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The **NORTH CAROLINA REGISTER**

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ADMINISTRATIVE ORDER

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PROPOSED RULES

CPA Examiners

ECD

EHNR

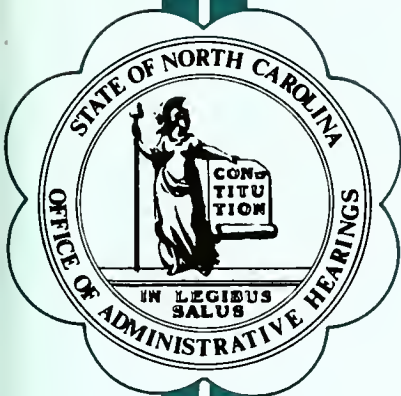
Human Resources

FINAL RULES

Correction

ISSUE DATE: NOVEMBER 15, 1989

Volume 4 • Issue 16 • Pages 802-825



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

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

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

North Carolina Register. Published bi-monthly by the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions one hundred and five dollars (\$105.00) per year.

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

NORTH CAROLINA REGISTER

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

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*****	*****	*****	*****	*****
01/02/89	12/08/88	12/15/88	02/01/89	05/01/89
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04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
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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.

ADMINISTRATIVE ORDER

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS

The Administrative Order issued by Chief Administrative Law Judge Robert A. Melott on March 21, 1989 and published at 4:1 NCR 4, April 3, 1989, is hereby rescinded.

This the 6th day of November, 1989.

s/Beecher R. Gray, Acting
Chief Administrative Law Judge

VOTING RIGHTS ACT FINAL DECISION LETTERS

[G.S. 120-30.911, 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:TGL:rac
DJ 166-012-3
Z1093
Z3103-3106

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

October 17, 1989

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

Dear Mr. McCarley:

This refers to the procedures for conducting the November 7, 1989, referendum election; Act No. 359, H.B. No. 936 (1989), which amends referendum procedures; the adoption of four-year terms for the city council and mayor; and the provision that the mayor has a full vote on the city council in the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 18, 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

JPT:MAP:FHD:lrj
DJ 166-012-3
Z1167

U.S. Department of Justice
Civil Rights Division

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

October 17, 1989

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

Dear Mr. Warren:

This refers to the annexation (Ordinance No. 89-107) to the City of Greensboro in Guilford County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 18, 1989.

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

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

U.S. Department of Justice
Civil Rights Division

JPT:MAP:RA:gmh
DJ 166-012-3
Z2066

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

October 27, 1989

George A. Weaver, Esq.
Lee, Reece & Weaver
P.O. Box 2047
Wilson, North Carolina 27894-2047

Dear Mr. Weaver:

This refers to the election day precinct transfer procedures for Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 1, 1989.

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

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

TITLE 4 - ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Seafood Industrial Park Authority intends to amend rule(s) cited as 4 NCAC 17 .0203 and .0205.

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

The public hearing will be conducted at 7:30 p.m. on December 18, 1989 at North Carolina Seafood Industrial Park Office, Wanchese, North Carolina.

Comment Procedures: Written comments will be received for thirty (30) days prior to the date of hearing. Any interested party may present comments at the hearing.

CHAPTER 17 - SEAFOOD INDUSTRIAL PARK AUTHORITY

SECTION .0200 - REGULATION OF DOCKAGE

.0203 GENERAL REGULATIONS FOR USE OF DOCK FACILITIES

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

(b) Except as set forth in Subsection (a) of this Rule, docks are available to active commercial fishing vessels on a first come, first served basis for short-term dockage. No vessel shall remain for a continuous period of more than ~~seven~~ 14 days without special authorization from ~~Dock Security~~ the Dockmaster or ~~the~~ Park Administrator.

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

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

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

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

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

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

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

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

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

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

(m) All fuel trucks, ice trucks or other service vehicles shall conduct their business so as not to interfere with other users of the facilities and shall insure that oil and gasoline is prevented from escaping ~~into onto~~ the ground, water into the water, or on the docks.

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

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

(p) Vessels and their owners ~~refusing to comply not complying~~ with the rules and regulations set forth herein may be denied docking privileges at the ~~authority~~ Park Authority facilities.

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

.0205 RATES: FEES AND PENALTIES

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

(b) Daily fees will be computed on the basis of a 24 hour period or any portion thereof.

~~(b) (c) An annual fee of two dollars and fifty cents (\$2.50)~~ A daily fee of fifteen cents (\$0.15) per lineal foot or fractional part thereof shall be charged all commercial fishing vessels using the Wanchese Seafood Industrial Park docks, tie-up space alongside the concrete dock and for second or third boat abreast mooring.

~~(c) (d) A annual fee of five dollars and fifty cents (\$5.50)~~ A daily fee of fifty cents (\$0.50) per lineal foot or fractional part thereof shall be charged all vessels or other water craft other than commercial fishing vessels using the Wanchese Seafood Industrial Park docks, tie-up space alongside the concrete dock and for second or third boat abreast mooring.

~~(d) (e) The fee shall be paid, in advance, on an annual or semiannual basis for docking privileges.~~ Daily fees must be paid in advance upon tying up or at the earliest time that Seafood Park staff is on hand to collect payment.

~~(e) (f) Checks should be made payable to the NC Seafood Industrial Park Authority and mailed to: Administrator, and any payment by cash or check may be made to the Dockmaster or Park Administrator or delivered to the Seafood Park Administration Office, Wanchese Seafood Industrial Park, Harbor Road, Wanchese, N.C. The mailing address for receipt of fees is P.O. Box 549, Wanchese, N. C. 27981. or payment may be delivered to the Office of Administration, Wanchese Seafood Industrial Park, Harbor Road, Wanchese, N. C.~~

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

(g) Payment of annual or semiannual daily fees shall entitle a vessel to docking privileges for normal turnaround time between trips, using any available dock space under the jurisdiction of the park authority on a first come, first served basis. Normal turnaround time shall mean not more than 14 days between trips. Any extra time beyond 14 days must be specifically authorized by the Dockmaster or Park Administrator.

