.

Mailing Address:  
Secretary, Board of Agriculture  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7125

3) Board of Crop Seed Improvement

The Board of Crop Seed Improvement was created by G.S. 106-269. The Board promotes the development and distribution of pure strains of crop seed to North Carolina farmers. The Board is authorized to adopt rules and regulations which relate to the certification of pure crop seeds. Rules promulgated by the Board are codified in 2 NCAC 29.

Mailing Address:  
Board of Crop Seed Improvement  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3930

4) State Farm Operations Commission

The State Farm Operations Commission was created by G.S. 106-26.13. The seven-member Committee develops policies for the use and operation of the State Farm Units.

Mailing Address:  
State Farm Operations Commission  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3236

5) Gasoline and Oil Inspection Board

The Gasoline and Oil Inspection Board was created by G.S. 119-26. The five-member Board

is composed of the Commissioner of Agriculture, the Director of the Standards Division and three members appointed by the Governor. The Board is authorized to adopt rules and regulations which govern the quality, labeling, transportation and inspection of liquid motor fuels, kerosene and other heating oils. Rules promulgated by the Board are codified in 2 NCAC 42.

Mailing Address:  
Standards Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3313

6) North Carolina Public Livestock Market Advisory Board

The North Carolina Public Livestock Market Advisory Board was created by G.S. 106-407.1. The eight-member Board serves in an advisory capacity to the Commissioner of Agriculture and the Board of Agriculture on issues which relate to the livestock markets and proposes rule changes related to this area. The Board also is required to attend any hearing for a license to operate a public livestock market.

Mailing Address:  
Veterinary Division  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7601

7) Advisory Commission for the Museum of Natural Sciences

The Advisory Commission for the Museum of Natural Sciences was created by G.S. 143-370. The nine-member Commission establishes policies for the Museum and works to promote and develop the Museum and its resources.

Mailing Address:  
Museum of Natural Sciences  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7430

8) Structural Pest Control Committee

The Structural Pest Control Committee was created by G.S. 106-65.23. The five-member Committee is authorized to adopt rules to regulate Structural Pest Control activities. The Committee is an occupational licensing board for Structural Pest Control operators in North Carolina. Rules promulgated by the Committee are codified in 2 NCAC 34. The Committee has the authority to assess civil penalties and to deny, revoke, suspend or modify the license, certified applicator's card or identification card of any person adjudged to have violated the Law or regulations.

Mailing Address:  
Secretary,  
Structural Pest Control Committee  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-6100

9) North Carolina Pesticide Board

The Pesticide Board was created by G.S. 143-436. The seven-member Board is authorized to adopt rules and regulations which govern the non-structural application, sale, disposal, and registration of pesticides and the licensing and certification of pesticide applicators. The Board is an occupational licensing board with respect to commercial pesticide applicators and private pesticide applicators.

Rules promulgated by the Board are codified in 2 NCAC 9L. The Board has the authority to access civil penalties and to suspend, revoke, deny or modify the licenses of persons adjudged to have violated the Law or regulations.

Mailing Address:  
Secretary,  
North Carolina Pesticide Board  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3556

10) Pesticide Advisory Committee

The Pesticide Advisory Committee was created by G.S. 143-439. The nineteen-member Committee is appointed by the Pesticide Board. The Committee serves in an advisory capacity to the Commissioner of Agriculture and the Pesticide Board on technical questions submitted to it and

the development of rules and regulations which relate to pesticides.

Mailing Address:  
Pesticide Advisory Committee  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-3556

11) North Carolina Plant Conservation Board

The North Carolina Plant Conservation Board was created by G.S. 106-202.14. Four members of the seven-member Board are appointed by the Governor and the remaining members are appointed by the Commissioner of Agriculture. The Board is authorized to adopt rules and regulations which classify plant species as either endangered, threatened or of special concern when necessary, and regulate the handling of classified plants. Rules promulgated by the Board are codified in 2 NCAC 10.

Mailing Address:  
Plant Protection Section  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-6930

12) North Carolina Plant Conservation Scientific Committee

The North Carolina Plant Conservation Scientific Committee was created by G.S. 106-202.17. The ten-member Committee serves in an advisory capacity to the North Carolina Plant Conservation Board on matters relating to plant species classified as either endangered, threatened or of special concern.

Mailing Address:  
Plant Protection Section  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-6930

13) North Carolina Agricultural Finance Authority

The North Carolina Agricultural Finance Authority was created by G.S. 122D-4. The ten-member Finance Authority is empowered to

provide capital and credit at interest rates within the financial means of persons and businesses engaged in agriculture and agricultural exports.

Mailing Address:  
Secretary, North Carolina  
Agricultural Finance Authority  
North Carolina Department of  
Agriculture  
Suite 406  
19 W. Hargett Street  
Raleigh, NC 27601  
Telephone: (919) 733-0635

14) North Carolina Grape Growers Council

The North Carolina Grape Growers Council was created by G.S. 106-750. The eleven-member Council is appointed by the Commissioner of Agriculture. The Council promotes the growth and development of North Carolina's grape and wine industry.

Mailing Address:  
Secretary, North Carolina  
Grape Growers Council  
Markets Division  
North Carolina Department of  
Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7136

15) Rural Rehabilitation Corporation Board of Directors

The Rural Rehabilitation Corporation Board of Directors was created by G.S. 137-31.3. The nine-member Board acts as the governing body of the North Carolina Rural Rehabilitation Corporation which serves as a social and financial instrumentality in assisting to rehabilitate farm families by enabling them to secure subsistence and gainful employment from the soil.

Mailing Address:  
Secretary, Rural Rehabilitation  
Corporation  
Fiscal Management Division  
North Carolina Department of  
Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-2113

16) Northeastern North Carolina Farmers Market Commission

The Northeastern North Carolina Farmers Market Commission was created by G.S. 106-720. The nine-member Commission is empowered to establish a farmers market in northeastern North Carolina that will facilitate the sale and marketing of agricultural commodities produced in the area. The Commission also serves in an advisory capacity to the Commissioner of Agriculture on the operation of the market.

Mailing Address:  
Chairman, Northeastern North  
Carolina Farmers Market Commission  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7125

17) Northeastern Farmers Market Advisory Board

The Northeastern Farmers Market Advisory Board was created by G.S. 106-721. The Board consists of one member from each of the counties served by the Northeastern North Carolina Farmers Market, appointed by the Commissioner of Agriculture. The Board serves in an advisory capacity to the Northeastern North Carolina Farmers Market Commission.

Mailing Address:  
Secretary, Northeastern Farmers  
Market Advisory Board  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7125

18) Southeastern North Carolina Farmers Market Commission

The Southeastern North Carolina Farmers Market Commission was created by G.S. 106-727. The nine-member Commission is empowered to establish a farmers market in southeastern North Carolina that will facilitate the sale and marketing of agricultural commodities produced in the area. The Commission also serves in an advisory capacity to the Commissioner of Agriculture on the operation of the market.

**Mailing Address:**

Chairman, Southeastern North Carolina  
Farmers Market Commission  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7125

**19) Southeastern Farmers Market Advisory  
Board**

The Southeastern Farmers Market Advisory Board was created by G.S. 106-728. The Board consists of one member from each of the counties served by the Southeastern North Carolina Farmers Market, appointed by the Commissioner of Agriculture. The Board serves in an advisory capacity to the Southeastern North Carolina Farmers Market Commission.

**Mailing Address:**

Secretary, Southeastern Farmers  
Market Advisory Board  
N. C. Department of Agriculture  
P. O. Box 27647  
Raleigh, NC 27611  
Telephone: (919) 733-7125

**NORTH CAROLINA DEPARTMENT OF  
NATURAL RESOURCES AND  
COMMUNITY DEVELOPMENT**

P.O. Box 27687  
512 N. Salisbury Street  
Raleigh, North Carolina 27611  
(919) 733-4984

The North Carolina Department of Natural Resources and Community Development is a principal State department in the executive branch of North Carolina government authorized by Article III, Section II of the North Carolina Constitution.

The Department has three primary duties:

- (1) To provide for the management and protection of the State's natural resources and environment;
- (2) To promote and assist in the orderly development of North Carolina counties and communities; and
- (3) To provide job training and promote employment for economically disadvantaged persons.

The head of the Department is the Secretary who is appointed by the Governor and serves at the pleasure of the Governor.

The Department is organized into twelve divisions as follows:

- (1) coastal management;
- (2) community assistance;
- (3) economic opportunity;
- (4) employment and training;
- (5) environmental management;
- (6) forest resources;
- (7) land resources;
- (8) marine fisheries;
- (9) parks and recreation;
- (10) soil and water;
- (11) water resources; and
- (12) zoological park.

The Wildlife Resources Commission and its staff are responsible to the Department for coordinating and reporting purposes.

A detailed account of each division follows.

**DIVISION OF COASTAL MANAGEMENT**

P.O. Box 27687  
Raleigh, N.C. 27611-7687  
919/733-2293

The Division is responsible for implementing a plan for the protection, preservation, orderly development and management of the coastal area of North Carolina. The Division provides staff support to the Coastal Resources Commission and Coastal Resources Advisory Council created by the Coastal Area Management Act (CAMA) of 1974 (G.S. 113A-100 et seq.). The Division processes major development permits; determines consistency of state and federal grants and projects with the North Carolina Coastal Management Program; prepares guidelines for a local land use planning program in twenty coastal counties; administers grants to local government for planning, permitting and beach access pro-

grams; and acquires and manages coastal and estuarine reserves as natural areas for research, education and preservation.

### ORGANIZATION

Field Services. Field services are provided from four regional district offices located in Elizabeth City, Washington, Morehead City and Wilmington. The Field Services staff handle direct contact with CAMA major development permit applicants, including on-site evaluations of permit applications and the enforcement of CAMA rules. They also provide assistance to local governments on land use plans, beach access projects and the CAMA minor development permit program.

Major Permit Coordination. This section is responsible for securing and reviewing state, federal and public comments on CAMA major development permit applications; drafting proposed decision documents; maintaining permit files; and reviewing federal agency actions, grants, and permit decisions for consistency with North Carolina policies.

Policy Analysis/Technical Services. This section develops and evaluates proposed rules for CAMA implementation, reviews proposed revisions to Area of Environmental Concern designations, and conducts the technical studies necessary to support program operations. The unit also provides public education and public information services, including media contacts, slide presentations, workshops, newsletters, journals, brochures, and related materials.

Coastal Reserves. This section is responsible for the identification, acquisition, and management of critical coastal natural areas to be preserved in a natural state for future research and education. The unit also coordinates research and education activities for acquired sites.

### COASTAL RESOURCES COMMISSION

The Coastal Resources Commission was created to administer the Coastal Area Management Act of 1974. The Commission consists of 15 members appointed by the Governor to represent specified interests.

The Commission is responsible for developing a management program for the coastal area by designating Areas of Environmental Concern in the 20 coastal counties; by adopting policies, standards and guidelines for coastal development

and natural resource protection; and by approving local governments' land use plans (N.C.G.S. 113A-104).

### COASTAL RESOURCES ADVISORY COUNCIL

The Coastal Resources Advisory Council consists of not more than 47 members. The Council assists the Secretary of Natural Resources and Community Development and the Coastal Resources Commission in an advisory capacity on technical questions relating to the development of rules and policies, and other matters arising under the Coastal Area Management Act (N.C.G.S. 113A-105).

### COASTAL RESERVE ADVISORY COMMITTEES

An Advisory Committee has been formed for each fully acquired Coastal Reserve under the Coastal Reserve Program. Each committee includes local officials, scientists, educators, adjacent landowners and site users. Reference of these advisory committees is included in 15 NCAC 70 .0104.

### DIVISION OF COMMUNITY ASSISTANCE

512 N. Salisbury St.  
P.O. Box 27687  
Raleigh, N.C. 27611-7687  
(919) 733-2850

The Division of Community Assistance provides aid to North Carolina's counties and municipalities in the areas of community development, land use, public management, and economic development planning. The Division works to accomplish these goals through administration of the Community Development Block Grant program, Emergency Shelter Grant program, the Main Street program, and through direct technical assistance to local governments.

### ORGANIZATION

Community Development Block Grant Program. The Community Development Block Grant program provides funds for community improvements. Local projects, which must primarily benefit low and moderate income persons, range from housing rehabilitation and neighborhood facilities to the provision of funds for creating or retaining jobs. Local governments apply on a competitive basis for grants in the categories of community revitalization, economic development, housing demonstration, development

planning, urgent needs, and interim assistance. Funds are also available for major disasters under the Urgent Needs category.

Emergency Shelter Grant Program. The Division of Community Assistance has been administering the Emergency Shelter Grant program since it was made available by the federally funded Stewart B. McKinney Homeless Act of 1987. Grant applications are reviewed on a competitive basis and awards are made to local governments who in turn distribute funds to shelters for maintenance, rehabilitation, and services costs.

Main Street Program. The Main Street program builds on a city's historic assets to reverse decline and create a bright diversified economic future in downtown.

The North Carolina Main Street Center of the Division works with local interests, the private sector, and other state agencies to direct available resources to strengthen downtown revitalization efforts in designated Main Street communities.

Local Government Assistance. Through its even regional offices located in Raleigh, Winston-Salem, Washington, Mooresville, Fayetteville, Asheville, and Wilmington, DCA planners and community development specialists assist local governments with a wide range of planning and management needs including land use and management planning, watershed protection planning, growth planning, and strategic and capital improvement planning.

## COMMUNITY DEVELOPMENT COUNCIL

The Community Development Council is responsible for advising the Secretary of NRCD with respect to promoting N.C. community development, with respect to type and effectiveness of planning and management services, and upon any matter the Secretary may refer to it. (G.S. 143B-305)

### DIVISION OF ECONOMIC OPPORTUNITY

Post Office Box 27687  
Raleigh, North Carolina 27611-7687  
(919) 733-2633

The Division of Economic Opportunity is responsible for the effective administration of the federally funded Community Services Block Grant Program and the state funded Community Action Partnership Program. It is also responsible for the administration of any other related

state or federal funds which may become available such as homeless funds and food and nutrition programs.

## ORGANIZATION

Program Operations. The Program Operations section is responsible for the review of grant applications submitted to the Division for funding. In addition this section is responsible for monitoring Division grantees to ensure compliance with all contracts, entered into by the Division.

Planning and Evaluation. This section is responsible for all program planning and evaluation of the Division and its grantees. Duties include drafting grant/funding applications and administrative rules.

### DIVISION OF EMPLOYMENT AND TRAINING

P.O. Box 27687  
Raleigh, NC 27611-7687  
(919) 733-6383 or 1-800-562-6333

The Division of Employment and Training administers federal grants that are awarded to the Governor under federal employment and training legislation, including the Job Training Partnership Act. As the designee of the Governor, the Division promotes efficient management and coordination of job training programs to maximize the benefits of these programs to the citizens of North Carolina and promotes an active, effective partnership between local and state agencies and private business in providing job training. (Stat. Auth. G.S. 143B-276; 20 CFR 626.1.)

## ORGANIZATION

Field Services Section. Oversees the Job Training Partnership Act (JTPA) service delivery areas and state-level contractor program operations to ensure that funds are managed and used correctly and as effectively as possible; provides technical assistance; reviews and resolves audits from subgrantees; and manages property, records, grievances, debt collection, and procurement.

Finance Section. Manages the financial activities associated with the administration of the JTPA and designs and maintains an information system used to assist all levels of management. Conducts follow-up studies on the effectiveness of the training provided in JTPA programs.

Planning and Programs Section. Provides policy and programmatic guidance to service deliv-

ery areas for Title IIA and IIB and state level contractors for the Governor's setasides and Title III programs; provides staff support to the State Job Training Council; develops and maintains a system of performance standards and measures for North Carolina and administers the Rural Service Delivery Area.

#### STATE JOB TRAINING COORDINATING COUNCIL

The State Job Training Coordinating Council is appointed by the Governor and advises the Governor on employment and training issues and recommends policies and strategies for the coordinated use of all of the state's job training resources. The Council recommends the Governor's Goals and Objectives, Coordination Criteria and the plans for the use of JTPA special purpose funds, and the State Plan for Employment and Training Assistance for Dislocated Workers. The Council is also responsible for reviewing local job training plans and the plans of other state agencies providing employment and training services. (Public Law 99-570, Section 122.)

#### RURAL SERVICE DELIVERY AREA PRIVATE INDUSTRY COUNCIL

This council provides policy guidance for, and exercises oversight with respect to all activities under the job training plan for the Rural Service Delivery Area in partnership with units of state and local government, and determines whether or not all employment and training activities in the Rural Service Delivery Area are in compliance with the JTPA. (Public Law 99-570, Section 102.)

DIVISION OF ENVIRONMENTAL  
MANAGEMENT  
P.O. Box 27687  
Raleigh, North Carolina 27611  
(919) 733-7015

The Division is responsible for comprehensive planning and management of the state's air, surface water, and groundwater resources. The Division issues permits to control sources of pollution; monitors compliance at permitted facilities; evaluates ambient environmental quality; and pursues enforcement actions for violations of environmental regulations.

#### ORGANIZATION

Air Quality Section. The Air Quality Section conserves and protects the State's air resources. The s emission control standards, and classifications for air contaminant sources. The section administers the federal regulations which have been delegated to the State, by the Environmental Protection Agency. By implementing the State and federal regulations designed to prevent significant deterioration, the section preserves the quality of clean air and the potential for continued economic growth.

Water Quality Section. The Water Quality Section maintains or restores an aquatic environment of quality sufficient to protect the existing and classified uses of the State's surface waters. The Section performs four major functions: 1) permits specific allowable pollution levels in discharges and receiving waters; 2) monitoring provides inspections for permit compliance and assesses ambient water quality; 3) modeling evaluates the impact of proposed discharges of waste and tests the control measures; 4) planning updates and maintains water quality standards and stream classifications.

The Water Quality Section also provides technical assistance or enforcement actions to correct standards violations.

Laboratory Section. The Laboratory Section provides analytical services to support the air, water and groundwater programs in the Division through two regional laboratories and a central laboratory. The regional laboratories are primarily responsible for bacteriological and biochemical analyses. The central laboratory provides a much broader range of chemical analyses. The Laboratory Section administers a certification program for commercial laboratories performing monitoring for permit holders. The laboratory staff also provides consultation assistance and limited training to municipalities and industries.

Groundwater Section. The Groundwater Section manages groundwater use and quality to support growth and development in the State. The program's goals are to prevent pollution of groundwater; respond to contamination incidents; and initiate cleanup actions as required. Permits are required for water wells having a designed capacity of 100,000 gallons per day or more; for groundwater quality monitoring wells; and for non-waste injection wells. When groundwater use threatens to exceed available supply in designated areas, all uses in these areas can be regulated. Water well contractors are re-

gistered annually and pump installers every five years.

Construction Grants. The Construction Grants Section helps units of governments finance wastewater pollution control facilities. This section administers the EPA Construction Grants Program and the Federal-State Revolving Fund Program which both provide funding for wastewater treatment facilities. The Section also provides technical review and certification for State funds under the N.C. Clean Water Revolving Loan Program.

Albemarle-Panlico Estuarine Study (APES). The primary purpose of the APES is to enable resource managers to preserve the productivity of the estuarine area by expanding relevant knowledge about the human uses upon its physical, biological, and social systems. The APES is conducted through the National Estuarine Program within the Environmental Protection Agency as a cooperative venture involving both federal and state agencies.

Pollution Prevention Program (PPP). The PPP provides positive alternatives to costly pollution control options to improve environmental quality and to generate economic benefits. The program supports and works with industries, small businesses, and communities to identify and apply techniques at the source of generation which will prevent, reduce, or recycle wastes before they become pollutants to North Carolina's environment. The program provides an information clearinghouse, technical assistance, and financial support to help reduce or minimize hazardous waste, wastewater discharges, air emissions, and solid waste.

#### WASTEWATER TREATMENT PLANT OPERATORS CERTIFICATION COMMISSION (WWTPOCC)

The purpose of the WWTPOCC is to protect the public health and to conserve and protect the quality of the water resources of the State. The Commission protects the public investment in wastewater treatment facilities by classifying wastewater treatment plants and requiring, through examination and certification, competent plant operators. North Carolina law creates the WWTPOCC and empowers the Commission to adopt rules with respect to the certification of treatment plant operators.

#### ENVIRONMENTAL MANAGEMENT COMMISSION

The Environmental Management Commission is created and empowered under Chapter 143B-282 of the General Statutes of North Carolina. The seventeen member commission promulgates rules necessary to protect, preserve, and enhance the water and air resources of the State. Included in its duties are, the authority to grant permits and orders to control sources of air and water pollution; permit and inspect dam construction; establish water and air quality standards and classifications; protect the land and waters from oil pollution and leaking underground storage tanks storing oil or hazardous substances. The Commission investigates water and air pollution incidents and may assess penalties for violations of water and air standards.

#### DIVISION OF FOREST RESOURCES

P.O. Box 27687  
Raleigh, NC 27611  
(919) 733-2162

North Carolina's forestland is one of the greatest influences on the state in terms of economic value and quality of life. The Division of Forest Resources' primary purpose is to ensure adequate and quality forest resources for the state to meet present and future needs. The processes used to accomplish this involve management of existing resources, development and establishment of new and better quality forests and protection of these resources.

The primary emphasis in carrying out the programs involved in these objectives is directed at the state's 240,000 private forest landowners who own the majority of the forestland.

Specific activities the Division is involved with are forest management assistance to private landowners, reforestation services, forest fire prevention and suppression, and insect and disease control programs. Other activities are operation of tree seedling nurseries, long range forestry planning and technical development, water quality controls, urban forestry assistance, training and support to volunteer fire departments and forestry education.

To summarize, the Division has an active role in planning and carrying out all activities related to maintaining, protecting and improving the forest resources of the state. To accomplish this role, the Division is organized statewide as follows:

Director's Office (Raleigh)

- Sections of Administrative Services, Forest Protection, and Forest Management/Forest Development (Raleigh)
- 3 Regional Offices (Kinston, Sanford and Asheville)
- 13 District Offices (Asheville, Lenoir, Rockingham, New Bern, Rocky Mount, Fayetteville, Elizabeth City, Whiteville, Sylva, Lexington, Hillsborough, Mount Holly, Fairfield)

## ORGANIZATION

Fire Control. The primary objective of the program is to prevent and minimize wildfire damage in the state. The program provides leadership and assumes primary responsibility for preventing and controlling forest fires on more than eighteen million acres in the state. North Carolina averages approximately 5000 wildfires annually with many areas in the state subject to large, disastrous fires. Close coordination with forest industries, rural fire departments, the Division of Emergency Management and numerous other concerns is an essential part of this program. This program also administers a federal grant program which provides funds and equipment to volunteer fire departments.

Forest Management. The objective of this program is to ensure adequate forest resources to meet the current and future needs of the state. This program provides professional and technical management assistance to all N.C. forest landowners which involves a detailed examination of the woodlands including the determination of the types, quality and quantity of trees; age, vigor and general growing conditions of the trees; and general overall situation of the resources. A written management plan recommending, for instance, reforestation plans, water quality and erosion control, intermediate or final harvesting, prescribed burning and various other forest practices is prepared for the landowner. Information is also provided on several cost sharing programs available for reforestation.

Pest Control. The objective of this program is to minimize loss of resources to forest pests and disease. The program identifies and takes control actions as warranted on endemic forest pest and disease problems in the state, and also works closely with other agencies in developing improved means to lessen damages from these activities.

Urban Forestry. The goal of Urban and Community Forestry for North Carolina is to im-

prove the quality of life, (environmentally, economically, and aesthetically) in urban areas through technical assistance and services to towns in developing and carrying out multi-year management plans for urban vegetation. Emphasis is on both extension of services to a growing number of urban areas, and increasing the intensity of service to those areas with more aggressive programs. Service is on a continuing basis to all areas that maintain an active program.

Nursery and Tree Improvement. This program provides adequate, high quality seedlings to meet the reforestation and Christmas tree production needs of the state. The Tree Improvement Program produces and provides genetically improved seeds to the Nursery Program which produces the seedlings for sale to the public. The production of 50 to 60 million seedlings per year occurs at three nurseries and one greenhouse.

Educational State Forests. The purpose of this program is to make N.C. citizens more aware of the importance of forestry by means of programs and demonstrations at several state forests. These forests are currently operated at Clayton, near Lenoir, Elizabethtown, near Wilkesboro and Hendersonville.

Forest Products Market Development. The primary objective of this program is to create adequate markets for all the wood fiber grown in North Carolina, helping to ensure an adequate return on investments for landowners who grow timber and motivating them to regenerate their forestland and practice sound forest management. The program is defined by four major activities: 1) industrial development - - recruiting new wood-using industries into the state, expand existing industry, and increase the use of North Carolina grown timber by instate industries; 2) export market development - - to increase the amount of North Carolina forest products being exported to foreign markets; 3) wood energy to promote the use of wood fuel; and, 4) new technology transfer - - to assure that industry is aware of and utilizes new technology, innovative processes and equipment resulting from research.

## FORESTRY ADVISORY COUNCIL

The Forestry Advisory Council advises the Department of Natural Resources and Community Development Secretary concerning conservation and development of private and public forests in the state. The Council also makes studies directed by the Secretary, conducts a continuing review of Division programs, and participates in

evaluations and in hearings related to the public interest in forestry.

#### SOUTHEASTERN FOREST FIRE COMPACT ADVISORY COMMITTEE

The Southeastern Forest Fire Compact is authorized by the Legislature and its purpose is to promote effective prevention and control of forest fires in the Southeastern Region of the United States. The Advisory Committee is composed of legislators and forest industry representatives and meets periodically with the State Foresters of member states to promote adequate forest fire protection measures throughout the Southeastern Region.

#### DIVISION OF LAND RESOURCES

P.O. Box 27687  
Raleigh, NC 27611  
(919) 733-3833

The Division of Land Resources is a division of the Department of Natural Resources and Community Development which is created by G.S. 143B-279 and G.S. 143B-275. The purpose of the Division of Land Resources is to protect and conserve the State's land, minerals, and related resources through the effective implementation and management of programs related to sedimentation pollution control, mined land reclamation, dam safety, land records management, geodetic survey, resources inventory and analysis (LRIS), and mineral resources conservation and development.

#### ORGANIZATION

Geodetic Survey Section. The primary activity of the Geodetic Survey Section is to place precisely positioned, monumented survey points, often called stations, marks, or benchmarks, throughout the State for use in boundary surveys, chart making, transportation systems and other related activities. These survey points become a part of the North Carolina Coordinate system, which is an X and Y grid covering North Carolina.

Land Records Management Program. The Land Records Management Program provides technical assistance to counties in modernizing their land records through orthobase mapping, orthophotos and computers. This program also makes financial grants to counties, through an application process funded by the General Assembly, for modernizing county land records.

Geological Survey Section. The Geological Survey Section examines, surveys and maps the geology of the State and publishes reports and maps for the private sector and the general public. The Section also administers the Oil and Gas Conservation Act.

Land Resources Information Service (LRIS). LRIS is a geographic information service that provides a computer data base of North Carolina land related features such as maps of soils, land use, topography and streams which can be analyzed using sophisticated computer mapping techniques. The system operates as a nonprofit agency serving federal, state, regional and local governments. A user fee is charged to cover operating costs.

Land Quality Section. The Land Quality Section is responsible for administering the North Carolina Mining Act of 1971, the North Carolina Sedimentation Pollution Control Act of 1973, and the North Carolina Dam Safety Act of 1967 (G.S. 143-215). In addition, this Section provides staff support for the Mining Commission and the Sedimentation Commission and the Sedimentation Pollution Control Commission.

#### NORTH CAROLINA MINING COMMISSION

This 9-member commission is appointed by the Governor to function as the regulatory body for the enhancement of the mining resources of North Carolina and to insure that mining activity is accomplished in a manner that protects the environment and the health, safety and welfare of the public pursuant to the North Carolina Mining Act of 1971 (G.S. 74-50 and 74-46).

#### NORTH CAROLINA SEDIMENTATION POLLUTION CONTROL COMMISSION

This 11-member commission is appointed by the Governor to function as the regulatory body for the administration and enforcement of minimal mandatory standards which will permit development of North Carolina to continue with the least detrimental effects from pollution by sedimentation pursuant to the Sedimentation Pollution Control Act of 1973 (G.S. 113A-50).

#### NORTH CAROLINA ADVISORY COMMITTEE ON LAND RECORDS

This 12-member committee is appointed by the governor to advise the department on establishing standards, and providing technical assistance

to local governments in implementing and maintaining minimum standards with regard to:

- 1 - uniform indexing of land records;
- 2 - uniform recording and indexing procedures for maps, plats, and condominiums; and
- 3 - security and reproduction of land records.

(Land Records Management Program - G.S. 143-345.6).

#### **DIVISION OF MARINE FISHERIES**

Post Office Box 769  
Morehead City, NC 28557-0769  
(919) 726-7021

The Division is responsible, under direction of the Marine Fisheries Commission and the Secretary, Department of Natural Resources and Community Development, for stewardship of the marine and estuarine resources of the State of North Carolina. As such it is responsible for the maintenance, preservation, protection and development of all marine and estuarine fisheries resources. This includes the promulgation of rules governing coastal fisheries, and their enforcement. It includes scientific endeavors leading to the development of information upon which regulatory and developmental decisions will be based. It also includes developmental activities intended to improve the cultivation, harvesting and marketing of shell and finfish.

#### **ORGANIZATION**

The Division is organized into four programs: Administration, Research, Operations, and Development.

Administration. Responsible for personnel, budget, physical plant management, licensing, public information and submerged lands claim activities.

Research. Responsible for planning, processing, analyzing, and publishing fisheries management data. Coordinates federal funding and project management.

Operations. Headquartered at Morehead City with offices in Elizabeth City, Manteo, Washington, and Wilmington, this program is responsible for fisheries management and law enforcement activities.

Development Program. Responsible for shellfish development, shellfish leasing and artificial reef construction and management.

#### **MARINE FISHERIES COMMISSION**

The Marine Fisheries Commission is responsible for management, restoration, development, cultivation, conservation protection and regulation of the marine and estuarine resources of the State (G.S. 143B-289.3); and to adopt rules to be followed in the management, protection, preservation and enhancement thereof (G.S. 143B-289.4); all such rules to be enforced by the Department and Division [143B-289.4(5)].

#### **DIVISION OF PARKS AND RECREATION**

P.O. Box 27687  
Raleigh, North Carolina 27611-7687  
(919) 733-4181

The North Carolina Division of Parks and Recreation is responsible for planning for a statewide system of park and recreation resources. The Division administers the State Parks System which includes state parks, state natural areas, state recreation areas, state trails, state lakes, and natural and scenic rivers. The system functions to preserve unique examples of archaeological, biological, geologic, scenic, and recreational resources. The Division is also responsible for the Land and Water Conservation Fund Program, a federal matching-fund program which supports outdoor recreation, conservation, and statewide recreation planning. Recreation consulting services are provided through a cooperative agreement with North Carolina State University. The Division is organized into four sections.

#### **ORGANIZATION**

Design and Development Section. The Design and Development Section is responsible for managing the Division's capital improvement projects, land acquisition program, and resource management program. The section maintains an inventory of repair and renovation needs in the State Parks System.

Operations Section. The Operations Section is responsible for efficient management of the State Parks System. On-site park superintendents serve to manage park units. Section responsibilities include State Parks System operation, interpretation and education, visitor protection and safety, natural resource management, concessions management, state trails, and volunteer program administration.

Consulting Services Section. The Consulting Services Section provides advisory services, planning assistance, and training programs to public, private, and commercial agencies and organizations. The section assists the field administration of the Land and Water Conservation Fund by providing information, processing applications, performing inspections, and resolving conversions. The unit also conducts special projects, such as the "Take Pride in America" program--a nationwide effort to promote public land stewardship.

Planning and Assessment Section. The Planning and Assessment Section prepares system-wide plans and general management plans for the State Parks System. The section is responsible for maintaining the State Comprehensive Outdoor Recreation Plan, conducting special studies, and preparing preliminary and feasibility studies of river segments nominated for inclusion into the State Natural and Scenic River System. The Natural Heritage Program, a part of the section, serves to identify, inventory, and provide protection for rare and endangered plant and animal species, special wildlife habitats, sensitive wetlands, and geologic landforms.

#### PARKS AND RECREATION COUNCIL

The Parks and Recreation Council functions to advise the Department on the promotion, development, and administration of the State Parks System. The Council works to educate and inform the citizens of the State on the needs and opportunities of the State Parks System. The Council also advises the Department with respect to the quality and quantity of the total recreation services provided to the citizens of the State. (G.S. 143B-311 through 313)

#### RECREATION AND NATURAL HERITAGE TRUST FUND BOARD OF TRUSTEES

The Board administers the Natural Heritage Trust Fund which was established to provide support for acquisition and management of significant natural areas. (G.S. 113-77.6 through 77.9)

#### NORTH CAROLINA TRAILS COMMITTEE

The Committee coordinates trail development among state and federal agencies, and local gov-

ernments and advises the Department on all matters pertaining to trails. The Committee reviews and recommends trails for the designation as State Trails including segments of the Mountains-to-Sea Trail. (G.S. 143B-88; 333; and 334)

#### DIVISION OF SOIL AND WATER CONSERVATION 512 North Salisbury Street Raleigh, North Carolina 27611 919/733-2302

The Division of Soil and Water Conservation is a comprehensive, statewide program for conserving our soil and water resources and operates under the Department of Natural Resources and Community Development. The Division provides staff, clerical assistance, and policy implementation for the N.C. Soil and Water Conservation Commission. It also helps the 94 local Soil and Water Conservation Districts and their State Association in their campaign for soil and water conservation.

#### ORGANIZATION

District Program Section. The District Program Section coordinates the activities of the 94 local soil and water conservation districts across the state and serves as staff for the N.C. Association of Soil and Water Conservation Districts, the 94 Districts' member association.

N.C. Agriculture Nonpoint Source Pollution Control Section. The N.C. Agriculture Nonpoint Source Pollution Control Section, commonly known as the N.C. Agriculture Cost-Share Section, is responsible for encouraging the voluntary adoption of Best Management Practices (BMP's) to control agricultural nonpoint source pollution. This Section administers the North Carolina Agriculture Cost-Share Program which addresses water quality.

Watershed Planning Section. The Watershed Planning Section supports the planning and implementation of PL 566 Small Watershed Projects (250,000 acres or less) under USDA-Soil Conservation Service Authority. The projects address community-wide natural resource problems such as flooding, erosion, and water quality.

Soil Survey Section. The Soil Survey Section collects and classifies soils data and prepares county soil survey reports. This Section works in close cooperation with the Soil Conservation Service (SCS).

Wetlands Inventory Section. The Wetlands Inventory Section provides quality control for the National Wetlands Inventory underway in North Carolina by the U.S. Fish and Wildlife Service.

#### NORTH CAROLINA SOIL AND WATER CONSERVATION COMMISSION

G.S. 143B-294 states "there is hereby created the Soil and Water Conservation Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the development and implementation of a soil and water conservation program."

DIVISION OF WATER RESOURCES  
P.O. Box 27687  
Raleigh, North Carolina 27611  
(919) 733-4064

The Division of Water Resources manages programs for planning, technical assistance, and financial assistance for river basin management, water supply, water conservation, navigation, stream clearance, flood control, beach protection, aquatic weed control, hydroelectric power, and recreational uses of water. The Division develops plans and special studies in cooperation with local governments and other state and federal agencies on complex water resource problems related to regional water use and interstate river basins.

#### ORGANIZATION

Water Resources Planning Section. The Water Resources Planning Section develops plans and special studies in cooperation with local governments and other state and federal agencies, performs instream flow studies, conducts aquatic weed control projects, develops water use projections for municipal, county, and regional water supplies, provides technical and financial assistance for local government-sponsored water development projects, prepares environmental assessments of major projects affecting water resources, and administers the Stream Watch Program and North Carolina Rivers Month.

Water Supply Assistance Section. The Water Supply Assistance Section provides technical assistance to counties, municipalities, and other public water supply systems and their consultants. Some of the services provided include: surveys of existing water supply systems, investigation of alternative and emergency raw water

sources, coordination of regional cooperation between local water supply systems, evaluation of future water demands, information on sources of financial assistance and water conservation, and notification to municipalities of potential water shortages.

Hydrology and Management Section. The Hydrology and Management Section provides information and interpretive studies on surface water and groundwater to other State agencies, federal agencies, and municipal and industrial water users and their consultants. Study topics include: reservoir operation, reservoir yield, groundwater modelling for water supply planning, and low flow frequency.

#### ENVIRONMENTAL MANAGEMENT COMMISSION

The Environmental Management Commission (EMC) receives staff support from the Divisions of Environmental Management, Water Resources, and Land Resources. The primary statutes administered by the Division of Water Resources for the EMC are the Water Use Act (G.S. 143-215.11 et seq), the Water Emergency Act [G.S. 143-354(b)-(e)], and the Federal Water Resources Development Projects Act (G.S. 143-215.38 et seq.).