(h) Any extra time beyond 14 days must be specifically authorized by Dock Security or the park administrator and will be assessed at a per diem rate of twenty-five cents (\$0.25) per linear foot for commercial fishing vessels and fifty cents (\$0.50) per linear foot for recreational vessels and all other water craft.

(i) A commercial fishing vessel without an annual or semiannual permit desiring to dock for any portion of a 24-hour period, or on a daily basis, will be assessed at a daily rate of twenty-

five cents (\$0.25) per foot (LOA). The daily rate for all other vessels meeting authorization criteria for dockage will be fifty cents (\$0.50) per foot (LOA). Daily fees must be paid in advance upon tying up or at the earliest time that park staff is on hand to collect payment.

~~(j) During periods of storm in the area or offshore, the docks may be used as a harbor of refuge. In this event, all vessels requiring refuge from the elements may dock at the facility on a first come, first served basis and no fee will be charged any vessel during such period. When the necessity for the use of the facilities as a harbor of refuge no longer exists, vessels must leave the premises within 24 hours or be subject to the normal fee provisions contained in this Section in Rule .0202. Rule .0205.~~

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

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

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

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

(m) Exceptions to Daily Fees:

(1) In lieu of paying daily dock fees, U.S. Coast Guard, U.S. Army Corps of Engineers and other vessels performing state or federal contract dredging operations in the channels and waters in and around Wanchese Harbor to Oregon Inlet, may purchase annual or semi-annual dock use permits.

(2) An annual fee of five dollars and fifty cents (\$5.50) per lineal foot or fractional part thereof shall be charged those vessels and will be prorated according to first day of dock use for the period, annual (July 1-June 30) or semi-annual (July 1-December 31 or January 1-June 30).

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

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources, Division of Medical Assistance intends to adopt rule(s) cited as 10 NCAC 26C .0005; and amend rule(s) cited as 10 NCAC 50B .0407.

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

The public hearing will be conducted at 1:30 p.m. on December 15, 1989 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning this proposed adoption and proposed amendment must be submitted by December 15, 1989, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 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 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26C - AMOUNT, DURATION, AND SCOPE OF ASSISTANCE

.0005 MEDICAL SERVICES

All medical services performed must be medically necessary and may not be experimental in nature. Medical necessity is determined by generally accepted North Carolina community practice standards as verified by independent Medicaid consultants.

Authority G.S. 108A-25(b); 42 C.F.R. 440.230(d).

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0400 - BUDGETING PRINCIPALS

.0407 PATIENT LIABILITY

(a) Patient liability applies to clients who live in facilities for skilled nursing, intermediate nursing, intermediate nursing for mental retardation or other medical institutions.

(b) The ~~patient's~~ client's patient liability for cost of care is computed as a monthly amount after ~~allowance for his personal needs under Rule~~

~~.0313 of this Subchapter and for amounts prescribed by federal regulations for dependents at home and medical care not covered by the program.~~ making the following deductions from his total income:

- (1) An amount for his personal needs as established under Rule .0313 of this Subchapter;
 - (2) Income given to the community spouse to provide him, from all sources, a total monthly income equal to the "minimum monthly maintenance needs allowance" as defined in 42 U.S.C. 1396r - 5(d) (3);
 - (3) Income given to family members described in 42 U.S.C. 1396r - 5(d) (1), to provide each, from all sources of income, a total monthly income equal to one-third of the amount established under 42 U.S.C. 1396r - 5(d) (3) (A) (i);
 - (4) An amount for unmet medical needs as determined under Paragraph (f) of this Rule.
- (c) Patient liability applies to institutional charges incurred from the date of admission or the first day of the month as appropriate and may not be prorated by days if the client lives in more than one institution during the month.
- (d) The county will notify the client, the institution and the state of the amount of the monthly liability and any changes or adjustments.
- (e) When the patient liability as calculated in Paragraph (b) of this Rule exceeds the Medicaid reimbursement rate for the institution for a 31 day month:
- (1) The patient liability will be the institution's Medicaid reimbursement rate for a 31 day month;
 - (2) The client is placed on a deductible determined in accordance with Federal regulations and Rules .0404, .0405 and .0406 of this Subchapter.
- (f) The amount deducted from income for unmet medical needs is determined as follows:
- (1) Unmet medical needs are:
 - (A) Medical care covered by the program but that exceeds limits on coverage of that care and that is not subject to payment by a third party;
 - (B) Medical care recognized under State and Federal tax law that is not covered by the program and that is not subject to payment by a third party; and
 - (C) Amounts for Medicare and other health insurance premiums, deductibles, or coinsurance charges that are not subject to payment by a third party.

- (2) The monthly amount of unmet medical needs deducted from monthly income is the total of the following:
- (A) Monthly charges for Medicare and other health insurance premiums;
- (B) Estimated monthly cost of other recurring unmet medical needs. This estimate is made in accordance with Federal regulations.
- (3) Unmet medical needs that occur only one time are deducted when they are incurred.
- (4) Following the certification period for which recurring unmet medical needs were estimated, the difference between total amount of estimated unmet medical needs and the actual amount of unmet medical needs incurred during that period is resolved as follows:
- (A) If the estimated amount of unmet medical needs exceeds the actual amount of unmet medical needs by more than five dollars (\$5.00) per month, the difference is added to income when determining patient liability for the earliest possible month for which patient liability can be increased in accordance with advance notice requirements at 10 NCAC 50A .0302;
- (B) If the estimated amount of unmet medical needs is less than the actual amount of unmet medical needs by more than five dollars (\$5.00) per month, the difference is deducted from income when determining patient liability for the month(s) following the month in which resolution is calculated.