#### AQUATIC WEED COUNCIL

The Aquatic Weed Council meets quarterly to coordinate the activities of the numerous agencies involved in aquatic weed control and to exchange information on aquatic weed control methods. The Council reviews the proposed weed control program developed by the Division of Water Resources each year to assure that all affects on the environment and on public health have been adequately evaluated.

NORTH CAROLINA ZOOLOGICAL PARK  
Route 4, Box 83  
Asheboro, North Carolina 27203  
(919) 879-5606

The N. C. Zoological Park is designed to display representative species of animal and plant life from the various land and sea masses of the world in a zoogeographic relationship and to achieve the specific purposes of:

- 1 - Providing unique educational opportunities to the general public and to the state school systems at all levels.

- 2 - Providing a meaningful recreational outlet for the citizens and tourists available to all; young, old, and handicapped.
- 3 - Providing research opportunities to the scientific community and collecting and disseminating scientific information about the animal and plant collection and other subjects which is of value to mankind.
- 4 - Developing and maintaining a major program for the conservation, preservation, and propagation of animal and plant life with particular emphasis on endangered and threatened species.
- 5 - Generating an economic return to the state which assists in defraying the cost of operation of the institution and contributes to the general economic well being of the region.

#### ORGANIZATION

General Curator. Responsible for the care and display of all animals owned by or on loan to the Zoo. Manages the Animal Curatorial programs, develops and conducts research and breeding programs, initiates and participates in multi-institution conservation programs, and other related wildlife issues. Manages the Education, Veterinary Medical Services, and Animal Husbandry programs. Professional liaison with national and international zoological organizations.

Exhibit and Graphics. Responsible for the design, construction, and maintenance of exhibits and natural habitats. Manages the graphics program and provides graphic services to other divisions.

Management Services. Responsible for all visitor service revenue activities. Manages and operates all personnel, financial management, accounting, and related administrative functions of the Zoo.

Facilities. Responsible for coordination and development of all Park construction. Responsible for the maintenance and accounting of all physical property and equipment. Provides all security, warehousing and supply, housekeeping, fire protection, and related services to the Zoo.

Marketing. Responsible for increasing positive awareness and attendance; developing and administering marketing programs and strategies; and disseminating information to media, govern-

ment agencies, tourism industry and general public. Approves all media releases involving the Zoo, including those issued by the Zoological Society and serves as the Zoo's public relations spokesperson. Plans and coordinates special events, joint promotions, publicity opportunities, and group visits.

Horticulture. Responsible for the planning, development, and maintenance of the introduced and indigenous botanic collection. Introduces plant material to create or simulate natural environments. Develops research and educational projects, initiates and participates in multi-institution conservation programs. Professional liaison with national and international botanical organizations.

#### NORTH CAROLINA ZOOLOGICAL PARK COUNCIL

This fifteen-member council is appointed by the Governor to oversee the development and operation of the Zoological Park (G.S. 143B-335; 143-177.3). Responsibilities include:

- 1 - Advise on the basic concepts of and for the Park, approve conceptual plans for the Park and its buildings.
- 2 - Advise on the construction, furnishings, equipment and operations of the Park.
- 3 - Establish and set admission fees with the approval of the Secretary, NRCD.
- 4 - Recommend programs to promote public appreciation of the Park.
- 5 - Disseminate information on animals and the Park as deemed necessary.
- 6 - Develop effective public support for the Park through whatever means are desirable and necessary.
- 7 - Solicit financial and material support from various private sources within and without the State.
- 8 - Advise the Secretary on any other matters referred to it.

#### NORTH CAROLINA AUCTIONEER LICENSING BOARD

The Auctioneer Licensing Board is responsible for the administration and enforcement of the

Auctioneers Law, G.S. 85B, which establishes specific standards of conduct for auctioneers and auction firms that serve to protect the public from incompetent or unqualified persons engaging in auction activities, and from deceitful practices, willful misrepresentations or fraudulent and dishonest dealings: affords a means of redress of grievances to any person suffering damage, and provides a means of monetary restitution for loss suffered.

The Auctioneers Law stipulates that there shall be a five-member Commission, appointed by the Governor. By law, three members are from nominations submitted to the Governor by the Auctioneers Association of North Carolina. At least three members must be experienced licensed auctioneers; one member is appointed to represent the public at large, and cannot be licensed as an auctioneer.

It is the responsibility of the board to license auctioneers, apprentice auctioneers, and auction firms and to see that the qualifications and activities of those engaged in auctioneering activities are in accord with law and in the best interests of the public. The board is not a board of arbitration and has no jurisdiction to settle disputes between parties concerning such matters of contract as the rate of commissions, the division of commissions, pay of assistants, and similar matters.

The Commission may upon its own motion or upon a complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any licensee, and has the power to suspend or revoke any license issued. The Commission may in its own name seek injunctive relief to restrain any violation or anticipated violation of the Auctioneers Law; is entitled to the services of the Attorney General in enforcing the provisions of G.S. 85B, or may employ an attorney to assist and represent it in enforcement of specific matters.

The Commission holds monthly meetings; receives and acts upon license applications; adopts rules and regulations; investigates complaints; holds administrative hearings as needed; suspends or revokes licenses when warranted; sponsors and underwrites educational projects for the benefit of licensees and provides recovery and guaranty protection through the Auctioneer Recovery Fund.

The board's office is staffed by an executive director, administrative assistant, and two secretaries. All employees serve at the pleasure of the Commission. Operational activities are supported totally by license fees collected from those in the auction profession and deposited with the State Treasurer: no funds are appropriated for the use of this agency. The staff administers examinations, issues and renews licenses, publishes an annual directory and biannual newsletters, and is responsible for the daily functioning of the office. Complaints are investigated with the assistance of a contractual investigative firm.

The administrative offices of the Auctioneer Licensing Board are located at:

3509 Haworth Dr., Suite 306  
Raleigh, N.C. 27609-7276  
Telephone: (919) 733-2182

Office hours are 8:30 a.m. until 5:00 p.m., Monday through Friday, except holidays.

#### **NORTH CAROLINA MARITAL AND FAMILY THERAPY CERTIFICATION BOARD**

The North Carolina Marital and Family Therapy Certification Board was established in 1979 in accordance with Chapter 31, Article 18C of the North Carolina General Statutes. The Certification Act was established to provide a structure and procedures which insure that the public has a means of protecting itself from unprofessional, improper, and unauthorized use of certain titles by persons who practice marital and family therapy.

Information on the certification process or the status of an applicant may be obtained by calling 919-748-4657 Monday through Friday between the hours of 8:00 a.m. - 5:00 p.m., or by writing:

Shelia K. Beck, Executive Secretary  
N.C. Marital and Family Therapy Certification  
Board

Section on Marital and Family Therapy  
Bowman Gray School of Medicine  
Winston-Salem, NC 27103

#### **BOARD OF MEDICAL EXAMINERS OF THE STATE OF NORTH CAROLINA**

**HISTORY AND PURPOSE:** The North Carolina Board of Medical Examiners was established in 1859 by legislature of the State of North Carolina with the purpose of the proper regulation of the

practice of medicine and surgery. It is for that purpose that the Board of Medical Examiners exists today.

**COMPOSITION:** The current Board of Medical Examiners is composed of eight members. Seven of the members are physicians appointed by the Governor after being nominated by the North Carolina Medical Society, and one public member who is also appointed by the Governor.

**MEETINGS:** Pursuant to Statute, the Board meets at least annually. Current regularly scheduled meetings are held in the months of January, March, May, June, August, October and December. Other meetings are scheduled during the year as needed to accomplish the Board's purpose. The Board has its greatest contact with the public in receiving complaints regarding physician behavior and competence and in the direct licensure of members of the public who satisfy the Board that they are competent for licensure to practice medicine in the State of North Carolina.

**PUBLIC COMPLAINTS:** The public may complain regarding practices of physicians or concerns regarding the practice of medicine in the state by submission of a written complaint stating the name of the physician concerned and the nature of the complaint. Such complaints can be submitted to the office of the North Carolina Board of Medical Examiners which is located at 1313 Navaho Drive, Raleigh, North Carolina 27609. The phone number at the office of the Board of Medical Examiners is 919/876-3885.

Applicants for licensure to practice medicine in the State of North Carolina may make an application upon submitting a request for an application to the North Carolina Board of Medical Examiners. Upon receipt of such licensure request the Board will send out appropriate application materials for the applicant. Any questions from the public not addressed herein may be addressed to the North Carolina Board of Medical Examiners at the address shown above.

#### **MIDWIFERY JOINT COMMITTEE OF THE STATE OF NORTH CAROLINA**

"Midwifery Joint Committee administers the provisions of Article 10A 'Practice of Midwifery' by the approval of nurses to practice midwifery in North Carolina and by regulation of that practice.

All meetings of the Midwifery Joint Committee are open to the public. Persons wishing to bring matters to the attention or consideration of the Midwifery Joint Committee may write the Midwifery Joint Committee, P. O. Box 2129, Raleigh, NC 27602."

#### **NORTH CAROLINA BOARD OF MORTUARY SCIENCE**

The North Carolina Board of Mortuary Science was created by Article 13A, Chapter 90, General Statutes. The Board consists of six persons licensed by the Board and elected by licensees, plus one public member appointed by the Governor. The Board meets as often as necessary to transact its business. (It is required by law to meet at least twice a year.) It administers the examination to applicants for licensure twice a year.

Information may be obtained from the submissions and requests may be made to the Board office, located at 412 North Wilmington Street, Raleigh, NC 27601, telephone (919) 733-9380.

#### **NORTH CAROLINA BOARD OF NURSING**

"The North Carolina Board of Nursing licenses registered nurses and licensed practical nurses; regulates the practice of nursing; approves educational units leading to licensure; approves nurse aide educational programs; maintains the Nurse Aide Central Registry; issues interpretations of the Nursing Practice Act; and maintains a joint subcommittee with the North Carolina Board of Medical Examiners for matters relating to the performance of medical acts of registered nurses.

All meetings of the Board, including Board committee meetings, are open to the public. Persons wishing to bring matters to the Board for its attention or consideration shall submit the request in writing no less than 30 days prior to the scheduled regular meeting. The Board office is located at 3724 National Drive, Suite 201, Raleigh, NC 27612; mailing address is P.O. Box 2129, Raleigh, NC 27602."

#### **NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS**

The North Carolina Board of Physical Therapy Examiners is an occupational licensing board which was created by the General Assembly in 1951. The Physical Therapy Practice Act is found in G.S. 90-270.24 -- 90-270.39.

The Board:

- (1) issues licenses to practitioners of physical therapy in order to protect the safety and welfare of recipients of physical therapy services in North Carolina. Both physical therapists and physical therapist assistants are licensed by the Board. Currently there are 2004 physical therapists holding active licenses with 1400 of these residing in North Carolina. There are 622 licensed physical therapist assistants and 530 of them live in the State.
- (2) is charged with the responsibility of investigating complaints regarding the unauthorized practice of physical therapy in North Carolina and acts of licensees that violate the Practice Act.
- (3) issues interpretation of questions arising from the Physical Therapy Practice Act.

The Board consists of eight members including one medical doctor, four physical therapists, two physical therapist assistants, and one public member, who represents the interest of the public at large and is a person who is not licensed under Chapter 90.

Licenses are granted both by endorsement of an active license in another state and by examination. Examinations will be held on November 2, 1989, February 1, 1990, and July 2, 1990.

The Board has adopted rules and regulations pursuant to the Administrative Procedure Act which are codified in 21 NCAC, Chapter 48.

Further information may be obtained by writing the Executive Secretary, 2426 Tryon Road, Durham, North Carolina 27705.

#### **NORTH CAROLINA REAL ESTATE COMMISSION**

The North Carolina Real Estate Commission is a state governmental agency. Its address is Post Office Box 17100, Raleigh, NC 27619 and its telephone number is (919) 733-9580.

The Commission licenses and regulates real estate agents including brokers, salesmen and corporate brokers. It handles complaints from consumers against licensees. The Commission also registers time share projects and regulates their sales activities. The Commission has the power to take disciplinary action against its li-

censees and time share projects where it determines there is a violation of the License Law or the Time Share Act.

Departments and personnel in the Real Estate Commission include the Commission itself, consisting of seven volunteer members appointed by the Governor. The Executive Director is responsible for overall administration of the Commission's staff, and programs and operations in accordance with the policies and directives of the Commission. The administrative section is responsible for personnel and financial management, as well as general and technical support. The licensing section processes the various applications submitted and maintains records on all licensees. The education section develops standards and materials for pre-licensing study, approves real estate schools and instructors and develops and administers the real estate license examination program. The investigative section investigates complaints against real estate agents and time share sales and management personnel. The section also employs auditors who examine the trust accounts of real estate firms and time share projects. The legal section conducts inquiries and coordinates investigations of consumer complaints, prosecutes charges against licensees at hearings before the Commission, and provides legal counsel to the Commission.

#### **NORTH CAROLINA DEPARTMENT OF COMMUNITY COLLEGES**

The Department of Community Colleges fulfills its administrative responsibilities through the following organizational structure: Office of the System's President with an Executive Vice President and staff, Assistants for Board Affairs, Federal Affairs and Governmental Affairs and four divisions -- Adult and Continuing Education, Finance, Programs, and Research and Information -- each headed by a Vice President.

Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the Department of Community Colleges shall address the petition to:

System's President  
Department of Community Colleges  
200 West Jones Street  
Raleigh, N.C. 27603-1337

#### **N.C. AGRICULTURAL FINANCE AUTHORITY**

GENERAL INFORMATION

The following is general information about the North Carolina Agricultural Finance Authority:

- (1) The Authority's officers are the Chairman, Vice-Chairman, Executive Director, and Secretary.
- (2) The mailing address is Suite 406, 19 West Hargett Street, Raleigh, North Carolina 27601.

#### PURPOSES, FUNCTIONS, DUTIES

The North Carolina Agricultural Finance Authority, hereinafter referred to as the "Authority", was created by Chapter 122D of the General Statutes of North Carolina for the purpose of providing capital and credit at affordable interest rates for investment in agriculture.

#### COMPOSITION OF AUTHORITY

The North Carolina Agricultural Finance Authority is an independent agency created within the Department of Agriculture composed of ten members. The Commissioner of Agriculture serves ex officio with the same rights and privileges, including voting rights, as other members. Three members are appointed by the General Assembly upon the recommendation of the Speaker of the House, three members are appointed by the General Assembly upon the recommendation of the President of the Senate, and three members are appointed by the Governor.

#### STATE OF NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS

The Office of Administrative Hearings (OAH) is an independent, quasi-judicial agency. It is one of the twenty-five administrative departments of state government authorized by Article III, Section 11 of the North Carolina Constitution.

The purpose of this agency is to establish and carry out a uniform system of administrative rulemaking and adjudicatory procedures for state agencies thereby ensuring that the functions of rulemaking, investigation, advocacy and adjudication are not all performed by the same group, staff or agency in the administrative process.

The mission of this agency is carried out through six groups within the Office:

- (1) The Adjudicative Staff - consists of the Chief Administrative Law Judge, who is also the Director of the agency, and Administrative Law Judges responsible for

conducting hearings on various grievable issues covered by administrative law.

The Deputy Director is responsible to the Director for all functions of the agency except adjudications.

- (2) The Hearings Staff - administers the contested case hearing provisions, the processing of cases and the collection, coding and tabulation of data related to cases.

The Hearings Manager will be responsible for the support activities for the hearings function.

- (3) The Rules Publication Staff - performs administrative and technical work in the compilation, production and publication of the North Carolina Register and the North Carolina Administrative Code.

The Director of APA Services is responsible for the operations of the Rules Publication Staff.

- (4) The Administrative Staff - performs ministerial activities involved in personnel and public relations.
- (5) The Civil Rights Division - conducts investigations and seeks resolutions of discrimination cases deferred by the Equal Employment Opportunities Commission.
- (6) The Fiscal Staff - performs activities involved in budget, purchasing and payroll.

The public may obtain information about and make submissions or requests to the Office of Administrative Hearings in person at 424 North Blount Street, Raleigh, North Carolina, by mail at Post Office Drawer 11666, Raleigh, N. C., 27604, and by telephone as follows:

Administrative Staff  
(919) 733-2691

Rules Publication Staff  
(919) 733-2678

Hearings Staff  
(919) 733-2698

Civil Rights Division  
(919) 733-0431

The following agencies did not submit a Statement of Organization: Administration; Auditor; Commerce; Correction; Council of State; Cultural Resources; State Board of Elections; Governor's Office; Human Resources; Insurance; Justice; Labor; Crime Control and Public Safety; Public Education; Revenue; Secretary of State; State Treasurer; Transportation; Housing Finance; State Personnel; Board of Architecture; Board of Barber Examiners; Board of Certified Public Accountant Examiners; Board of Chiropractic Examiners; Board for General Contractors; Board of Cosmetic Art Examiners; Board of Dental Examiners; Board of Examiners of Electrical Contractors; Board of Registration for Foresters; Board of Geologists; Board of Hearing Aid Dealers and Fitters; Board of Landscape Architects; Registration Board of Landscape Contractors; Board of Nursing Home Administrators; Board of Occupational Therapists; Board of Opticians; Board of Examiners in Optometry; Board of Osteopathic Examination and Registration; Board of Pharmacy; Board of Examiners of Plumbing and Heating Contractors; Board of Podiatry; Board of Practicing Counselors; Board of Practicing Psychologists; Board of Professional Engineers and Land Surveyors; Board of Refrigeration Examiners; Board of Sanitarian Examiners; Certification Board for Social Work; Board of Examiners for Speech, Language Pathologists and Audiologist; Medical Board for Veterinary.

TITLE 2 - DEPARTMENT OF  
AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend rule(s) cited as 2 NCAC 43L .0202; 48A .0603, .0611; 52B .0101, .0209; 52C .0101, .0105; and adopt rule(s) cited as 2 NCAC 52A .0011.

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

The public hearing will be conducted at 10:00 a.m. on September 18, 1989 at Conference Room, L.Y. Ballentine Bldg., 2109 Blue Ridge Rd., Raleigh, NC 27612.

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

CHAPTER 43 - MARKETS

SUBCHAPTER 43L - MARKETS

SECTION .0200 - FEES: CHARLOTTE  
FARMERS' MARKET

.0202 GATE FEES

The following gate fees shall be paid upon entering the market:

- (1) Retail Shed A
  - (a) ~~May~~ March through ~~September~~ October
  - (b) ~~April, October~~, November ~~December~~ through February
  - (c) ~~January, February, March~~

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Day		Week
<del>\$1.00</del> \$5.00		<del>\$16.00</del> <u>\$20.00</u>
<del>3.00</del> <u>4.00</u>		
<del>2.00</del>		

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- (2) Retail ~~Building~~ Buildings B and C
  - (a) ~~April~~ March through September
  - (b) October through ~~March~~ February

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Day		Week
<del>\$5.00</del> <u>6.00</u>		<del>20.00</del> <u>25.00</u>
<del>3.00</del> <u>6.00</u>		<u>20.00</u>

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Statutory Authority G.S. 106-22; 106-530.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .0600 - BOLL WEEVIL

.0603 CONDITIONS GOVERNING THE  
MOVEMENT OF REGULATED  
ARTICLES

The following conditions govern the movement of regulated articles:

- (1) A certificate or permit is required to transport regulated articles from a regulated area into or through any elimination zone in this state. ~~except that articles may be transported from South Carolina into the southern elimination zone without a permit.~~

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

.0611 REQUIREMENTS FOR PROGRAM  
PARTICIPATION

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

- (1) Filling out a Cotton Acreage Reporting Form at the ASCS office by July 1 of the current growing season for which participation is desired. At this time the farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the Commissioner, but not to exceed six dollars (\$6.00) per acre. Those farm operators not reporting their acreage by July 1 will not be considered as program participants. All acreage reported by such nonparticipants after July 1 will be considered in excess and subject to penalty.
- (2) All fees shall be paid by the farm operator. Fees shall be made payable to and collected by ASCS.

Farm operators in the elimination zone whose ASCS measured acreage exceeds the grower reported acreage by more than ten percent, shall be assessed a penalty fee of ~~five dollars (\$5.00)~~ three dollars (\$3.00) per acre on that acreage in excess of the reported acreage. ~~Any person~~

whose reported acreage exceeds the ASCS measured acreage by more than ten percent due to emergency or hardship conditions may apply for a waiver.

A farm operator may apply for a waiver requesting delayed payment under conditions of financial hardship. Any farm operator applying for a waiver shall make application in writing to the Plant Pest Administrator, ~~stating the conditions under which he requests such waiver.~~ Waiver requests involving financial hardship. This request must be accompanied by a financial statement from a bank or lending agency supporting such request. All farm operators granted waiver requests for financial hardship will be charged interest payable at a rate equal to 15 percent per annum. The decision whether or not to waive all or part of these requirements shall be made by the Plant Pest Administrator and notification given to the farm operator within two weeks after receipt of such application. ~~Decision shall be based on the following: meteorological conditions, economic conditions, and any other uncontrollable destructive forces.~~

Failure to pay all remaining fees or file a completed waiver request for delayed payment on or before July 15 of the current growing season will result in a penalty fee of ~~ten dollars (\$10.00)~~ five dollars (\$5.00) per acre. If a waiver is granted payment shall be due at the time the cotton is sold, or by November 15, whichever is sooner. ~~Failure by a farm operator to pay all program costs as of July 15 or upon notification of ASCS measured acreage, whichever is later, shall be a violation of this Section. The farm operator when found in violation of this Section and upon notification shall completely destroy all cotton not found to be in compliance with the provisions of this Section. If such farm operator fails to comply with these Regulations, the Commissioner of Agriculture, through his duly authorized agents, shall proceed to destroy such cotton in accordance with the provisions of Article 4 and Article 26 of Chapter 106 of the North Carolina General Statutes.~~

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

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

## CHAPTER 52 - VETERINARY DIVISION

### SUBCHAPTER 52A - RULES AND REGULATIONS ADOPTED BY REFERENCE

#### .0011 PSEUDORABIES PROGRAM

The North Carolina Pseudorabies Program, as promulgated by the Swine Diseases Committee, is hereby adopted by reference in accordance with G.S. 150B-14(c).

*Statutory Authority G.S. 106-307.3 through 106-307.5.*

### SUBCHAPTER 52B - ANIMAL DISEASE

#### SECTION .0100 - ANIMAL DISEASE: QUARANTINE

##### .0101 QUARANTINE NOTICES

(d) Written permits to move poultry or other animals which are affected with or exposed to a contagious and/or infectious disease or which originate in a quarantined area, into North Carolina may be issued by the State Veterinarian or his authorized representative under the following conditions:

- (1) The animals or poultry are to be used for research purposes under conditions which will prevent exposure to other livestock and poultry;
- (2) Animals affected with or exposed to brucellosis, tuberculosis, and/or other diseases designated by the State Veterinarian which are consigned to a state or federal inspected slaughter house for immediate slaughter; such livestock shall be identified in a manner acceptable to the State Veterinarian or his authorized representative;
- (3) For the movement of swine in accordance with the North Carolina Pseudorabies Program.

*Statutory Authority G.S. 106-307.3 through 106-307.5.*

#### SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

##### .0209 IMPORTATION REQUIREMENTS: SHEEP

(c) Unless waived by the State Veterinarian, sheep for purposes other than immediate slaughter that have not been dipped in accordance with the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture may not be imported into the state. While in transit they shall be accompanied by a certificate of such dipping. The requirements for dipping will be waived when it can be determined that the sheep

will be isolated from other animals at the North Carolina destination until dipped.

Statutory Authority G.S. 106-307.5.

SUBCHAPTER 52C - CONTROL OF  
LIVESTOCK DISEASES: MISCELLANEOUS  
PROVISIONS

SECTION .0100 - DISEASED AND DEAD  
ANIMALS

.0101 TRANSPORTATION OF INFECTED  
ANIMALS

Permits will be issued by the State Veterinarian to sell or transport on the public roads of the state animals affected with a contagious or infectious disease under the following circumstances:

- (4) Permits may be issued for the movement of swine in accordance with the North Carolina Pseudorabies Program.

Statutory Authority G.S. 106-22(3); 106-400.

.0105 PSEUDORABIES STATUS AND  
TESTING

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

- (1) No pseudorabies vaccine has been used in the herd of origin, unless the herd is a pseudorabies Controlled Vaccinated herd as defined in Title 9, Part 85.1 of the Code of Federal Regulations, or a pseudorabies monitored vaccinated herd or unless the use of vaccine has been approved under the North Carolina Pseudorabies Program; and
- (2) The swine were tested and found negative for pseudorabies within 30 days prior to movement; or
- (3) The swine originated from a pseudorabies-free area as determined by the State Veterinarian; or
- (4) The swine originated from a Qualified Pseudorabies Negative Herd as defined in Title 9, Part 85 of the Code of Federal Regulations; or
- (5) The swine originated from a monitored feeder pig herd. For the purposes of this Rule, in order to qualify as a monitored feeder pig herd, testing must have been performed in accordance with the following standards:
  - (A) In herds of ten or fewer breeding swine, all breeding swine must test negative within 12 months prior to movement.

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

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

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

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

- (6) The swine are being transported or held in accordance with the North Carolina Pseudorabies Program.

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

TITLE 7 - DEPARTMENT OF CULTURAL  
RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that Cultural Resources, USS North Carolina Battleship Commission intends to amend rule(s) cited as 7 NCAC 5 .0203 - .0204.*

*The proposed effective date of this action is January 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on September 14, 1989 at Admiral's Cabin, USS North Carolina Battleship Memorial, Eagle Island, Wilmington, North Carolina.*

*Comment Procedures: Data, opinions and arguments concerning this rule must be submitted by September 14, 1989 to the Director, USS North Carolina Battleship Memorial, Post Office Box 417, Wilmington, North Carolina 28402.*

CHAPTER 5 - U.S.S. NORTH CAROLINA  
BATTLESHIP COMMISSION

SECTION .0200 - USE REGULATIONS

.0203 ADMISSION PRICES

(a) The admission price for the Battleship U.S.S. North Carolina is ~~four dollars (\$4.00)~~ five dollars (\$5.00) for adults age 12 and over, ~~two dollars (\$2.00)~~ two dollars and fifty cents (\$2.50) for children age 6 through 11, ~~one dollar (\$1.00)~~

one dollar and twenty-five cents (\$1.25) per student for organized school groups in grades kindergarten through 6, and ~~two dollars (\$2.00)~~ two dollars and fifty cents (\$2.50) per student for organized school groups in grades 7 through 12.

(b) There is no charge for children under 6.

(c) Classroom teachers, aides, and chaperones accompanying students in class field trips will be admitted without charge at the rate of 1 teacher/aide/chaperone for each 20 students.

(d) Tour groups under auspices of bona fide travel agents will be offered a ~~45~~ 20 percent discount. Tour directors and drivers will be admitted without charge.

(e) Any organized groups of 20 or more will be offered a 10 percent discount when tickets are purchased by a single source.

*Statutory Authority G.S. 143-362; 143B-73.*

#### .0204 SOUND AND LIGHT SHOW

(a) The admission price for the sound and light show at the Battleship U.S.S. North Carolina is ~~three dollars (\$3.00)~~ three dollars and fifty cents (\$3.50) for adults age 12 and over and ~~one dollar and fifty cents (\$1.50)~~ one dollar and seventy-five cents (\$1.75) for children age 6 through 11.

(b) There is no charge for children under 6 years of age.

(c) Tour groups under the auspices of bona fide travel agents will be offered a ~~45~~ 20 percent discount. Tour directors and drivers will be admitted without charge.

(d) Any organized group of 20 or more will be offered a 10 percent discount when tickets are purchased by a single source.

*Statutory Authority G.S. 143-362; 143B-73.*

### TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Water Treatment Facility Operators Board of Certification intends to amend rule cited as 10 NCAC 10E .0304.*

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

*The public hearing will be conducted at 9:00 a.m. on September 14, 1989 at Jane S. McKimmon Center, N.C. State University, Western Boulevard, Raleigh, N.C.*

*Comment Procedures: Any person requiring information may contact: Mr. John C. McFadyen,*

*P.O. Box 2091, Raleigh, N.C. 27602, telephone (919) 733-0379. Written comments may be submitted to the above address 30 days prior to the public hearing. Written and oral comments may also be presented at the public hearing. Notice of an oral presentation must be given to the above address at least 3 days prior to the public hearing.*

### CHAPTER 10 - HEALTH/ENVIRONMENTAL HEALTH

#### SUBCHAPTER 10E - WATER TREATMENT FACILITY OPERATORS

#### SECTION .0300 - APPLICATIONS AND FEES

##### .0304 FEE SCHEDULE

(d) The cost of the annual certification renewal shall be ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00). Renewal fees shall be payable the first of each year. ~~upon receipt of a notice from the secretary-treasurer of the board.~~

*Statutory Authority G.S. 90A-27.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend rules cited as 10 NCAC 2611 .0303.*

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

*The public hearing will be conducted at 1:30 p.m. on September 14, 1989 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.*

*Comment Procedures: Written comments concerning this amendment must be submitted by September 14, 1989, to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on this rule amendment is available upon written request from the same address.*

### CHAPTER 26 - MEDICAL ASSISTANCE

#### SUBCHAPTER 26H - REIMBURSEMENT PLANS

#### SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

##### .0303 METHODS AND STANDARDS FOR DETERMINING RATES

(c) If allowable costs are less than prospective payments during a cost reporting period, a provider may retain one-half of the difference between costs and payments, up to an amount of ~~one dollar (\$1.00)~~ five dollars (\$5.00) per patient day. The balance of unexpended payments must be refunded to the Division of Medical Assistance.

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

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Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend rule cited as 10 NCAC 50B .0313.

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

The public hearing will be conducted at 1:30 p.m. on September 14, 1989 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning this proposed amendment must be submitted by September 14, 1989, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

## CHAPTER 50 - MEDICAL ASSISTANCE

### SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

#### SECTION .0300 - CONDITIONS FOR ELIGIBILITY

##### .0313 INCOME

(d) Income levels for purposes of establishing financial eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

- (1) The income level is reduced by one-third when an aged, blind or disabled individual lives in the household of another person and does not pay his proportionate share

of household expenses. The one-third reduction does not apply to children under nineteen years of age, living in the home of their parents;

- (2) ~~An individual living in a long term care facility or other medical institution is allowed a twenty-five dollar (\$25.00) income level, and a couple in the same room in a long term care facility is allowed a fifty dollar (\$50.00) income level; When calculating the patient liability of a client in a long term care facility or other medical institution under Rule .0407 of this Subchapter, deduct from total income an amount for personal needs equal to thirty dollars (\$30.00) per month for a single individual and sixty dollars (\$60.00) per month for a couple living in the same room;~~
- (3) ~~Individuals who are in a long term care facility for a temporary period of six months or less are allowed the income level provided by statute in addition to the twenty-five dollar (\$25.00) level. When calculating the patient liability of a client in a long term care facility or other medical institution under Rule .0407 of this Subchapter, deduct from total income, in addition to the amount for personal needs deducted under Paragraph (d)(2) of this Rule, an amount equal to the income level provided by statute.~~

Authority G.S. 108A-25(b); 108A-61; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.833; 42 C.F.R. 435.1007; 45 C.F.R. 233.20; P.L. 99-272; Section 12202; P.L. 100-360, Section 411(n).

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Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources - Social Services intends to amend rules cited as 10 NCAC 42P .0201, .0401 - .0404.

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

The public hearing will be conducted at 10:00 a.m. on September 20, 1989 at Disability Determination Services Bldg., 321 Chapanoke Road, Raleigh, NC 27603.

*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 Donna A. Creech, 325 N. Salisbury Street, Raleigh, NC 27611. 919/733-3055.

## CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

### SUBCHAPTER 42P - CHORE SERVICES

#### SECTION .0200 - DEFINITIONS

##### .0201 DEFINITIONS

As used in this Subchapter, the following terms have the meanings specified:

- (1) "Available Person" is someone who lives with or near enough to the client and who has the time and is willing to perform the needed services.
- (2) "Relative", for purposes of this service, means a parent, spouse, or child or sibling over the age of 18 years.
- (3) "Responsible Person" is someone who is capable of and dependable enough to perform the needed service for the client.
- (4) "Own Home" means that the service recipient is living in a residence he maintains for himself or is maintained for him. Own home does not include any group care.
- (5) "Tasks Essential to the Activities of Daily Living" means those activities which are appropriate and necessary to be performed in order for the service recipient to remain and function in his own home.
- (6) "Specialist" for this service may include but is not limited to the following: registered nurse, physical therapist, speech pathologist, dietitian, nutritionist or occupational therapist. The term, specialist, refers to a person whose duties require professional education or training and/or a period of apprenticeship and/or a license. If a specialist such as a registered nurse is employed as a chore provider, she may be paid only for tasks performed which fall within the scope of the definition of chore services and are specified in the agreement for chore services.
- (7) (6) "Transportation to Essential Service Facilities and Resources" means that if a chore provider performs tasks which require transporting the recipient, it is permissible for the provider to do so; however, such transportation must be limited to making accessible essential service facilities and re-

sources; e.g., hospital, doctor's office, grocery store, etc.

- (8) (7) "Custodial Supervision" is oversight of the service recipient which maintains and protects his well-being.
- (9) (8) "Aged" means age 60 years or older.
- (10) (9) "Disabled" means unable to engage in any substantial activity necessary for self-care or self-support by reason of a medically determined physical or mental impairment.
- (11) (10) ~~Primary~~ "Caregiver" for purposes of the non-institutional respite care component, is the person who voluntarily provides the most care or assumes the most responsibility for another person.
- (12) (11) "Administering Agency" is the organizational unit responsible for provision of chore services in accordance with the rules set forth in this Subchapter. The administering agency may be the county department of social services or another local or state agency to which provision of the service is contracted.

Statutory Authority G.S. 143B-153.

#### SECTION .0400 - SERVICE PROVISION: MAXIMUM ALLOWANCE OF PAYMENT

##### .0401 GENERAL POLICY

(c) ~~Regardless of the method of provision, the rate of payment shall be no less than the state minimum wage plus the employer's share of applicable federal and state taxes. The payment rate includes the cost of travel involved in running errands and transporting clients as specified in 10 NCAC 35E .0312. Chore services must be provided by staff who meet the qualifications established by the North Carolina Office of State Personnel.~~

(d) ~~When a chore provider serves more than one person in the same home, it is permissible for the payment rate to be available for each client. The administering agency determines when the service is mutually beneficial and when it is not.~~

(e) (d) Responsibilities of the administering agency, chore provider and client under each method of provision are set forth in policy material issued by the division which is available in accordance with 10 NCAC 35A .0003.

(f) (e) Relatives may be paid as chore providers only if it becomes necessary for them to give up employment in order for them to provide chore services.

Statutory Authority G.S. 143B-153.

##### .0402 DIRECT PROVISION

County departments of social services may employ chore services providers as members of their staff to perform tasks in accordance with 10 NCAC 35E .0312 and the rules of this Subchapter. Chore services providers are subject to the provisions of the State Personnel Act and to applicable personnel policies of the county in which they are employed. ~~Chore providers may be employed on a temporary basis as flat rate exempt employees or on a permanent basis as salaried employees.~~ Responsibility for the selection, training, assignment to clients, supervision and discharge of ~~temporary and permanent employees~~ as chore providers rests with the county department of social services.

Statutory Authority G.S. 143B-153.

#### .0403 CASH PAYMENT METHOD

(a) Chore services may be provided through a cash payment made to an eligible client as reimbursement for services he has received and for which he has paid. County department of social services may make cash advances to eligible clients but may not claim reimbursement from federal/state funds until a receipt is provided by the client documenting that the service has been delivered and paid for.

(b) The cash payment method of provision is utilized only in accordance with the following ~~arrangements:~~ arrangement:

(1) ~~In situations where the client or a responsible person designated by the client is capable and willing, responsibility for the selection and supervision of the chore provider and management of applicable employer-related responsibilities rests with the client or his designated responsible person.~~ Under this arrangement, the county department of social services may assist the client in completing and managing the paperwork associated with meeting applicable employer-related responsibilities. The client, or a person designated by the client, is capable and willing to be responsible for hiring, firing, and supervising the chore provider and for carrying out other applicable employer-related responsibilities.

(2) ~~In situations where the client does not meet the criteria set forth in (b)(1) of this Rule, the county department of social services is responsible for the selection, training, and supervision of the chore provider and for meeting all applicable employer-related responsibilities on the client's behalf.~~ The levels of tasks performed by the chore provider do not require supervision by a

registered nurse or another professional with skills appropriate to the task being performed for the client.

(3) The client, or a person designated by the client, provides certification to the administering agency, that the training requirement for chore providers has been met.

Statutory Authority G.S. 143B-153.