Authority G.S. 108A-54; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.831; 42 C.F.R. 435.832; P.L. 100-360; P.L. 100-485.

TITLE 15 - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

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 .0115.

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

The public hearing will be conducted at 7:00 p.m. on December 19, 1989 at Commissioners' Meeting Room, Third Floor, Wilson County Administrative Offices and Law Enforcement Center.

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 December 4, 1989 to January 3, 1990. 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

.0115 SHINING LIGHTS IN DEER AREAS

(b) No person shall, between the hours of 11:00 p.m. and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Beaufort -- entire county;
- (2) Bladen -- entire county;
- (3) Brunswick -- entire county;
- (4) Camden -- entire county;
- (5) Chowan -- entire county;
- (6) Currituck -- entire county;
- (7) Duplin -- entire county;
- (8) Edgecombe -- entire county;
- (9) Franklin -- entire county;
- (10) Gates -- entire county;
- (11) Granville -- entire county;
- (12) Greene -- entire county;
- (13) Hertford -- entire county;
- (14) Hoke -- entire county;
- (15) Hyde -- entire county, except that part of the county described in Paragraph (c) of this Rule;
- (16) Jones -- entire county;
- (17) Lenoir -- entire county;
- (18) Martin -- entire county;
- (19) Montgomery -- entire county;
- (20) Nash -- entire county;
- (21) Orange -- entire county;
- (22) Pamlico -- entire county;
- (23) Pasquotank -- entire county;
- (24) Pender -- entire county;
- (25) Perquimans -- entire county;
- (26) Pitt -- entire county;
- (27) Richmond -- entire county;
- (28) Robeson -- entire county;
- (29) Sampson -- entire county;
- (30) Tyrrell -- entire county;
- (31) Vance -- entire county;
- (32) Wake -- entire county;
- (33) Warren -- entire county;

- (34) Washington -- entire county;
- (35) Wayne -- entire county;
- (36) Wilson -- entire county.

Statutory Authority G.S. 113-134; 113-291.1; S.L. 1981, Ch. 410; S.L. 1981 (Second Session 1982), Ch. 1180.

**TITLE 21 - OCCUPATIONAL LICENSING
BOARDS**

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of CPA Examiners intends to amend rule(s) cited as 21 NCAC 8A .0301; 8C .0121; 8F .0103, .0105, .0401, .0502; 8G .0112, .0403 - .0404, .0406, .0409; 8H .0001, .0003 - .0004; 8I .0004; 8J .0001, .0005; and adopt rule(s) cited as 21 NCAC 8A .0311.

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

The public hearing will be conducted at 10:00 a.m. on December 18, 1989 at N.C. State Board of CPA Examiners, 1101 Oberlin Road, Ste. 104, Raleigh, NC 27605.

Comment Procedures: Any person interested in these rules may present oral comments relevant to the action proposed at the public rule-making hearing or deliver written comments to the Board office not later than 5:00 p.m. on Friday, December 15, 1989. Anyone planning to attend the hearing should notify the Deputy Director at the Board office by noon on Monday, December 11, 1989, whether they wish to speak on the proposals and whether they will speak in favor of the proposals or against them.

**CHAPTER 8 - BOARD OF CERTIFIED PUBLIC
ACCOUNTANT EXAMINERS**

SUBCHAPTER 8A - DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (15) "License year" means the 12 months beginning July 1 and ending June 30;
- (16) ~~(15)~~ "NASBA" means the National Association of State Boards of Accountancy;

- (17) ~~(16)~~ "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (18) ~~(17)~~ "Retired," when used to refer to the status of a person, describes a person possessing a North Carolina certificate of qualification who:
 - (A) does not receive any earned compensation for current personal services in any job whatsoever; and
 - (B) does not render services in the field of accountancy on a voluntary basis; and
- (19) ~~(18)~~ "Revenue Department" means the North Carolina Department of Revenue.

Statutory Authority G.S. 93-1.

**.0311 EMPHASIS IN TAXATION OR
ACCOUNTING**

Pursuant to G.S. 93-12(5), a law degree with an emphasis in taxation or accounting may be substituted for one year of the experience requirement for certification purposes. For the purposes of this substitution, an "emphasis in taxation or accounting" shall mean 12 semester hours in taxation or accounting above the undergraduate level.

Statutory Authority G.S. 93-12(5).

SUBCHAPTER 8C - CONTESTED CASES

**SECTION .0100 - PROCEDURE IN CONTESTED
CASES**

.0121 SERVICE OF SUBPOENAS

(a) Subpoenas shall be served as the officer issuing the subpoenas shall direct and as may be appropriate to the circumstances of the case. Subpoenas may be directed to be served by any of the following methods:

- (1) by a Board employee; or
- (2) by the sheriff of the county in which the person subpoenaed resides, when the party requesting the subpoena prepays the sheriff's service fee; or
- (3) by certified mail through the U.S. Postal Service.

Statutory Authority G.S. 93-12; 150B-39.