#### .0404 PURCHASE OF SERVICE CONTRACT METHOD

Chore services may be purchased from another agency ~~or individual provider~~ under a purchase of service contract in accordance with rules set forth in 10 NCAC 36.

Statutory Authority G.S. 143B-153.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Governor's Waste Management Board intends to repeal rule(s) cited as 10 NCAC 48A .0101 - .0105, .0107 - .0108, .0201 - .0204, .0301 - .0303; and adopt rule(s) cited as 10 NCAC 48A .0401 - .0414, .0501 - .0514.*

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

*The public hearing will be conducted at 10:00 a.m. on September 21, 1989 at Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27611.*

*Comment Procedures: Written comments concerning these rules must be submitted by September 20, 1989, to: Executive Director, Governor's Waste Management Board, 325 N. Salisbury Street, Raleigh, North Carolina 27611. Oral comments may be presented at the hearing. In addition, a fiscal impact statement on the rule adoptions are available upon written request from the same address.*

### CHAPTER 48 - GOVERNOR'S WASTE MANAGEMENT BOARD

#### SUBCHAPTER 48A - RULES OF PROCEDURE FOR IMPLEMENTING THE LIMITED PREEMPTION PROCESS

#### SECTION .0100 - GENERAL RULES FOR IMPLEMENTING THE PREEMPTION PROCESS

- .0101 PURPOSE (REPEALED)
- .0102 DEFINITIONS (REPEALED)
- .0103 STANDING TO PETITION THE BOARD (REPEALED)
- .0104 GROUNDS FOR PETITION (REPEALED)
- .0105 NOTICE OF PETITION (REPEALED)

*Statutory Authority G.S. 104E-6.2; 130A-293; 143B-216.13(14).*

- .0107 PUBLIC HEARING TO BE HELD (REPEALED)
- .0108 CONDUCT OF THE HEARING (REPEALED)

*Statutory Authority G.S. 104E-6.2; 130A-293; 143B-216.13(11); 143B-216.13(14).*

**SECTION .0200 - PREEMPTION PROCESS:  
LOW-LEVEL RADIOACTIVE WASTE FACILITY**

- .0201 RESPONSE TO NOTICE OF PETITION (REPEALED)
- .0202 THE BOARD'S RECOMMENDATIONS TO THE GOVERNOR (REPEALED)
- .0203 GOVERNOR'S DECISION (REPEALED)
- .0204 APPEAL OF THE GOVERNOR'S DECISION (REPEALED)

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**SECTION .0300 - PREEMPTION PROCESS:  
HAZARDOUS WASTE FACILITY**

- .0301 RESPONSE TO NOTICE OF PETITION (REPEALED)
- .0302 THE BOARD'S DECISION (REPEALED)
- .0303 APPEAL OF THE BOARD'S DECISION (REPEALED)

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**SECTION .0400 - PREEMPTION PROCESS:  
LOW-LEVEL RADIOACTIVE WASTE FACILITY**

**.0401 PURPOSE: GENERAL PRINCIPLES**

The purpose of these Rules is to establish procedures to be used by the Governor's Waste Management Board in reviewing petitions for limited preemption of a local ordinance pursuant to the authority set forth in G.S. 104E-6.2. Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

- (1) Every document filed with the Board shall be signed by the person who prepared the

document, shall contain his name, address and telephone number, and shall indicate the individual or group represented, if applicable.

- (2) 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. 104E-6.2; 143B-216.13(14).*

**.0402 DEFINITIONS**

As used in these Rules:

- (1) "Authority" means the North Carolina Low-Level Radioactive Waste Management Authority established pursuant to Chapter 104G of the General Statutes.
- (2) "Board" means the Governor's Waste Management Board established pursuant to Part 27 of Article 3 of Chapter 143B of the General Statutes.
- (3) "Chairman" means the Chairman of the Board.
- (4) "City" means a municipal corporation defined by G.S. 160A-1.
- (5) "Commission" means the North Carolina Radiation Protection Commission established pursuant to Chapter 104E of the General Statutes.
- (6) "County" means any one of the counties listed in G.S. 153A-10.
- (7) "Days" means calendar days.
- (8) "Facility" means any low-level radioactive waste facility as defined in G.S. 104E-5(9b), that is either proposed, under construction, or operational.
- (9) "File" or "Filing" means to place the paper or item to be filed into the care and custody of the Executive Director of the Board, and acceptance thereof by him. All documents filed with the Board, except exhibits, shall be in letter size 8½" by 11".
- (10) "Non-party" means any person who is not a party.
- (11) "Operator" means the person employed by the authority pursuant to G.S. 104G-10.
- (12) "Ordinance" means a local ordinance, resolution or other action by a county, city, town or other unit or agency of local government including health, environmental or land use regulations; taxes; fees or charges.
- (13) "Party" means the person who submits a petition, or the city or county that adopted the ordinance that is the subject of the petition.
- (14) "Person" means an individual; corporation; company; association; partnership;

unit of government, agency, authority or commission at the local, state or federal level; or other legal entity.

- (15) "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. Service on the Board means personal delivery, or unless otherwise provided by law or rule, delivery by first class United States Postage Service mail or a licensed overnight express mail service, postage prepaid and addressed to the Executive Director, Governor's Waste Management Board, 325 N. Salisbury Street, Raleigh, N.C. 27611. 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 with licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, with sufficient postage affixed, 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.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0403 GROUNDS FOR PETITION**

(a) The grounds for petitioning the Board to preempt an ordinance are:

- (1) That there is an ordinance applicable to a facility which would prohibit or have the effect of prohibiting the establishment or operation of a facility;
- (2) That the proposed facility is needed in order to establish adequate capability for the management of low-level radioactive waste and therefore serves the interests of the citizens of the state as a whole;
- (3) That all legally required state and federal permits or approvals have been issued by the appropriate state and federal agencies or that all state and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the ordinance;
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
- (5) That the construction and operation of a facility will not pose an unreasonable

health or environmental risk to the surrounding locality and that the facility operator, or authority has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable ordinance.

(b) Factors that may be considered in determining whether an ordinance would prohibit or have the effect of prohibiting the establishment or operation of a facility include:

- (1) That any legally required local permit, license, certification or other form of permission to initiate or continue establishment or operation of the facility has been granted by the city or county with conditions that in effect prevent establishment or operation;
- (2) That any legally required local permit, license, certification or other form of permission to initiate or continue establishment or operation of the facility has been withheld by the city or county for any unreasonable time so as to constitute denial;
- (3) That compliance with the ordinance is so economically burdensome beyond what is necessary to protect the public health and safety as to make it impracticable for the facility to be established or operated;
- (4) That the petitioner has exhausted any appeal procedures provided by the ordinance, or that despite his good faith efforts to appeal as provided by such ordinance, the city/county has been responsible for such unreasonable delay as to effectively constitute denial; and
- (5) Any other grounds constituting a basis for relief under G.S. 104E-6.2.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0404 COMMENCEMENT OF PROCEEDINGS**

(a) A proceeding before the Board is commenced by the filing of a petition by the Authority or the operator in accordance with G.S. 104E-6.2 together with a Certificate of Service establishing service of a copy of the petition on each city and county in which any portion of the facility is or is to be located.

(b) The petition shall contain:

- (1) The name, address and telephone number of the petitioner, and the names of the city and county in which the facility is or is to be located; and
- (2) A short plain statement of facts and issues which addresses all grounds covered in

Rule .0403 of this Section. Such statement shall specifically include a description of:

- (A) The action giving rise to the petition;
- (B) The ordinance, or a certified copy of the ordinance if available;
- (C) The effect of the ordinance on the facility's establishment or operation, specifying those provisions of the ordinance alleged to prevent the establishment or operation of the facility;
- (D) Attempts made by the petitioner to resolve the issue with each city and county in which the facility is or is to be located;
- (E) Any actions taken to comply with the ordinance or any of its provisions;
- (F) Status of and compliance with all applicable state and federal permits or approvals;
- (G) Why the facility is needed;
- (H) Opportunities local citizens and elected officials have had to participate in the siting process;
- (I) Documentation that the construction and operation of a facility will not pose an unreasonable health or environmental risk to the surrounding locality. For purposes of the filing of this petition, this documentation shall be deemed complete if it describes the information submitted for all applicable state and federal permits or approvals;
- (J) Measures that the facility operator or Authority have taken or consented to take to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable ordinance;
- (K) Metes and bounds description, site plan, maps or other information describing the facility and its location; and
- (L) All other information the petitioner believes relevant and which constitutes grounds for relief under G.S. 104E-6.2.

(c) Within ten days of receipt of the petition, the Executive Director of the Board, or his designee, shall review the petition and determine the completeness of the petition under Rule .0404(b) of this Section. If the petition is determined to be incomplete, the Executive Director shall return it to the petitioner with a statement of the reasons it is deficient. Return of a petition for incompleteness in no way precludes the petitioner from re-filing a revised petition. If the petition is found to be complete, the Executive Director shall send a notice of proceeding in accordance with Rule .0405 of this Section.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0405 NOTICE OF PROCEEDINGS**

(a) Within five days after a petition is found complete by the Executive Director of the Board, or his designee, the Executive Director shall serve a Notice of Proceeding on the petitioner and on the governing board of each city and county in which the facility is or is to be located;

(b) Such notice shall contain:

- (1) A statement that a complete petition has been received;
- (2) A statement that a public hearing on the petition will be held on a specific date and at a specific place in accordance with Rule .0406 of this Subchapter;
- (3) A statement that each city and county in which the facility is to be located is entitled to appoint one or more members to sit with the Board and hear this matter in accordance with G.S. 104E-6.2(a); failure to appoint a member or refusal of an appointee to serve shall not affect the conduct of the hearing; the terms of the Board members appointed by local governing bodies shall end upon the final determination made by the Board under Rule .0411 of this Section; and such members shall serve as members of the Board only for purposes of these rules;
- (4) A request that within seven days of receipt, the city or county which adopted the ordinance shall serve on the Board a certified copy of that ordinance;
- (5) A request that within 30 days of receipt of the Notice, the city or county serve on [as defined in Rule .0402(15) of this Section] the Board a response to the petition which includes all information within its possession regarding the grounds set forth in Rule .0403 of this Section and any other information as to why this ordinance should not be preempted;
- (6) Name of proceeding and date of filing;
- (7) Address and telephone number of the office of the Board;
- (8) A citation to the relevant statutes or rules involved;
- (9) A short plain statement of the factual allegations or issues to be determined;
- (10) A brief description of the procedure to be followed at the hearing; and
- (11) A statement of how persons may participate in the hearing and where additional information can be obtained.

*Statutory Authority G.S. 104E-6.2;  
143B-216.13(14).*

**.0406 PUBLIC HEARING TO BE HELD**

When a complete petition is filed with the Board, the Board shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within a reasonable time but not to exceed 60 days after receipt of the complete petition by the Board.

*Statutory Authority G.S. 104E-6.2;  
143B-216.13(14).*

**.0407 NOTICE OF PUBLIC HEARING**

(a) The Board shall give notice of the public hearing in accordance with 104E-6.2(c)(1) and 104E-6.2(c)(2).

(b) The Board shall serve the parties to the proceeding with a Notice of the Public Hearing not less than 30 days before the hearing, which notice shall contain the following:

- (1) Name of proceeding and date of filing;
- (2) Date, time, place, and nature of hearing;
- (3) Name, address, and telephone number of the Board;
- (4) A citation to the relevant statutes or rules involved;
- (5) A short plain statement of the factual allegations or issues to be determined;
- (6) A brief description of the procedure to be followed at the hearing; and
- (7) A statement of how persons may participate in the hearing and where information can be obtained.

*Statutory Authority G.S. 104E-6.2;  
143B-216.13(14).*

**.0408 CONDUCT OF HEARING**

(a) In accordance with information provided in the Notice of Hearing, any non-party may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any non-party may submit additional evidence to the Board for its consideration.

(b) The Board may, in its discretion, set the order of presentation and place reasonable time limits on the testimony of each person who appears before the Board at the hearing.

(c) Members of the Board may ask questions of any person who appears before the Board at the hearing.

(d) The Board shall hold the record open to receive written comments from persons for 20 days after termination of the hearing.

(e) All parties shall have the right to present evidence, rebuttal testimony, and argument relevant to the issues.

(f) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the Board.

(g) The Board shall serve copies of all orders or decisions on all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the Board shall simultaneously serve a copy on all other parties.

(h) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(i) Any non-party offering testimony or other evidence may be questioned by parties to the case and by the Board.

*Statutory Authority G.S. 104E-6.2;  
143B-216.13(14).*

**.0409 WITNESSES**

Any party may be a witness and may present witnesses on the party's behalf at the hearing. Fourteen days in advance of the public hearing, parties shall serve on the Board a witness list, a synopsis of testimony, and an estimate of the time required to hear each witness. A party may make reasonable amendments to its witness list. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded.

*Statutory Authority G.S. 104E-6.2;  
143B-216.13(14).*

**.0410 OFFICIAL RECORD**

(a) The official record of a proceeding under this Chapter shall be available at a place designated by the Board for public inspection upon reasonable request.

(b) The proceedings will be recorded. Copies of recorded tapes shall be available at cost from the Board. Transcripts of proceedings during which oral evidence is presented will be made only upon written request of any person. The requesting person shall pay the cost of such transcript or copy thereof that the person orders and this cost shall include the cost of an original for the Board. Cost shall be determined under supervision of the Board which, in cases deemed appropriate by it, 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 person who submitted it.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0411 BOARD'S DECISION**

(a) The Board shall determine whether or to what extent to preempt the ordinance to allow for the establishment or operation in accordance with G.S. 104E-6.2(d). In the event that the Board makes all five findings set out in G.S. 104E-6.2(d) but determines that the provisions of the ordinance in question are severable, the Board may determine that a specific provision, rather than the entire ordinance is preempted.

(b) The Board's decision shall be made by a majority of the Board members as defined in G.S. 104E-6.2(a). To be eligible to vote, a Board member shall be present at the time the vote is taken.

(c) A decision shall be based exclusively on:

- (1) substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 and arguments presented during the hearing and made part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed; and
- (4) other items in the official record.

(d) The 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 the specific provisions of the ordinance at issue;
- (5) findings of fact, with specific reasons given for findings on disputed facts;
- (6) conclusions of law based on the findings of fact and applicable constitution principles, statutes, rules, or regulations;
- (7) a final determination that the challenged ordinance, or specific parts thereof, is preempted with respect to the facility;
- (8) in the discretion of the Board, a memorandum giving reasons for the conclusions of law; and
- (9) a statement that each party has the right to appeal the final decision.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0412 APPEAL OF BOARD'S DECISION**

The decision of the Board may be appealed in accordance with G.S. 104E-6.2(c).

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0413 RECONSIDERATION OR REHEARING**

After the Board issues a decision in a proceeding, the Board loses jurisdiction to amend the decision except to correct clerical or mathematical errors.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**.0414 AVAILABILITY OF COPIES**

These rules and copies of all matters adopted by reference herein are available from the Board at cost.

*Statutory Authority G.S. 104E-6.2; 143B-216.13(14).*

**SECTION .0500 - PREEMPTION PROCESS:  
HAZARDOUS WASTE FACILITY**

**.0501 PURPOSE: GENERAL PRINCIPLES**

The purpose of these Rules is to establish procedures to be used by the Governor's Waste Management Board in reviewing petitions for limited preemption of a local ordinance pursuant to the authority set forth in G.S. 130A-293. Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

- (1) Every document filed with the Board shall be signed by the person who prepared the document, shall contain his name, address and telephone number, and shall indicate the individual or group represented, if applicable.
- (2) 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. 130A-293; 143B-216.13(14).*

**.0502 DEFINITIONS**

As used in these Rules:

- (1) "Board" means the Governor's Waste Management Board established pursuant to Part 27 of Article 3 of Chapter 143B of the General Statutes.
- (2) "Chairman" means the Chairman of the Board.
- (3) "City" means a municipal corporation defined by G.S. 160A-1.
- (4) "Commission" means the North Carolina Hazardous Waste Management Commission

established pursuant to Chapter 130B of the General Statutes.

- (5) "County" means any one of the counties listed in G.S. 153A-10.
- (6) "Days" means calendar days.
- (7) "Facility" means a hazardous waste facility authorized by the Governor as provided in G.S. 130B-5(a) and G.S. 130B-5(b)(1), either proposed, under construction, or operational.
- (8) "File" or "Filing" means to place the paper or item to be filed into the care and custody of the Executive Director of the Board and acceptance thereof by him. All documents filed with the Board, except exhibits, shall be in letter size 8½" by 11".
- (9) "Non-party" means any person who is not a party.
- (10) "Operator" means a private operator or the Hazardous Waste Management Commission or a person employed by the Hazardous Waste Management Commission pursuant to G.S. 130B-7.
- (11) "Ordinance" means a local ordinance, resolution or other action by a county, city, town or other unit or agency of local government including health, environmental or land use regulations, taxes, fees or charges.
- (12) "Party" means the person who submits a petition, or the city or county that adopted the ordinance that is the subject of the petition.
- (13) "Person" means an individual; corporation; company; association; partnership; unit of government, agency, authority or commission at the local, state or federal level; or other legal entity.
- (14) "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. Service on the Board means personal delivery by first class United States Postage Service mail or a licensed overnight express mail service, postage prepaid and addressed to the Executive Director, Governor's Waste Management Board, 325 N. Salisbury Street, Raleigh, N.C. 27611. 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 with licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, with suf-

ficient postage affixed, 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.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

#### **.0503 GROUNDS FOR PETITION**

- (a) The grounds for petitioning the Board to review a local ordinance are:
  - (1) That there is an ordinance applicable to a facility which would prohibit or have the effect of prohibiting establishment or operation of a facility;
  - (2) That the proposed facility is needed in order to establish adequate capability for the management of hazardous waste generated in this state and therefore serves the interests of the citizens of the state as a whole;
  - (3) That all legally required state and federal permits or approvals have been issued by the appropriate state and federal agencies or that all state and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the ordinance;
  - (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
  - (5) That the construction and operation of a facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator or commission has taken or consented to take any reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable ordinance.
- (b) Factors that may be considered in determining whether an ordinance would prohibit or have the effect of prohibiting the establishment or operation of a facility include:
  - (1) That any legally required local permit, license, certification or other form of permission to initiate or continue establishment or operation of the facility has been granted by the city or county with conditions that in effect prevent establishment or operation;
  - (2) That any legally required local permit, license, certification or other form of permission to initiate or continue establishment or operation of the facility has been withheld by the city or county

for any unreasonable time so as to constitute denial;

- (3) That compliance with the ordinance is so economically burdensome beyond what is necessary to protect the public health and safety as to make it impracticable for the facility to be established or operated;
- (4) That the petitioner has exhausted any appeal procedures provided by the ordinance, or that despite his good faith efforts to appeal as provided by such ordinance, the city/county has been responsible for such unreasonable delay as to effectively constitute denial; and
- (5) Any other grounds constituting a basis for relief under G.S. 130A-293.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0504 COMMENCEMENT OF PROCEEDINGS**

(a) A proceeding before the Board is commenced by the filing of a petition by the Commission, or the operator in accordance with G.S. 130A-293 together with a Certificate of Service establishing service of a copy of the petition on each city and county in which any portion of the facility is or is to be located.