**SUBCHAPTER 8F - REQUIREMENTS FOR
CERTIFIED PUBLIC ACCOUNTANT
EXAMINATION AND CERTIFICATE
APPLICANTS**

SECTION .0100 - GENERAL PROVISIONS

**.0103 FILING OF EXAMINATION
APPLICATIONS AND FEES**

(e) Official transcripts (originals - not photocopies) signed by the college registrar and bearing the college seal are required to prove education and degree requirements. A letter from the ~~academic dean~~ college registrar of the school may be filed as documentation that the applicant has met the graduation requirements if the degree has not been awarded and/or posted to the transcript. However, no examination grades will be released until an official transcript is filed confirming the information supplied in the ~~academic dean's~~ college registrar's letter. All applicants submitting transcripts from foreign schools for consideration of degree and or of meeting accountancy course requirements must have had the transcript(s) evaluated by a Board-approved educational evaluation service. ~~Applicants shall read their transcripts to determine if they contain all the required information. Applicants shall be responsible for determining that their transcripts contain all the required information.~~

Statutory Authority G.S. 93-12(3); 93-12(4); 93-12(5).

.0105 PASSING GRADES

(c) A candidate receiving conditional credit initially as provided for under ~~21 NCAC 81 .0105(b)~~ Paragraph (b) of this Rule shall retain credit for a period of not more than the five succeeding examinations offered by the Board provided that for the period during which an applicant who was or is in active military service any time subsequent to receiving conditional credit, only those examinations for which that applicant has applied and has been approved shall be considered as succeeding examinations.

~~(c) In computing the five succeeding examinations offered by the Board, the time spent in the military service shall be excluded; however, a candidate in the military service shall not receive an extension for any examinations taken while in the military service.~~

Statutory Authority G.S. 93-12(3); 93-12(5).

SECTION .0400 - EXPRIENCE

.0401 WORK EXPERIENCE REQUIRED OF CANDIDATES FOR CPA CERTIFICATION

(b) The following provisions apply to all candidates seeking to meet the work experience requirement by working in the field of accounting. G.S. 93-12(5)(second a.) and (second c.).

(2) ~~In order to calculate how much work experience a candidate has acquired, all weeks of actual full-time employment are added to all full-time equivalent weeks.~~

All weeks of actual full-time employment are added to all full-time equivalent weeks in order to calculate how much work experience a candidate has acquired. Dividing that number by 52 results in the years of work experience the candidate has acquired.

Statutory Authority G.S. 93-12(3); 93-12(5).

SECTION .0500 - APPLICATIONS FOR CERTIFICATES

.0502 APPLICATION FOR CPA CERTIFICATE

(b) Three certificates of good moral character signed by CPAs shall be submitted with the application for a CPA certificate. ~~unless, within the preceding six months, the applicant submitted an examination application that contained certificates of good moral character signed by CPAs.~~

Statutory Authority G.S. 93-12(5).

SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0100 - GENERAL PROVISIONS

.0112 DISCIPLINARY ACTIONS FOR VIOLATIONS

(a) Any person or firm having violated any accountancy statute or rule of this Board may be subjected for each such violation to any of the following disciplinary actions or a combination of such:

(5) ~~Fine~~ Civil penalty - may be assessed in amounts of up to one thousand dollars (\$1,000) per violation, as determined by the Board. The amount of the ~~fine~~ civil penalty is based on the number and severity of the violations. Privileges in professional associations are usually not affected, nor is the right to use the CPA title affected. ~~Fines~~ Civil penalties assessed are made public in the same manner as a censure.

(7) Revocation - is permanent unless a person whose certificate is revoked applies for and is granted a new certificate of qualification pursuant to 21 NCAC 81 .0004. ~~Application for a new certificate may be made at any time after revocation. Prior to granting a new certificate, the Board may impose certain conditions upon an applicant whose former license was revoked.~~ A revocation is published and announced in the same manner as a censure or suspension. A revocation may result in suspension of privileges to prac-

tion before the IRS and the Revenue Department. Memberships in associations may be terminated along with the ability to participate in group insurance plans. A CPA employed by a professional ~~association~~ corporation must terminate employment and sever all financial interests in the professional ~~association~~ corporation.

Statutory Authority G. S. 55B-12; 93-12(9).

SECTION .0400 - CONTINUING PROFESSIONAL EDUCATION

.0403 QUALIFICATION OF CPE SPONSORS

(d) In the CPE program sponsor agreement with the Board, the approved sponsor will agree to:

- (3) state the following in every brochure or other publication or announcement concerning a course:
 - (A) the general content of the course and the specific knowledge or skill taught in the course;
 - (B) any prerequisites for the course and any advance preparation;
 - (C) the level of the course, such as basic, intermediate, or advanced;
 - (D) the teaching methods to be used in the course;
 - (E) the amount of recommended CPE credit a CPA who takes the course could claim; and
 - (F) the date the course is offered, if the course is offered only on a certain date, and, if applicable, the location;
- (9) ~~monitor attendance at a group course to~~ assign accurately the number of CPE credits each participant may be eligible to receive by either:
 - (A) monitoring attendance at a group course; or
 - (B) testing in order to determine if the participant has appropriately learned the material presented;
- (12) systematically review the evaluation process to ensure its effectiveness; ~~and~~
- (13) retain for five years from the date of the course presentation or completion:
 - (A) a record of participants completing course credit requirements;
 - (B) an outline of the course (or equivalent);
 - (C) the date and location of presentation;
 - (D) the participant evaluations or summaries of evaluations;
 - (E) the documentation of the instructor's qualifications; and

- (F) the number of contact hours recommended for each participant;
- (14) have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPE programs and has the responsibility and is accountable for assuring and demonstrating compliance with these rules by the sponsor or by any other organization working with the sponsor for the development, distribution and/or presentation of CPE courses;
- (15) develop and promulgate policies and procedures for the management of grievances including, but not limited to, tuition and fee refunds;
- (16) possess a budget and resources that are adequate for the activities undertaken and their continued improvement; and
- (17) ~~(13)~~ effective January 1, 1990, provide persons completing course requirements with written proof of completion indicating the participant's name, the name of the course, the date the course was held, the sponsor's name and address, and the number of CPE hours calculated and recommended in accordance with 21 NCAC 8G .0409.

(e) Failure of an approved sponsor to comply with the terms of the CPE program sponsor agreement shall be grounds for the Board to terminate the agreement, to remove the approved sponsor's name from the list of approved sponsors and to notify the public of this action.

Statutory Authority G.S. 93-12(8b).

.0404 REQUIREMENTS FOR CPE CREDIT

(c) In addition to courses sponsored by approved sponsors, the following may qualify as acceptable types of continuing education programs, provided the programs comply with the requirements set forth in Paragraph (a) of this Rule:

- (1) professional development programs of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;
- (3) courses taken at regionally accredited colleges and universities;
- (4) formal educational programs conducted within an association of accounting firms; and
- (5) formal correspondence courses.

A CPA may claim credit for a course offered by a non-approved sponsor provided that the course

meets the requirements of Rules .0403(d), .0404, and .0409 of this Section. It is the responsibility of the CPA to maintain documentation proving that the course met these standards.

Statutory Authority G.S. 93-12(8b).

.0406 COMPLIANCE WITH CPE REQUIREMENTS

(a) All active CPAs must file with the Board a completed CPE reporting form by the July 1 renewal date of each year. Inactive CPAs must file with the Board an affidavit of exemption from the CPE requirement by the July 1 renewal date. ~~or, if they desire to comply with the CPE requirements, must file a completed CPE reporting form by that date.~~

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by the July 1 renewal date, the Board may, in its discretion:

- (1) change the CPA's status from active to conditional, and may impose any conditions that the Board considers appropriate in the circumstances, as a penalty for the first such failure within a five calendar year period;
- (2) place the CPA on conditional status again and require the payment of a fine civil penalty of one hundred dollars (\$100.00) for the second such failure within a five calendar year period; and
- (3) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 8J .0006 for the third such failure within a five calendar year period.

Statutory Authority G.S. 93-12(8b); 93-12(9e).

.0409 COMPUTATION OF CPE CREDITS

(b) College Courses. CPE credit for a college course in the college curriculum will be granted based on the number of credit hours the college gives the CPA for completing the course. One semester hour of college credit is 15 CPE credits; one quarter hour of college credit is ten CPE credits; and one continuing education unit (CEU) is ten CPE credits. If a college course does not carry credit, CPE credit for the course will be based on the number of contact hours of the course using the formula set out in Paragraph (a) of this Rule. However, under no event circumstances will CPE credit be given to a CPA who audits a college course.

(d) Instructing a CPE Course. CPE credit for teaching or presenting a CPE course is given based on the number of contact hours spent in preparing and presenting the course. No more than 50 percent of the CPE credits required for a year may be credits for preparing for and presenting a course. CPE credit for preparing for and presenting a course is allowed only once a year for a course presented more than once in the same year by the same CPA. Instructors of undergraduate level college courses may not claim any CPE credit for such courses; however, instructors of graduate level courses may claim credit if the courses are conducted in accordance with Rules .0403 and .0404 of this Section.

Statutory Authority G.S. 93-12(8b).

SUBCHAPTER 8H - RECIPROCITY

.0001 RECIPROCAL CERTIFICATES

(c) An applicant for a reciprocal certificate must meet all of the current requirements imposed on an applicant under G.S. 93-12(5) or the following requirements, which the Board considers to be substantially equivalent to those requirements:

(2) The applicant:

(A) within ten years immediately preceding the filing date of the application, has had four years of experience in the field of accounting under the direct supervision of a CPA who held a valid license during the period of supervision in any state or territory of the United States or the District of Columbia; and within ten years immediately preceding the filing date of the application; or

(B) has ten years of experience in the field of accounting, or ten years of experience teaching accounting as defined and calculated in 21 NCAC 8F .0409, or any combination of such experience earned within the 12 years immediately preceding the filing date of the application.

Statutory Authority G.S. 93-12(6); 93-12(7a).

.0003 APPLICATION FOR TEMPORARY PERMIT

(b) The initial application fee and the renewal fee for temporary permits shall be the maximum amount allowed by statute for each fiscal license year or fraction thereof.

(c) Upon approval of a temporary permit, the Board will issue the applicant a card stating statement confirming that the CPA is entitled temporarily to use the CPA title and engage in

PROPOSED RULES

the public practice of accountancy in North Carolina for a stated ~~fixed~~ license year or fraction thereof.

Statutory Authority G.S. 93-10; 93-12(6); 93-12(7a); 93-12(8).

.0004 NOTICE TO BOARD OF DISCIPLINE BY OTHER AGENCY

Any applicant for or holder of a temporary or reciprocal certificate issued by this Board shall ~~advise the Executive Director in writing within 15 days after being disciplined by any other state licensing agency or governmental body.~~ also comply with the reporting requirements listed in 21 NCAC 8G .0113.

Statutory Authority G.S. 93-12(3).

SUBCHAPTER 8I - REVOCATION OF CERTIFICATES AND OTHER DISCIPLINARY ACTION

.0004 MODIFICATION OF DISCIPLINE AND NEW CERTIFICATE

(e) No application for a new certificate or for modification of discipline will be considered while the applicant is serving a sentence for any criminal offense, including any period during which the applicant is on probation or parole pursuant to that criminal offense.

Statutory Authority G.S. 55B-12; 93-2; 93-12(7a); 93-12(7b); 93-12(9).