(b) The petition shall contain:

- (1) The name, address and telephone number of the petitioner, and the names of the city and county in which the facility is or is to be located; and
- (2) A short plain statement of facts and issues which addresses all grounds covered in Rule .0503 of this Section. Such statement shall specifically include a description of:
  - (A) The action giving rise to the petition;
  - (B) The ordinance, or a certified copy of the ordinance if available;
  - (C) The effect of the ordinance on the facility's establishment or operation, specifying those provisions of the ordinance alleged to prevent the establishment or operation of the facility;
  - (D) Attempts made by the petitioner to resolve the issue with each city and county in which the facility is or is to be located;
  - (E) Any actions taken to comply with the ordinance or any of its provisions;
  - (F) Status of and compliance with all applicable state and federal permits or approvals;
  - (G) Why the facility is needed;
  - (H) Opportunities local citizens and elected officials have had to participate in the siting process;

(I) Documentation that the construction and operation of a facility will not pose an unreasonable health or environmental risk to the surrounding locality. For purposes of the filing of this petition, this documentation shall be deemed complete if it describes the information submitted for all applicable state and federal permits of approvals;

(J) Measures that the facility developer or operator or Commission have taken or consented to take to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable ordinance;

(K) Metes and bounds description, site plan, maps or other information describing the facility and its location; and

(L) All other information the petitioner believes relevant and which constitutes grounds for relief under G.S. 130A-293.

(c) Within ten days of receipt of the petition, the Executive Director of the Board, or his designee, shall review the petition and determine the completeness of the petition under Rule .0504(b) of this Section. If the petition is determined to be incomplete, the Executive Director shall return it to the petitioner with a statement of the reasons it is deficient. Return of a petition for incompleteness in no way precludes the petitioner from re-filing a revised petition. If the petition is found to be complete, the Executive Director shall send a notice of proceeding in accordance with Rule .0505 of this Section.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0505 NOTICE OF PROCEEDINGS**

(a) Within five days after a petition is found complete by the Executive Director of the Board, or his designee, the Executive Director shall serve a Notice of Proceeding on the petitioner and on the governing board of each city and county in which the facility is or is to be located;

(b) Such notice shall contain:

- (1) A statement that a complete petition has been received;
- (2) A statement that a public hearing on the petition will be held on a specific date and at a specific place in accordance with Rule .0506 of this Section;
- (3) A statement that each city and county in which the facility is to be located is entitled to appoint one or more members to sit with the Board and hear this matter in accordance with G.S. 130A-293.

- (4) A request that within seven days of receipt, the city or county which adopted the ordinance shall serve on the Board a certified copy of that ordinance;
- (5) A request that within 30 days of receipt of the Notice, the city or county serve as defined in Rule .0502(15) of this Section on the Board a response to the petition which includes all information within its possession regarding the grounds set forth in Rule .0503 of this Section and any other information as to why this ordinance should not be preempted;
- (6) Name of proceeding and date of filing;
- (7) Address and telephone number of the office of the Board;
- (8) A citation to the relevant statutes or rules involved;
- (9) A short plain statement of the factual allegations or issues to be determined;
- (10) A brief description of the procedure to be followed at the hearing; and
- (11) A statement of how persons may participate in the hearing and where additional information can be obtained.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

#### **.0506 PUBLIC HEARING TO BE HELD**

When a complete petition is filed with the Board, the Board shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within a reasonable time but not to exceed 60 days after receipt of the complete petition by the Board.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

#### **.0507 NOTICE OF PUBLIC HEARING**

(a) The Board shall publish notice of the public hearing in accordance with 130A-293(c)(1) and 130A-293(c)(2).

(b) The Board shall serve the parties to the proceeding with a Notice of the Public Hearing not less than 30 days before the hearing, which notice shall contain the following:

- (1) Name of proceeding and date of filing;
- (2) Date, time, place, and nature of hearing;
- (3) Name, address, and telephone number of the Board;
- (4) A citation to the relevant statutes or rules involved;
- (5) A short plain statement of the factual allegations or issues to be determined;
- (6) A brief description of the procedure to be followed at the hearing; and

- (7) A statement of how persons may participate in the hearing and where information can be obtained.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

#### **.0508 CONDUCT OF HEARING**

(a) In accordance with information provided in the Notice of Hearing, and non-party may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any non-party may submit additional evidence to the Board for its consideration.

(b) The Board may, in its discretion, set the order of presentation and place reasonable time limits on the testimony of each person who appears before the Board at the hearing.

(c) Members of the Board may ask questions of any person who appears before the Board at the hearing.

(d) The Board shall hold the record open to receive written comments from persons for 20 days after termination of the hearing.

(e) All parties shall have the right to present evidence, rebuttal testimony, and argument relevant to the issues.

(f) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the Board.

(g) The Board shall serve copies of all orders or decisions on all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the Board shall simultaneously serve a copy on all other parties.

(h) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(i) Any non-party offering testimony or other evidence may be questioned by parties to the case and by the Board.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

#### **.0509 WITNESSES**

Any party may be a witness and may present witnesses on the party's behalf at the hearing. Fourteen days in advance of the public hearing, parties shall serve on the Board a witness list, a synopsis of testimony, and an estimate of the time required to hear each witness. A party may make reasonable amendments to its witness list.

All oral testimony at the hearing shall be under oath or affirmation and shall be recorded.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0510 OFFICIAL RECORD**

(a) The official record of a proceeding under this Chapter shall be available for public inspection upon reasonable request at a place designated by the Board.

(b) The proceedings will be recorded. Copies of recorded tapes shall be available at cost from the Board. Transcripts of proceedings during which oral evidence is presented will be made only upon written request of any person. The requesting person shall pay the cost of such transcript or copy thereof that the person orders and this cost shall include the cost of an original for the Board. Cost shall be determined under supervision of the Board which, in cases deemed appropriate by it, 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 person who submitted it.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0511 BOARD'S DECISION**

(a) The Board shall determine whether or to what extent to preempt the ordinance to allow for the establishment or operation of a facility in accordance with G.S. 130A-293(d). In the event that the Board makes all five findings set out in G.S. 130A-293(d) but determines that the provisions of the ordinance in question are severable, the Board may determine that a specific provision, rather than the entire ordinance is preempted.

(b) The Board's decision shall be made by a majority of the Board members as defined in G.S. 130A-293(a). To be eligible to vote, a Board member shall be present at the time the vote is taken.

(c) A decision shall be based exclusively on:

- (1) substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 and arguments presented during the hearing and made part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed; and
- (4) other items in the official record.

(d) A 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 the specific provisions of the ordinance at issue;
- (5) findings of fact, with specific reasons given for findings on disputed facts;
- (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or regulations;
- (7) a final determination that the challenged ordinance, or specific parts thereof, is preempted with respect to the facility;
- (8) in the discretion of the Board, a memorandum giving reasons for the conclusions of law; and
- (9) a statement that each party has the right to appeal the final decision.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0512 APPEAL OF BOARD'S DECISION**

The decision of the Board may be appealed in accordance with G.S. 130A-293(c).

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0513 RECONSIDERATION OR REHEARING**

After the Board issues a decision in a proceeding, the Board loses jurisdiction to amend the decision except to correct clerical or mathematical errors.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**.0514 AVAILABILITY OF COPIES**

These rules and copies of all matters adopted by reference herein are available from the Board at cost.

*Statutory Authority G.S. 130A-293; 143B-216.13(14).*

**TITLE 11 - DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 6B .0102 - .0103, .0105, .0201, .0204 - .0205, .0303, .0401; and adopt rule(s) cited as 11 NCAC 6B .0106 - .0107, .0404 - .0405.*

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

*The public hearing will be conducted at 10:00 a.m. on September 15, 1989 at Third Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: Written comments may be sent to Fran DiPasquantonio, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Fran DiPasquantonio or Linda Stott at (919) 733-4700.*

## CHAPTER 6 - AGENT SERVICES DIVISION

### SUBCHAPTER 6B - THIRD PARTY ADMINISTRATOR

#### SECTION .0100 - DESCRIPTION OF FORMS

##### .0102 BIOGRAPHICAL AFFIDAVIT

The biographical affidavit form designated as TPA-2-87 (Rev. 6/89) for administrators shall include, but not be limited to, the following information:

- (1) full name and address of administrator;
- (2) affiant's social security number;
- (3) affiant's date and place of birth;
- (4) affiant's residence address;
- (5) affiant's business address;
- (6) affiant's business telephone number;
- (7) affiant's present or proposed position with the administrator;
- (8) affiant's employment record for the past five years;
- (9) whether the affiant has ever been in a position which required a fidelity bond or has been denied a fidelity bond;
- (10) affiant's education;
- (11) affiant's membership in professional societies and associations;
- (12) the name of any insurance company with which affiant is a related party;
- (13) the names of members of affiant's immediate family who subscribe to or own, beneficially or of record, shares of stock of applicant administrator or its affiliates and a description of such holdings;
- (14) whether affiant has ever been refused a professional, occupational, or vocational license by any public or governmental agency or regulatory authority, or whether such license held has ever been suspended or revoked;
- (15) whether affiant has ever been adjudged bankrupt;
- (16) whether affiant has ever been convicted, or has had a sentence imposed or suspended, or has been pardoned for conviction of or

pleaded guilty or nolo contendere to an indictment charging any crime involving fraud, dishonesty or moral turpitude, or charging a violation of any corporate securities statute, or any insurance law, or has been subject of any disciplinary proceeding of any federal or state regulatory agency;

- (17) whether affiant has ever been an officer, director, manager, trustee, or controlling stockholder of any company during which time the company became insolvent or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship;
- (18) whether the certificate of authority or license to do business of any insurance company of which affiant was an officer has ever been suspended or revoked while the affiant was an officer of such company; and
- (19) experience as an administrator.

*Statutory Authority G.S. 58-9; 58-525; 58-536.*

##### .0103 TPA TRANSMITTAL

The TPA transmittal form (TPA-3-87) (Rev. 6/89) is designed as a check list to assure that all information required is submitted. The following information is required:

- (1) application for administrator's registration (TPA-1-87);
- (2) biographical form, (TPA-2-87) (Rev. 6/89) must be completed by every officer of a corporation or every partner of a partnership or the owner and operating manager of a sole proprietorship;
- (3) copies of each type of service contract utilized by the administrator with its benefit plans for North Carolina residents;
- (4) financial statements must include a balance sheet, a statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;
- (5) a surety bond in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company duly licensed to do business in North Carolina. The surety bond is conditioned upon the performance by administrators of their obligation to in-

surers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package;

- (6) company check ~~certified check~~ or money order in the amount of twenty dollars (\$20.00) registration fee payable to the North Carolina Department of Insurance;
- (7) narrative description specifying administrator's services performed in North Carolina;
- (8) signature, date, address and telephone number of the preparer of the application package;
- (9) a copy of each trust document between the administrator and employers for whom the administration of self-funded plans is performed;
- (10) narrative of internal controls, (TPA-IC-89); and
- (11) an executed copy of the power of attorney form, if not domiciled in this State. (Form enclosed in application and renewal package.)

*Statutory Authority G.S. 58-9; 58-536.*

**.0105 RENEWAL TPA TRANSMITTAL**

The renewal TPA transmittal form (RTPA-2-88) (Rev. 6/89) is similar to the TPA transmittal form (TPA-3-87) (Rev. 6/89) and must contain the following information:

- (1) any change of address in location of the administrator's North Carolina office;
- (2) any changes in ownership of the administrator or, any new officers, or addition or deletion of any new partners since the last filing and, if so, a biographical affidavit for new administrators (TPA-2-87) (Rev. 6/89);
- (3) a list of all new service contracts (self-funded, or fully insured) entered into since the last application;
- (4) financial statements must include a balance sheet, a statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;

- (5) a surety bond in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company duly licensed to do business in North Carolina. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package;
- (6) narrative of description specifying administrator's services performed in North Carolina;
- (7) company check ~~certified check~~ or money order in the amount of twenty dollars (\$20.00) registration fee payable to the North Carolina Department of Insurance; ~~and~~
- (8) signature, date, address, and telephone number of the preparer of the application package;
- (9) a copy of each trust document between the administrator and employers for whom the administration of self-funded plans is performed; and
- (10) narrative on internal controls, TPA-IC-89 enclosed.

*Statutory Authority G.S. 58-9; 58-536.*

**.0106 ADMINISTRATOR'S QUESTIONNAIRE**

All applications and renewals for an administrator certificate of registration must include the completed administrator's questionnaire form TPA-4-89 requiring the following information:

- (1) administrator's name, address, and contact person;
- (2) administrator's legal structure;
- (3) affiliated companies and their relationship with the administrator;
- (4) administrator's federal employer's identification number;
- (5) administrator's fiscal year-end;
- (6) administrator's independent certified public accountant;
- (7) administrator's surety coverage provider;
- (8) services provided by the administrator;
- (9) insurers for which services are provided by the administrator;
- (10) self-funders for which services are provided by the administrator;
- (11) administrator's errors and omissions coverage provider;

- (12) administrator's stop loss coverage provider;
- (13) administrator's registered in other states;
- (14) administrator's anticipated processing time for claims adjudicated;
- (15) statistics for the administrator's activities in North Carolina; and
- (16) any other information that the Commissioner may desire in regulating administrators.

*Statutory Authority G.S. 58-9; 58-527; 58-529; 58-536.*

**.0107 INTERNAL CONTROL (TPA-IC-89)**

For applications and renewal application for an administrator's certificate of registration, consideration will be given to the administrator's system of internal control. Internal controls relative to the administrator's operations and to the administration of self-funded and fully-insured plans will be reviewed. To provide information for this review, the administrator shall prepare and submit a narrative discussing existing internal controls over company operations and administered plans. Description of such internal controls are as follows:

- (1) Internal controls for the administrator's operations:
  - (a) procedures to safeguard the receipt of company funds;
  - (b) segregation of functions within the workflow;
  - (c) procedures to safeguard the disbursement of company funds; and
  - (d) audits, including internal audits and those performed by companies with which the administrator has service agreements.
- (2) Internal controls to safeguard funds of self-funded plans:
  - (a) procedures to safeguard the receipt of funds. Specify if funds are received by the administrator, or are deposited directly with a bank or into a bank lockbox;
  - (b) if funds are collected on behalf of or for more than one self-funder, specify if there are established separate accounts for each self-funder; or if the bank into which such funds are deposited maintains records clearly recording the deposits and withdrawals made on behalf of each self-funder;
  - (c) procedures to safeguard the disbursement of funds. Specify authorization procedures for the payment of claims;
  - (d) if claims are paid by the administrator from funds collected on behalf of a self-funder, specify if such claims are paid on

- the drafts of and as authorized by such self-funder; and
- (e) segregation of functions within the workflow.
- (3) Internal controls to safeguard funds of fully-insured plans:
  - (a) procedures to safeguard the receipt of funds. Specify if funds are received by the administrator, or are deposited directly with a bank or into a bank lockbox;
  - (b) if funds are collected on behalf of or for more than one insurer, specify if there are established separate accounts for each insurer, or if the bank into which such funds are deposited maintains records clearly recording the deposits and withdrawals made on behalf of each insurer;
  - (c) procedures to safeguard the disbursement of funds. Specify authorization procedures for the payment of claims;
  - (d) if claims are paid by the administrator from funds collected on behalf of an insurer, specify if such claims are paid on the drafts of and as authorized by such insurer; and
  - (e) segregation of functions within the workflow.

*Statutory Authority G.S. 58-9; 58-536.*

**SECTION .0200 - REGISTRATION**

**.0201 CONTENTS OF FULL APPLICATION**

All applications for an administrator certificate of registration must include:

- (1) an application for administrator's registration (TPA-1-87) signed by an officer, if a corporation, or every partner, if a partnership, or the owner and operating manager, if a sole proprietorship;
- (2) biographical form(s) (TPA-2-87) (Rev. 6/89) completed by every officer, partner, or owner and operating manager as indicated; forms may be duplicated to meet needs;
- (3) copies of each type of service contract utilized for benefit plans administered covering North Carolina residents;
- (4) financial statements must include a balance sheet, a statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public

accountant's opinion letter does not disclaim association with the consolidating schedules;

- (5) a surety bond in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company licensed to do business in North Carolina. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package;
- (6) all basic organizational documents of the third party administrator, such as the articles of incorporation, bylaws, partnership agreements and all other similar documents and all amendments to those documents;
- (7) a narrative description specifying administrator's services performed in North Carolina;
- (8) a power of attorney duly executed by the administrator, if not domiciled in North Carolina, appointing the Commissioner of Insurance, and the Commissioner's duly authorized deputies as attorneys for the administrator in and for this state, upon whom process in any legal action or proceeding against the administrator on a cause of action arising in this state may be served; (form enclosed in application and renewal package);
- (9) a company check ~~certified check~~ or money order in the amount of twenty dollars (\$20.00), registration fee, payable to the North Carolina Department of Insurance; and
- (10) such other information as the department may reasonably require.

*Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.*

**.0204 APPLICATION FOR RENEWAL OF A CERTIFICATE OF REGISTRATION**

All applications for renewal of a certificate of registration must include:

- (1) application for administrator's renewal registration (RTPA-1-88);
- (2) all changes to the information contained in biographical form(s) (TPA-2-87) (Rev. 6/89);
- (3) all changes or additions to ownership, organizational structure or location of the administrator;

- (4) all changes or additions to the service contracts entered into by the administrator;
- (5) financial statements must include a balance sheet, statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;
- (6) a surety bond in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company licensed to do business in North Carolina. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package; and
- (7) a company check ~~certified check~~ or money order in the amount of twenty dollars (\$20.00), renewal registration fee, payable to the North Carolina Department of Insurance.

*Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.*

**.0205 RENEWAL CERTIFICATE OF REGISTRATION**

The renewal date for all certificates of registration will be September 1. Renewal packages will be sent to registered administrators on July 1 and should be returned to the Department of Insurance, Agent Services Division, ~~Administrative Assistant, Registrar,~~ P.O. Box 26387, Raleigh, N.C. 27611, no later than August 10.