SUBCHAPTER 8J - RENEWALS AND REGISTRATIONS

.0001 ANNUAL RENEWAL OF CERTIFICATE, FORFEITURE AND REAPPLICATION

(c) Upon failure of a CPA to comply with any applicable part of Paragraph (b) of this Rule by July 1, the Board will send notice of such failure to the CPA at the most recent mailing address the Board has on file. Subsequent failure of the CPA to comply with any applicable part of Paragraph (b) of this Rule within 30 days after such notice is mailed automatically results in forfeiture of the CPA's certificate, as required by G.S. 93-12(15).

Statutory Authority G.S. 93-12(7a); 93-12(8); 93-12(8a); 93-12(8b); 93-12(15).

.0005 RETIRED AND INACTIVE STATUS: CHANGE OF STATUS

(a) Any CPA may apply to the Board for change of status to retired status or inactive status provided the CPA meets the description of the appropriate status as defined in 21 NCAC 8A .0301. Application for any status change may be made on the annual certificate renewal form or another form provided by the Board.

Statutory Authority G.S. 93-12(8); 93-12(8b).

The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.

Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Upon request from the adopting agency, the text of rules will be published in this section.

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as * Correction. These changes do not change the effective date of the rule.*

TITLE 5 - DEPARTMENT OF CORRECTION

CHAPTER 1 - DEPARTMENTAL RULES

SUBCHAPTER 1A - ORGANIZATION OF THE DEPARTMENT OF CORRECTION

SECTION .0100 - GENERAL PROVISIONS

- .0101 NAME AND ADDRESS
- .0102 PURPOSE
- .0103 ORGANIZATION
- .0104 LEVEL OF AUTHORITY
- .0105 JURISDICTION
- .0106 INFORMATION ABOUT THE DEPARTMENT OF CORRECTION

History Note: Statutory Authority G.S. 15-184; 143-10; 143-11; 143B-260; 143B-261; 143B-264; 143B-266; 148-4; 148-11; 148-26; 148-26.2; 148-65.1; 148-65(a); 162-39; Eff. February 1, 1976; Repealed Eff. December 1, 1989.

SECTION .0200 - DIVISION OF PRISONS

- .0201 GENERAL
- .0202 STRUCTURE

History Note: Statutory Authority G.S. 143B-10; 148-11; Eff. February 1, 1976; Repealed Eff. December 1, 1989.

SECTION .0300 - DIVISION OF ADULT PROBATION AND PAROLE

- .0301 GENERAL
- .0302 STRUCTURE

History Note: Statutory Authority G.S. 143B-10; 143B-19; 148-4(6); Eff. February 1, 1976; Amended Eff. May 1, 1983; Repealed Eff. December 1, 1989.

SECTION .0400 - PAROLE COMMISSION

- .0401 STRUCTURE
- .0402 POWERS AND DUTIES

History Note: Statutory Authority G.S. 143B-13; 143B-266; 143B-276; Eff. February 1, 1976; Repealed Eff. December 1, 1989.

SECTION .0500 - INMATE GRIEVANCE COMMISSION

- .0501 STRUCTURE
- .0502 SUBMISSION OF GRIEVANCE OR COMPLAINT

History Note: Statutory Authority G.S. 148-101; 148-102; 148-103; 148-104; Eff. February 1, 1976; Repealed Eff. December 1, 1989.

SECTION .0600 - BOARD OF CORRECTION

- .0601 STRUCTURE
- .0602 DUTIES

History Note: Statutory Authority G.S. 143B-265; Eff. February 1, 1976; Repealed Eff. December 1, 1989.

SUBCHAPTER 1B - GENERAL ADMINISTRATION

SECTION .0100 - POLICY AND PROCEDURE DEVELOPMENT

- .0101 GENERAL
- .0102 POLICY DEVELOPMENT AND MAINTENANCE
- .0103 AMENDMENTS

History Note: Statutory Authority G.S.

FINAL RULES

143B-261.1; 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.

SUBCHAPTER 1C - FISCAL ADMINISTRATION

SECTION .0100 - OPENING; CHANGING AND TRANSFERRING OF BANK ACCOUNTS

- .0101 PURPOSE
- .0102 PROCEDURE

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0200 - INMATES' INCENTIVE WAGE FUND

- .0201 PURPOSE
- .0202 GENERAL
- .0203 ESTABLISHMENT OF INITIAL IMPREST FUND
- .0204 PLACING INMATES ON THE PROGRAM
- .0205 PREPARATION OF PAYROLL
- .0206 MONTHLY REIMBURSEMENT CLAIMS BY UNITS

*History Note: Statutory Authority G.S. 148-11; 148-18;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0300 - INMATE'S WORK RELEASE FUNDS

- .0301 PURPOSE
- .0302 GENERAL
- .0303 WORK RELEASE PROGRAM
- .0304 PROCEDURE FOR RECEIPTS OF EARNINGS
- .0305 CENTRAL ACCOUNTING OFFICE

*History Note: Statutory Authority G.S. 148-11; 148-33.1(f); 148-33.1(f)(2);
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0400 - TRANSFER OF INMATE'S WORK RELEASE FUNDS

- .0401 PURPOSE
- .0402 INMATES ON THE PROGRAM
- .0403 INMATES OFF THE PROGRAM
- .0404 GENERAL PROVISIONS AND INSTRUCTIONS

*History Note: Statutory Authority G.S. 148-11; 148-33.1(f);
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0500 - CANTEEN OPERATION

- .0501 PURPOSE
- .0502 GENERAL
- .0503 FISCAL
- .0504 MONTHLY REPORT
- .0505 MERCHANDISE

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0600 - TREATMENT FACILITY OPERATIONAL FUNDING

- .0601 PURPOSE
- .0602 GENERAL
- .0603 ESTABLISHMENT OF IMPREST FUND
- .0604 PAYMENT OF OPERATIONAL EXPENSES
- .0605 MONTHLY REPORTS TO RALEIGH ACCOUNTING OFFICE
- .0606 REIMBURSEMENT FROM RALEIGH ACCOUNTING OFFICE

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0700 - TRANSFER OF INMATES' TRUST FUND

- .0701 PURPOSE
- .0702 OPENING OF SAVINGS ACCOUNT BY INMATE
- .0703 GENERAL PROVISIONS AND INSTRUCTIONS

*History Note: Statutory Authority G.S. 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0800 - COMPENSATION UNDER EMERGENCY LEAVE POLICY

- .0801 PURPOSE
- .0802 GENERAL
- .0803 FISCAL

*History Note: Statutory Authority G.S. 148-5; 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0900 - FEDERAL GRANT PURCHASING PROCEDURE

- .0901 GENERAL
- .0902 PURCHASE ORDER REQUEST (FORM DC-106)
- .0903 APPROVAL

- .0904 PURCHASE ORDER
- .0905 MATERIAL RECEIVED REPORT
(FORM DC-103)

*History Note: Statutory Authority G.S. 148-5;
148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .1000 - INMATES' TRUST FUND

- .1001 PURPOSE
- .1002 PROCEDURE

*History Note: Statutory Authority G.S. 148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SUBCHAPTER 1D - STAFF DEVELOPMENT
AND TRAINING

SECTION .0100 - STAFF TRAINING

- .0101 GENERAL
- .0102 GENERATION OF TRAINING ACTION
MEMO
- .0103 APPROVAL OF TRAINING ACTION
MEMO
- .0104 GENERATION OF A DETAILED PLAN
- .0105 IMPLEMENTATION OF TRAINING
SESSION

*History Note: Statutory Authority G.S. 17B-2;
148-11;
Eff. July 1, 1976;
Repealed Eff. December 1, 1989.*

SECTION .0200 - REQUEST FOR
EDUCATIONAL LEAVE AND TUITION
REFUND

- .0201 GENERAL
- .0202 REQUEST FOR EDUCATIONAL LEAVE
- .0203 APPLICATION FOR TUITION REFUND

*History Note: Authority State Personnel
Manual 4-7;
Eff. July 1, 1976;
Amended Eff. October 11, 1978;
Repealed Eff. December 1, 1989.*

SUBCHAPTER 1E - PERSONNEL

SECTION .0100 - PERFORMANCE APPRAISAL

- .0101 GENERAL
- .0102 PROCEDURES

*History Note: Statutory Authority G.S.
143B-261.1; 143B-361.1;
Eff. December 12, 1977;
Repealed Eff. December 1, 1989.*

SECTION .0200 - PERSONNEL SECONDARY
EMPLOYMENT

- .0201 GENERAL
- .0202 PROHIBITIONS
- .0203 REQUESTS AND APPROVAL
- .0204 DISCIPLINARY ACTION

*History Note: Statutory Authority G.S. 148-11;
Eff. June 13, 1978;
Repealed Eff. December 1, 1989.*

CHAPTER 2 - DIVISION OF PRISONS

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .0600 - CUSTODIAL
CLASSIFICATIONS

.0605 COMMUNITY RESOURCE COUNCILS

(a) General. Community Resource Councils are developed to provide orderly assistance in stimulating community involvement and to promote volunteerism in prison facilities throughout the state. Council activities shall be governed by Department of Correction policies and procedures.

(b) Location. Each Division of Prisons facility will organize and maintain a community Resource Council. Councils will be established based on the nature and function of each facility. Upon written justification, a facility may request a temporary exemption from the Director of Prisons.

(c) Appointment.

- (1) The superintendent of each prison facility and the respective area administrator, if appropriate, will recommend persons to serve as council members. Each superintendent and area administrator will confer with local community leaders during the selection process. The list of nominees will be submitted to the Department of Correction through the chain of command, for consideration by the Secretary.
- (2) The Secretary shall appoint council members to two-year terms. Council appointments will be made annually, with appointments effective January 1 of each year. When unscheduled vacancies occur, new appointees will serve the unexpired term of the council member being replaced, and may be eligible for reappointment to a full term.
- (3) During the initial organization of each council, members will be appointed to serve staggered terms. Each year members will be reappointed; however, no council shall make By-laws or other policies which call for the election of more

- than one half its members during any one year.
- (4) The Secretary may remove any member of the council for misfeasance, malfeasance, or nonfeasance.
- (d) Statement of Purpose.
- (1) Councils shall be governed in general principle by an established statement of purpose approved by the Secretary of Correction. Copies of this purpose statement will be maintained in the Office of the Secretary.
- (2) Unit superintendents and council chairpersons shall clarify the specific mission and purpose of each Community Resource Council. Other goals and short-term planning strategies should be developed to provide positive leadership and recognition of members for the achievement of correctional goals established by the local facility, the administration, and the Community Resource Council.
- (e) By-Laws. Each council shall adopt standard by-laws. Issues not addressed by the standard by-laws are reserved to the discretion of individual councils but must comply with state law and with departmental policies and procedures.
- (f) Community Resource Council Activities.
- (1) Volunteers. The council should be involved in recruitment of volunteers to assist in providing volunteer services or fund-raising activities at the facility.
- (2) Fund-Raising. Special, local council fund-raising guidelines must be designed to assure that gifts and donations are appropriately received. If a major [anything greater than one thousand dollars (\$1,000)] fund-raising project is contemplated, such as for the construction of a chapel, a separate fund-raising body must be established and incorporated as a non-profit organization. All proposed major fund-raising projects must be approved by the secretary prior to commencement of the project.
- (3) Program Activity. Acceptable program activities for council volunteers may include assisting inmate families in understanding prison policies and procedures, providing workshops for staff on relevant issues, or generating in-kind contributions of equipment and supplies. Provided, any in-kind contribution in an amount greater than one thousand dollars (\$1,000) shall be subject to the approval of the secretary.
- (g) Training.