*Statutory Authority G.S. 58-9; 58-536.*

**SECTION .0300 - FINANCIAL REQUIREMENTS**

**.0303 FINANCIAL INFORMATION PUBLIC RECORDS**

All financial information filed in support of an application for initial issuance or renewal of a certificate of registration will be subject to the public records law of North Carolina. Such information will not be released by the department

until registration is accomplished and a certificate issued. In the event that the application is withdrawn from consideration by the applicant, then it will not be deemed public information. During the renewal period or during an investigation of an administrator, the file will be subject to the public records law of North Carolina.

*Statutory Authority G.S. 58-9; 58-11; 132-6.*

#### SECTION .0400 - GENERAL PROVISIONS

##### .0401 SERVICE CONTRACTS WITH INSURANCE COMPANIES

All service contracts with insurance companies must be with insurers licensed ~~or authorized~~ to operate in North Carolina.

*Statutory Authority G.S. 58-9; 58-15; 58-527.*

##### .0404 DEFINITIONS

(a) "Related party" means principal owner of the insurance company; members of the insurance company's management; members of the immediate families of the principal owners of the insurance company and its management; members of a party with which the insurance company may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests; members of a party that can significantly influence the management or operating policies of any transacting parties; members with an ownership interest in one of the transacting parties and who can significantly influence the other party so that one or more of the transacting parties may be prevented from fully pursuing its own separate interests; individuals legally or beneficially owning any outstanding voting stock.

(b) "Surety bond" means coverage for the subscribers of a self-funded or fully-insured plan issued by a company licensed to do business in this State.

*Statutory Authority G.S. 58-9; 58-530; 58-536.*

##### .0405 PAYMENT OF CLAIMS

(a) Evidence of competency of an administrator shall include, but will not be limited to, processing and payment of claims in a timely manner.

(b) If claims filed with an administrator or insurer have not been paid within 30 days after receipt of the initial claim by the administrator or the insurer, the administrator or the insurer shall at that time mail a claim status report to the claimant.

*Statutory Authority G.S. 58-9; 58-530.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 6B .0103, .0105, .0201, .0204, .0304.*

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

*The public hearing will be conducted at 10:00 a.m. on September 15, 1989 at Third Floor, Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: Written comments may be sent to Fran DiPasquantonio, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Fran DiPasquantonio or Linda Stott at (919) 733-4700.*

#### SUBCHAPTER 6B - THIRD PARTY ADMINISTRATOR

##### SECTION .0100 - DESCRIPTION OF FORMS

###### .0103 TPA TRANSMITTAL

The TPA transmittal form (TPA-3-87) is designed as a check list to assure that all information required is submitted. The following information is required:

- (1) application for administrator's registration (TPA-1-87);
- (2) biographical form, (TPA-2-87), must be completed by every officer of a corporation or every partner of a partnership or the owner and operating manager of a sole proprietorship;
- (3) copies of each type of service contract utilized by the administrator with its benefit plans for North Carolina residents;
- (4) financial statements must include a balance sheet, a statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;

- (5) a ~~copy of the fidelity coverage surety bond~~ in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company duly licensed ~~or authorized~~ to do business in North Carolina. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package; Fidelity coverage issued in the name of the administrator and its parent company, or issued in the name of the administrator and affiliated companies, is acceptable if the fidelity coverage is an amount of one hundred thousand dollars (\$100,000) or more and the policy limit is issued on a per occurrence basis;
- (6) company check, certified check or money order in the amount of twenty dollars (\$20.00) registration fee payable to the North Carolina Department of Insurance;
- (7) narrative description specifying administrator's services performed in North Carolina;
- (8) signature, date, address and telephone number of the preparer of the application package.

*Statutory Authority G.S. 58-9; 58-536.*

**.0105 RENEWAL TPA TRANSMITTAL**

The renewal TPA transmittal form (RTPA-2-88) is similar to the TPA transmittal form (TPA-3-87) and must contain the following information:

- (1) any change of address in location of the administrator's North Carolina office;
- (2) any changes in ownership of the administrator or, any new officers, or addition or deletion of any new partners since the last filing and, if so, a biographical affidavit for new administrators (TPA-2-87);
- (3) a list of all new service contracts (self-funded, or fully insured) entered into since the last application;
- (4) financial statements must include a balance sheet, a statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant.

Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;

- (5) a ~~copy of the fidelity coverage surety bond~~ in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company duly licensed ~~or authorized~~ to do business in North Carolina. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package; Fidelity coverage issued in the name of the administrator and its parent company, or issued in the name of the administrator and affiliated companies, is acceptable if the fidelity coverage is an amount of one hundred thousand dollars (\$100,000) or more and the policy limit is issued on a per occurrence basis;
- (6) narrative of description specifying administrator's services performed in North Carolina;
- (7) company check, certified check or money order in the amount of twenty dollars (\$20.00) registration fee payable to the North Carolina Department of Insurance; and
- (8) signature, date, address, and telephone number of the preparer of the application package.

*Statutory Authority G.S. 58-9; 58-536.*

**SECTION .0200 - REGISTRATION**

**.0201 CONTENTS OF FULL APPLICATION**

All applications for an administrator certificate of registration must include:

- (1) an application for administrator's registration (TPA-1-87) signed by an officer, if a corporation, or every partner, if a partnership, or the owner and operating manager, if a sole proprietorship;
- (2) biographical form(s) (TPA-2-87) completed by every officer, partner, or owner and operating manager as indicated; forms may be duplicated to meet needs;

- (3) copies of each type of service contract utilized for benefit plans administered covering North Carolina residents;
- (4) financial statements must include a balance sheet, a statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;
- (5) a ~~copy of the fidelity coverage surety bond~~ in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company licensed ~~or authorized~~ to do business in North Carolina. ~~(a copy of the policy is required). Fidelity coverage issued in the name of the administrator and its parent company, or issued in the name of the administrator and affiliated companies, is acceptable if the fidelity coverage is an amount of one hundred thousand dollars (\$100,000) or more and the policy limit is issued on a per occurrence basis. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package;~~
- (6) all basic organizational documents of the third party administrator, such as the articles of incorporation, bylaws, partnership agreements and all other similar documents and all amendments to those documents;
- (7) a narrative description specifying administrator's services performed in North Carolina;
- (8) a power of attorney duly executed by the administrator, if not domiciled in North Carolina, appointing the Commissioner of Insurance, and the Commissioner's duly authorized deputies as attorneys for the administrator in and for this state, upon whom process in any legal action or proceeding against the administrator on a cause of action arising in this state may be served;
- (9) a company check, certified check, or money order in the amount of twenty dollars

(\$20.00), registration fee, payable to the North Carolina Department of Insurance; and

- (10) such other information as the department may reasonably require.

*Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.*

#### **.0204 APPLICATION FOR RENEWAL OF A CERTIFICATE OF REGISTRATION**

All applications for renewal of a certificate of registration must include:

- (1) application for administrator's renewal registration (RTPA-1-88);
- (2) all changes to the information contained in biographical form(s) (TPA-2-87);
- (3) all changes or additions to ownership, organizational structure or location of the administrator;
- (4) all changes or additions to the service contracts entered into by the administrator;
- (5) financial statements must include a balance sheet, statement of income and a statement of cash flows for the administrator's most recent full fiscal year. Financial statements must be presented in the form of an audit, a review, or a compilation prepared by an independent certified public accountant. Financial statements of an administrator's parent company are acceptable if such present consolidating schedules for the administrator, and if the certified public accountant's opinion letter does not disclaim association with the consolidating schedules;
- (6) a ~~copy of a fidelity coverage surety bond~~ in an amount of one hundred thousand dollars (\$100,000) or more issued in the name of the administrator written by a company duly licensed ~~or authorized~~ to do business in North Carolina. ~~Fidelity coverage issued in the name of the administrator and its parent company, or issued in the name of the administrator and affiliated companies, is acceptable if the fidelity coverage is an amount of one hundred thousand dollars (\$100,000) or more and the policy limit is issued on a per occurrence basis (a copy of the policy is required). The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules. A copy of the surety bond form is enclosed with the application and renewal package; and~~

- (7) a company check, certified check, or money order in the amount of twenty dollars (\$20.00), renewal registration fee, payable to the North Carolina Department of Insurance.

Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.

## SECTION .0300 - FINANCIAL REQUIREMENTS

### .0304 SURETY BOND ISSUED BY LICENSED COMPANY

The fidelity coverage surety bond required by G.S. 58-536(b) must be issued by an insurance company licensed ~~or authorized~~ to do business in North Carolina. ~~Such coverage must be issued in the name of the administrator, or the administrator and parent company, or the administrator and affiliates and provide for notification to the Department of Insurance 30 days in advance of any termination, or increase or decrease in the amount thereof. A copy of the policy is required to be filed with the department. The surety bond is conditioned upon the performance by administrators of their obligation to insurers, self-funders and participants under their service contracts, and their compliance with the requirement of Article 41 of Chapter 58 of the General Statutes of North Carolina as well as any applicable rules.~~

Statutory Authority G.S. 58-9; 58-15; 58-29; 58-536.

## TITLE 12 - DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend rules cited as 12 NCAC 9A .0103; 9B .0104, .0209, .0226 - .0227, .0232 - .0233, .0304; 9C .0304, .0306, .0309, .0601; 9E .0107; adopt rules cited as 12 NCAC 9B .0234, .0312.*

*The proposed effective date of this action is March 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on September 14, 1989 at Hearing Room of the Alcoholic Beverage Control Commission Building, 3322 Old Garner Road, Raleigh, North Carolina.*

*Comment Procedures: Any person interested in these rules may present oral or written comments*

*relevant to the proposed action at the Public Rule-Making Hearing. Written statements not presented at the Hearing should be directed to the undersigned. The proposed rules are available for public inspection and copies may be obtained at the following address:*

*Criminal Justice Standards Division  
North Carolina Department of Justice  
1 West Morgan Street  
Room 123, Court of Appeals Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602*

## CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

### SUBCHAPTER 9A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

#### SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

##### .0103 DEFINITIONS

The following definitions apply throughout this Chapter, except as modified in 12 NCAC 9A .0107 for the purpose of the commission's rule-making and administrative hearing procedures:

- (20) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances by the North Carolina General Statutes, the United States Code, the common law, or the courts as felonies. Misdemeanor offenses are classified by the commission as follows:
- (a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred ~~North Carolina or its political subdivisions~~ includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "class A misdemeanor" criminal offenses are motor vehicle or traffic offenses designated as misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina, similar laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (G.S. 20-138.1) which is expressly included herein as a class A misdemeanor, if the de-

feudant was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)].

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, ~~and~~ statutes, or ordinances of the jurisdiction in which the offense occurred of North Carolina includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "class B misdemeanor" criminal offenses are motor vehicles or traffic offenses designated as being misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions with the following exceptions. Class B misdemeanor does expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b) (driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). This definition further includes a violation of G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense.

*Statutory Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.*

#### **SUBCHAPTER 9B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING**

##### **SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT**

###### **.0104 MEDICAL EXAMINATION**

(a) Each applicant for employment as a criminal justice officer shall complete the commission's Medical History Statement Form within ~~420 days~~ one year prior to employment by the employing agency and shall be examined by a physician licensed to practice medicine in North Carolina within ~~420 days~~ one year prior to employment by the employing agency.

*Statutory Authority G.S. 17C-6; 17C-10.*

##### **SECTION .0200 - MINIMUM STANDARDS FOR**

#### **CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION**

##### **.0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING**

(c) Each instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- |                                      |             |
|--------------------------------------|-------------|
| (7) <u>Adult Learning Teaching</u>   |             |
| Adults                               | 6 3/4 Hours |
| (8) <u>Adult Learning: The</u>       |             |
| <u>Learning Environment</u>          | 2 1/4 Hours |
| (9) (8) Principles of Instruction:   |             |
| Demonstration Methods and            |             |
| Practical Exercise                   | 6 Hours     |
| (10) (9) Methods and Strategies      |             |
| of Instruction                       | 4 Hours     |
| (11) (10) The Evaluation Process     | 4 Hours     |
| (12) (11) Principles of Instruction: |             |
| Audio-Visual Aids                    | 8 Hours     |
| (13) (12) <u>Student 10-Minute</u>   |             |
| <u>Talk and Video Critique</u>       | 6 Hours     |
| (14) (13) Student Performance:       |             |
| First Thirty-Minute                  |             |
| Presentation                         | 7 1/2 Hours |
| Second Thirty-Minute                 |             |
| Presentation                         | 7 1/2 Hours |
| Final Eighty-Minute                  |             |
| Presentation                         | 12 Hours    |
| (15) (14) Examination                | 1 1/2 Hours |

*Statutory Authority G.S. 17C-6.*

##### **.0226 SPECIALIZED INSTRUCTOR TRAINING - FIREARMS**

(c) Each applicant for specialized firearms instructor training shall:

- (3) present a written endorsement by a department head or certified school director indicating the student will be utilized to instruct firearms in a "Law Enforcement Officer's In-Service Firearms Training and Qualification Program"; and
- (4) possess a current valid CPR Certification.

*Statutory Authority G.S. 17C-6.*

##### **.0227 SPECIALIZED INSTRUCTOR TRAINING - DRIVING**

(c) Each applicant for specialized driver instructor training shall:

- (3) possess a valid operator driver's license; and,
- (4) maintain a safe driving record where no more than four points have been assigned against the driving record within the past three years; and
- (5) possess a current valid CPR Certification.

*Statutory Authority G.S. 17C-6.*

**.0232 SPECIALIZED INSTRUCTOR TRAINING - DEFENSIVE TACTICS**

- (c) Each applicant for specialized defensive tactics instructor training shall:
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course; ~~and~~
  - (3) present a written endorsement by a certified school director indicating the student will be utilized to instruct defensive tactics in "Basic Recruit Training--Law Enforcement" courses; and
  - (4) possess a current valid CPR Certification.

*Statutory Authority G.S. 17C-6.*

**.0233 SPECIALIZED INSTRUCTOR TRAINING - PHYSICAL FITNESS**

- (c) Each applicant for specialized physical fitness training shall:
- (3) present a letter from a physician stating fitness to participate in the course; and
  - (4) possess a current valid CPR Certification.

*Statutory Authority G.S. 17C-6.*

**.0234 BASIC TRAINING--JUVENILE DETENTION HOMES PERSONNEL**

(a) The basic training course for local confinement personnel who work in juvenile detention homes, either state or local, shall consist of a minimum of 78 hours of instruction presented during a single course offering not to exceed two weeks in length.

(b) The basic training course for juvenile detention home officers shall include training in the following identified topical areas:

- |  |          |
|--|----------|
| (1) Course Orientation                               | 2 Hours  |
| (2) Juvenile Law                                     | 4 Hours  |
| (3) Introduction to Reality Therapy                  | 24 Hours |
| (4) Suicide Prevention                               | 4 Hours  |
| (5) Daily Supervision in a Juvenile Detention Center | 6 Hours  |
| (6) Unarmed Self-Defense                             | 20 Hours |
| (7) One Rescuer Cardiopulmonary Resuscitation (CPR)  | 6 Hours  |
| (8) First Aid  | 8 Hours  |
| (9) Evaluation and Testing                           | 2 Hours  |
| (10) Prevention of Communicable Diseases             | 2 Hours  |

(c) The commission-accredited school that is accredited to offer the "Basic Training--Juvenile Detention" course is: The North Carolina Division of Youth Services.

*Statutory Authority G.S. 17C-2; 17C-6; 17C-10.*

**SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS**

**.0304 SPECIFIC INSTRUCTOR CERTIFICATION**

(c) To qualify for and maintain any Specific Instructor Certification, an applicant must possess a current valid CPR Certification.

(d) ~~(c)~~ To qualify for Specific Instructor Certification in the Emergency Medical Services topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify through one of the following two options:

(1) The first option is:

- (A) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
- (B) hold current basic Emergency Medical Technician certification; and
- (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate.

(2) The second option is:

- (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (B) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
- (C) hold current basic EMT certification.

(e) ~~(d)~~ To qualify for Specific Instructor Certification in the Physical Fitness topical area, an applicant may become certified through one of the following two methods:

(1) The first method is:

- (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (B) successfully complete the pertinent commission-approved specific instructor training course; and
- (C) obtain the recommendation of a commission-recognized school director.

(2) The second method is:

- (A) successfully complete the pertinent commission-approved specific instructor training course; and

- (B) obtain the recommendation of a commission-recognized school director; and
- (C) in addition to the requirements of both (2), (A) and (B) of this Rule, the applicant must meet one of the following qualifications:

- (i) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
- (ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.

(f) ~~(e)~~ Any existing commission-issued "Specific Instructor Certification - Physical Fitness" issued prior to July 1, 1989 is automatically extended with an expiration date of June 30, 1990. Any General Instructor having successfully completed the Specialized Physical Fitness Instructor Course and not having made application, must apply prior to July 1, 1990 in order for such course to be recognized for certification. Any instructor authorized to instruct in a "Basic Recruit Training -- Law Enforcement" course after January 1, 1989 and before July 1, 1989 shall receive credit for such teaching time to satisfy the probationary period requirements or to obtain renewal of "Specific Instructor Certification - Physical Fitness."

(g) ~~(f)~~ To qualify for Specific Instructor Certification in the State Youth Services Medical Emergencies topical area, an applicant is not required to meet the standards for issuance of General Instructor Certification, but as a minimum, must qualify in the following manner:

- (1) have successfully completed a commission-accredited basic instructor training course or an equivalent instructor training course as determined by the commission within the 24 month period preceding application; and
- (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements.

*Statutory Authority G.S. 17C-6.*

#### **.0312 INSTRUCTOR CERTIFICATION RENEWAL**

Individuals who hold full-general instructor certification or full-specific instructor certification may, for just cause, be granted an extension of the two-year period to successfully teach the four

hour minimum requirement. The Director may grant such extensions on a one time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

*Statutory Authority G.S. 17C-6.*

### **SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS**

#### **SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS**

##### **.0304 GENERAL CERTIFICATION**

(d) For local confinement personnel of juvenile detention homes, either state or local, in service prior to January 1, 1990, the Commission shall grant General Certification to all local confinement personnel officially appointed and in juvenile detention homes with any political subdivision of the state on December 31, 1989. Such personnel shall be exempt from the provisions of Rules .0301, .0302 and .0303 of this Section and from basic training requirements applicable to those certified as probationary officers. Any personnel wishing to take advantage of the privilege granted by this Paragraph shall apply on or before March 31, 1990 and all General Certifications granted after that date shall be as prescribed in this Section.

(e) ~~(d)~~ General certification is continuous from the date of issuance, so long as:

- (1) The certified officer remains continuously employed or appointed as a criminal justice officer in good standing with an agency and the certification has not been terminated for cause; or
- (2) The certified officer, having separated in good standing from a criminal justice agency, is re-appointed or re-employed as a criminal justice officer within one year, and the certification has not been terminated for cause; and
- (3) The certified officer meets the in-service training requirements as prescribed in 12 NCAC 9E during each full calendar year of certification.

*Statutory Authority G.S. 17C-2; 17C-6; 17C-10.*

##### **.0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS**

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within ~~420 days~~ one year prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 9B .0104 within ~~420 days~~ one year prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file; and
- (4) submit a copy of the commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapon(s) remain the same as those previously used to qualify. Such in-service training compliance must have occurred within the 12 month period preceding transfer; or
- (5) satisfactorily complete the employing agency's in-service firearms training program as prescribed in Rules 9E .0105 and 9E .0106.

*Statutory Authority G.S. 17C-6; 17C-10.*

**.0309 LATERAL TRANSFER OF LOCAL CONFINEMENT PERSONNEL**

(b) Prior to transfer of certification, local confinement personnel shall:

- (1) complete a Medical History Statement Form within ~~420 days~~ one year prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 9B .0104 within ~~420 days~~ one year prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the individual's permanent personnel file.

*Statutory Authority G.S. 17C-2; 17C-6; 17C-10.*

**SECTION .0600 - EQUIPMENT AND PROCEDURES**

**.0601 APPROVED SPEED-MEASURING INSTRUMENTS**

(a) The following speed instruments are approved for radio microwave (radar) use, provided they are not equipped with dual antennas:

- (34) Kustom PRO-1000 Moving Stationary

*Statutory Authority G.S. 17C-6.*

**SUBCHAPTER 9E - IN-SERVICE TRAINING PROGRAMS**

**SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

**.0107 FAILURE TO QUALIFY**

(a) Where an officer is employed with an agency that establishes a higher standard for annual in-service firearms training than the minimum specified in this Subchapter and the officer has failed to meet the requirements of the employing agency as of December 31 of each calendar year, such officer shall be required to meet the requirements of this Rule and the higher standard of the employing agency for continued employment. ~~or~~ Prior to transfer to another agency, the officer shall be required to meet the requirements of this Rule and the requirements of the subsequent agency, if the subsequent agency requires a higher standard for annual in-service firearms training than the minimum required in Rules .0105 and .0106 of this Section.

*Statutory Authority G.S. 17C-6; 17C-10.*

**TITLE 14A - DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Crime Control and Public Safety Division of Victim and Justice Services intends to amend rule cited as 14A NCAC 11 .0503.*

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

*The public hearing will be conducted at 10:00 a.m. on September 14, 1989 at Library, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any interested person may present comments relevant to the action proposed at the public hearing either in written or oral form. Written statements not presented at the public hearing must be directed prior to September 14, 1989 to the Administrative Procedures Coordinator, Second Floor, Archdale Building, 512 N. Salisbury Street, Raleigh or P.O. Box 27687, Raleigh, NC 27611.*

**CHAPTER 11 - DIVISION OF VICTIM AND JUSTICE SERVICES**

**SECTION .0500 - CRIME VICTIMS COMPENSATION COMMISSION**

**.0503 DETERMINING COMPENSATION**

(a) ~~A claimant shall only be compensated for economic loss. Non-economic detriment shall not be compensated.~~

(b) ~~Claims arising out of motor vehicle accidents or collisions shall be denied.~~

(c) The Director and the Commission shall use the fee schedule published by the Industrial Commission for medical, surgical, hospital, nursing, dental, and other treatment when determining an award. The Commission or Director may, in special hardship cases where sufficient reason is demonstrated, award fees in excess of this schedule.

*Statutory Authority G.S. 15B-4; 15B-6; 15B-7; 15B-8; 15B-10; 15B-11; S.L. 1987, c. 819, s. 35; S.B. 26, Ch. 322.*

**TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend rule cited as 15 NCAC 7H .0308.*

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

*The public hearing will be conducted at 10:00 a.m. on September 28, 1989 at The Coastline Convention Center, 501 Nutt Street, Suite 1, Wilmington, NC 28401.*

*Comment Procedures: All person interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up to the date of the hearing. Any persons desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting: Portia Rochelle, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687 (919) 733-2283.*

**CHAPTER 7 - COASTAL MANAGEMENT**

**SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN**

**SECTION .0300 - OCEAN HAZARD AREAS**

**.0308 SPECIFIC USE STANDARDS**

(a) Ocean Shoreline Erosion Control Activities:  
(1) Use Standards Applicable to all Erosion Control Activities:

(M) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:

(i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;

(ii) the preferred erosion control measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control measure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.

*Statutory Authority G.S. 113A-107 (a); 113A-107 (b); 113A-113 (b) (6) a., b., d.; 113A-124.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15 NCAC 10B .0105, .0118; 10C .0305; 10F .0308; and intends to adopt rule(s) cited as 15 NCAC 10J .0001 - .0004.*

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

*The public hearing will be conducted at 10:00 a.m. on October 2, 1989 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from September 18, 1989 to October 17, 1989. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.*

**CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY**

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0105 MIGRATORY GAME BIRDS

(a) Cooperative State Rules

- (1) The taking of sea ducks (scoter, eider and old squaw) during any special federally-announced season for these species shall be limited to the waters of the Atlantic Ocean, and to those coastal waters south of US 64 which are separated by a distance of at least 800 yards of open water from any shore, island or marsh.
- (2) The extra daily bag and possession limits allowed by the federal regulations on scaup apply in all coastal waters east of U.S. Highway 17, except Currituck Sound north of US 158.
- (3) Tundra swans may be taken during the open season by permit only subject to limitations imposed by the U. S. Fish and Wildlife Service. A limited number of nontransferable swan permits will be issued by the Wildlife Resources Commission without charge to as many applicants who will be selected at random by computer, and only one swan may be taken under each permit which must be cancelled at the time of the kill by cutting out the month and day of the kill. Accompanying the permit is a metal tag which must be affixed at the base of the right wing of the swan at the time and place of the kill. In addition, a preaddressed post-paid card is supplied to each permittee on which to report the number of days hunted and the details of the kill if made. It is unlawful to hunt swans without having the permit and the tag in possession or to possess a swan without the cancelled permit in possession and the tag properly affixed to the swan. It is unlawful to possess a swan permit or tag while hunting that was assigned to another person or to alter the permit or tag in any way other than cutting out the proper month and day of kill.

- (4) Canada geese may be taken west of I-95 during the open season by permit holders only subject to limitations imposed by the U.S. Fish and Wildlife Service. Permits will be issued by the North Carolina Wildlife Resources Commission. It is unlawful to hunt or possess Canada geese west of I-95 without having the permit in possession. It is unlawful to possess a Canada goose permit while hunting that

was assigned to another person or to alter the permit in any way.

*Authority G.S. 113-134; 113-274; 113-291.1; 50 C.F.R. 20.21; 50 C.F.R. 20.105.*

.0118 SALE OF WILDLIFE

(a) The carcasses or pelts of bobcats, opossums and raccoon which have been lawfully taken by any hunting method, upon compliance with applicable fur tagging requirements set forth in 15 NCAC 10B .0400, may be sold to licensed fur dealers. The sale of carcasses or pelts of bobcats, opossum and raccoon killed accidentally or taken by hunting for control of depredations is permitted under the conditions set forth in 15 NCAC 10B .0106(d)(4).

(b) Except as otherwise provided in Paragraph (a) of this Rule, the sale of game birds and game animals or parts thereof is prohibited, except that processed products made from lawfully acquired game birds or game animals which are not readily identifiable as game birds or game animals or parts thereof may be sold provided that no label or advertisement identifies the product as a game bird or game animal, or part thereof.

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

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

.0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS
Mountain Trout (All Species)	7 (exceptn. 3)
Muskellunge and Tiger Musky	2
Chain Pickerel (Jack)	None (exceptn. 1)
Walleye	8 (exceptn. 9 and 10)
Sauger	8

## PROPOSED RULES

Black Bass:		None	ALL YEAR
Largemouth	8 (exceptn. 8 and 10)	None	ALL YEAR
Smallmouth and Spotted	8 (exceptn. 8 and 10)	16 in. (exc. 1 and 12)	ALL YEAR
White Bass	25 (exceptn. 1)	None	ALL YEAR (exceptn. 5)
Sea Trout (Spot- ted or Speckled)	None	None	ALL YEAR (exceptn. 7)
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (exc. 1 and 6)	(b) Exceptions: (13) <u>In Cane Creek Reservoir (Orange County) the season for taking largemouth bass is closed.</u>	
Kokanee Salmon	7	Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.	
Panfishes	None (exceptn. 5)	SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY	
NONGAME FISHES	None		

### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

MINIMUM SIZE LIMITS	OPEN SEASON (EXCPTN. 2)
None (exceptn. 3)	All year, except March 1 to 1/2 hr. before sunrise on first Saturday in April (exceptns. 2 and 3)
30 in.	ALL YEAR
None	ALL YEAR
None (exceptn. 9)	ALL YEAR
15 in.	ALL YEAR
14 in. (exceptns. 4, 8 and 11)	Black Bass: ALL YEAR ( <u>exceptn. 13</u> )
12 in. (exceptns. 4, 8 and 11)	ALL YEAR

#### .0308 CLAY COUNTY

(a) Regulated Area. This Rule applies to that portion of Lake Chatuge which is located within the boundaries of Clay County.

(b) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the regulated area.

(c) Speed Limit. It is unlawful to operate any motorboat or vessel at a speed greater than no-wake speed within 50 yards of the High Bridge, Gibson Cove access area, Chatuge Cove Complex II Marina, Lakeside Cottages and Marina, and Chatuge Dam Spillway access area located on the regulated area.

(d) Placement and Maintenance of Markers. The Board of Commissioners of Clay County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking Lake Chatuge, supplementary standards as set forth in Rule .0301(g)(1) to (7) of this Section shall apply.

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

**SUBCHAPTER 10J - WILDLIFE  
CONSERVATION AREA REGULATIONS**

**.0001 DESIGNATION OF WILDLIFE  
CONSERVATION AREAS**

For the purposes of these regulations, wildlife conservation areas are defined as any lands owned, leased, controlled, or cooperatively managed by the Wildlife Resources Commission primarily for the conservation of nongame wildlife resources including those areas designated and posted as Wildlife Conservation Areas and those designated and posted as Colonial Waterbird Nesting Areas.

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

**.0002 GENERAL REGULATIONS REGARDING  
USE OF CONSERVATION AREAS**

(a) Trespass. Entry on areas posted as Wildlife Conservation Areas for purposes other than wildlife observation, hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or live or dead nongame wildlife species or parts thereof, or other materials, without the written authorization of the landowner: Restrictions. On those areas designated and posted as Colonial Waterbird Nesting Areas, entry is prohibited during the period of April 1 through August 31 of each year, except by written permission of the landowner. Entry into Colonial Waterbird Nesting Areas during the period of September 1 through March 31 will be as authorized by the landowner.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any wildlife conservation area except in receptacles provided for disposal of such refuse. No garbage dumps or sanitary landfills shall be established on any wildlife conservation area by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a designated wildlife conservation area at any time except during the open hunting seasons or hunting days for game birds or game animals thereon unless such device is cased or not immediately available for use, provided that such devices may be possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on designated wildlife conservation areas at any time

other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons. This Rule shall not prevent possession or use of bow and arrow as a licensed special fishing device is those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shall containing larger than No. 2 steel shot or No. 4 lead shot or any rifle or pistol larger than a .22 caliber rimfire while on a designated wildlife conservation area. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting waterfowl on any area designated and posted as a wildlife conservation area.

(d) License Requirements:

(1) Hunting, Trapping and Fishing:

(A) Requirement. Except as provided in Paragraph (d)(1)(B) of this Rule, any person entering upon any designated wildlife conservation area for the purpose of hunting, trapping or fishing must have in his possession a game lands use license in addition to the appropriate hunting, trapping, or fishing licenses.

(B) Exception. A person under 16 years of age may hunt on designated wildlife conservation areas on the license of his parent or legal guardian.

(2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a designated wildlife conservation area for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a regular fishing license and special trout license. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on designated wildlife conservation areas.

(e) Training Dogs. Dogs may not be trained on designated wildlife conservation areas except during open hunting seasons for game animals or game birds thereon. Dogs may not be allowed to enter any wildlife conservation area designated and posted as a colonial waterbird nesting area during the period of April 1 through August 31.

(f) Trapping. Subject to the restrictions contained in 15 NCAC 10B .0110, .0302, and .0303, trapping of furbearing animals is permitted on any area designated and posted as a wildlife conservation area during the applicable open seasons, except that trapping is prohibited:

(1) on the Nona Pitt Hinson Cohen Wildlife Conservation Area in Richmond County;

(2) in posted "safety zones" located on any Wildlife Conservation Area.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping areas, or within, into, or across a posted "safety zone" on any designated wildlife conservation area. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any designated wildlife conservation area.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on a road, trail or area posted against vehicular traffic or other than on roads maintained for vehicular use on any designated wildlife conservation area.

(i) Camping. No person shall camp on any designated wildlife conservation area except on an area designated by the landowner for camping. On the coastal islands designated wildlife conservation areas, camping will be allowed except on those areas designated and posted as Colonial Waterbird Nesting Areas.

(j) Swimming. Swimming is prohibited in the waters located on designated wildlife conservation areas, except that swimming is allowed in waters adjacent to coastal island wildlife conservation areas.

(k) Motorboats. No person shall operate any vessel powered by an internal combustion engine on the waters located on designated wildlife conservation areas.

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

#### **.0003 HUNTING ON WILDLIFE CONSERVATION AREAS**

(a) Safety Requirements. No person while hunting on any area designated and posted as a wildlife conservation area shall be under the influence of alcohol or any narcotic drug.

(b) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any area designated and posted as a wildlife conservation area. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(c) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by these regulations, hunting on areas designated and posted as wildlife conservation areas is permitted during the open season for the game or furbearing species being hunted. Waterfowl hunters shall not enter the areas earlier than 4:00

a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each date. No person shall operate any vessel or vehicle powered by an internal combustion engine on the waters of any area designated and posted as a wildlife conservation area. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any area designated and posted as a wildlife conservation area, salt, grain, fruit, or other foods without prior written authorization of the Commission or its agent and no person shall take or attempt to take any game birds or game animals attracted to such foods. No person shall use an electronic calling device for the purpose of attracting wild birds or wild animals. No live wild animals or wild birds shall be removed from any designated wildlife conservation area except with the written permission of the landowner.

(d) Hunting Dates:

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

#### **NO WILDLIFE CONSERVATION AREAS LISTED AT THIS TIME**

- (2) Except as otherwise indicated, the following designated wildlife conservation areas or indicated portions thereof are closed to all hunting: Richmond County - Nona Pitt Hinson Cohen Wildlife Conservation Area.

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

#### **.0004 FISHING ON WILDLIFE CONSERVATION AREAS**

(a) Generally. Except as otherwise indicated herein, fishing on designated wildlife conservation areas which are open to fishing shall be in ac-

cordance with the statewide regulations. All designated wildlife conservation areas are open to public fishing except restocked ponds when posted against fishing. No trotline or set-hook nor any net, trap, gig or other special fishing device of a type mentioned in 15 NCAC 10C .0403 except bow and arrow may be used in any of the impounded waters or free-running streams located on designated wildlife conservation areas.

(b) Designated Public Mountain Trout Waters: Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any designated wildlife conservation area from one-half hour after sunset to one-half hour before sunrise.

*Statutory Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15 NCAC 10F .0345.*

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

*The public hearing will be conducted at 10:00 a.m. on September 14, 1989 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 30, 1989 to September 29, 1989. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury Street, Raleigh, NC 27611.*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

#### SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

##### .0345 CHATHAM AND WAKE COUNTIES

(a) Regulated Areas. This Rule applies to the following waters of the Shearon Harris Nuclear Power Plant Reservoir, otherwise known as

Harris Reservoir, which is located in the counties of Chatham and Wake:

(1) All waters within 50 yards of any marked boat launching ramp, pier, dock, mooring area, boat storage structure, bridge, or service area.

(2) The cove located in Chatham County encompassing approximately ten acres wherein a Wildlife Resources Commission access area is located as indicated by markers placed and maintained by the Wildlife Resources Commission.

(b) Restricted Zones. Except for authorized personnel of the power company, no person shall operate a motorboat or vessel in any restricted zone which is marked to prevent entry by boats.

(c) Mast Height. No person shall place or operate on the regulated area described in Paragraph (a) of this Rule any sailboat or other vessel having a mast or any superstructure extending vertically above water level a distance of 35 feet or more.

(d) Speed Limit. ~~Except as provided in Paragraph (e) of this Rule,~~ No person shall operate a vessel at greater than no-wake speed within any of 50 yards of any marked boat launching ramp, pier, boat storage structure, or service area on the regulated areas described in Paragraph (a) of this Rule.

~~(e) Skiing. Except to leave or return to the shore or a boat launching ramp, no skiing is permitted within any speed zone described in Paragraph (d) of this Rule. In leaving or returning to the shore or boat ramp, all vessels pulling skiers must be operated on a course perpendicular to the shore line. Upon dropping skiers within any such speed zone, the boat speed shall be reduced to no-wake speed.~~

~~(f) (e) Swimming Areas.~~ No person shall operate any vessel or water skis within a marked public swimming area.

~~(g) (f) Placement and Maintenance of Markers.~~ The Board of Commissioners of Chatham County and the Board of Commissioners of Wake County are designated suitable agencies for placement and maintenance of markers implementing this Rule within their respective counties. Provided the said boards exercise their supervisory responsibilities, they may delegate the actual placement and maintenance to some other responsible agency, corporation, group or individual. With regard to marking the regulated areas described in Paragraph (a) of this Rule, the supplementary standards set forth in Rule .0301(g) of this Section shall apply.

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

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2	Agriculture, Department of
3	Auditor, Department of State
4	Commerce, Department of
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9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
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15	Natural Resources and Community Development, Department of
16	Public 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	Independent Agencies
25	State Personnel, Office of
26	Administrative Hearings, Office of

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

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	General Contractors, Licensing Board for
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20	Foresters, Board of Registration for
21	Geologists, Board of
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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

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- JO - Judicial Orders or Decision
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