- (1) A training program approved by the Office of Volunteer Services will be conducted by each unit superintendent or a designee for each council member.
- (2) Training should be offered to councils on a continuing basis to assure efficiency of operations and the achievement of Department of Correction goals.
- (h) Reporting. The chairperson of each council shall submit a copy of the minutes of each council meeting to the Volunteer Services Program Consultant and to the secretary on a regular basis. These reports should reflect council activities, achievements and any problems. A periodic summary report shall be compiled from all minutes submitted to the Office of the Volunteer Services Program Consultant and distributed to council chairpersons, area administrators, institution heads and unit superintendents.
- (i) Evaluation. Each council shall complete an annual evaluation to determine its progress and effectiveness in meeting community needs, staff needs, inmate needs, and in the accomplishment of other specific objectives set forth by policy or those goals established by the council members.
- (j) Recognition Program. Recognition activities should be held annually to recognize community volunteers and other persons instrumental in the attainment of goals and objectives and other special achievements which merit recognition.

History Note: Statutory Authority G.S. 143B-10; 148-4; 148-11; Eff. July 1, 1987; Amended Eff. December 1, 1989.

SUBCHAPTER 2G - COURT RELATED PROCEEDINGS

SECTION .0200 - ACCESS TO THE COURTS

.0201 GENERAL

Every inmate committed to the Department of Correction shall be afforded reasonable access to the courts. In an effort to provide such access, the Department will contract for attorneys to provide assistance for inmates.

History Note: Statutory Authority G.S. 148-11; Eff. February 1, 1976; Amended Eff. December 1, 1989.

.0202 ACCESS TO COURTS

Inmates are to be counseled and encouraged to utilize the legal services contractor in order to access the courts. No inmate will be penalized due to allegations against the Department or its employees presented in petitions and complaints.

History Note: Statutory Authority G.S. 15-176; 148-11; Eff. February 1, 1976; Amended Eff. December 1, 1989; March 1, 1985; January 1, 1985; June 1, 1984.

.0203 DIVISION OF PRISONS RESPONSIBILITY

(a) Facility responsibility. The Department shall work to facilitate the provision of legal services to inmates by the contractor. Each superintendent or institution head will be responsible for the following:

- (1) Appointing a facility coordinator for inmate access to the contractor;
- (2) Insuring that unit staff become familiar with the names and proper identification of contractor's staff; and
- (3) Designating reasonably private area(s) in the facility for the inmate and attorney to meet, consistent with custody, security, and operational requirements. The contractor's attorneys, as well as any private attorney retained by an inmate, will not be permitted access to staff or other areas of the facility without the approval of the Department's Legal Counsel.

(b) Inmate Court Attire. In accordance with G.S. 15-176, when an inmate appears in any criminal court proceeding as a party, the inmate must wear civilian clothing. Discharge clothing will be provided for this purpose. Unless otherwise directed by the Attorney General's Office, inmates appearing in court in a civil action will be neatly attired in prison clothing commensurate with their custody grade.

(c) Legal Mail. Written communication to and from the legal services contractor shall be considered legal mail and shall be managed in accordance with 5 NCAC 2D .0300.

(d) Notary Services. Each facility will have available a Notary Public to notarize legal papers for inmates at reasonable times.

(e) Notice. All facilities within the Division of Prisons shall post in conspicuous locations, a notice from the contractor, identifying services available and the method of contacting the contractor.

(f) Orientation. Newly admitted inmates will be provided orientation in the Diagnostic and Reception Center regarding the availability of legal assistance from the contractor.

(g) Complaints. Each prison facility administrator will be responsible for documenting staff and inmate complaints regarding the contractor's staff or provision of services. Complaints should be forwarded through the chain of command to the Director of Prisons.

(h) Supplies. Inmates will be provided with paper, carbon paper, and writing implements with which the legal services contractor may be contacted. The Department will not provide typewriters nor photocopy services for the preparation of legal documents.

(i) Law Libraries and Legal Material. The Department will not provide law libraries, legal texts or other legal materials.

History Note: Statutory Authority G.S. 148-11; Eff. June 16, 1978; Amended Eff. December 1, 1989; March 1, 1985.

.0204 INMATE - CONTRACTOR ACCESS

The primary and preferred method of inmate access to the courts is through the attorney assistance program as established by the Department under the contract as specified in Rule .0201 of this Subchapter. Inmates should be encouraged to contact the legal services contractor for legal assistance.

- (1) Special Provisions for Non-English Speaking or Illiterate Inmates. The facility superintendent or their designee will initiate the contact on behalf of any non-English speaking or illiterate inmate who makes it known that legal assistance is requested. Once contact has been made, the contractor is responsible for providing any special assistance which may be needed.
- (2) Access to Inmates. The contractor will be provided access to its inmate clients as frequently as is required to provide adequate legal representation and consistent with the terms and conditions as specified in the contract. Contact between inmates and the contractor is to be in the form of written correspondence or personal visits.

History Note: Statutory Authority G.S. 148-11; Eff. June 16, 1978; Amended Eff. December 1, 1989.

.0205 ACCESS TO PRIVATE COUNSEL

Inmates may retain private counsel for legal representation. Such attorneys shall be permitted access to inmates consistent with 5 NCAC 2D .0202(a), and must show proof that an attorney-client relationship has been established with an inmate in a matter which may be pending before the court.

History Note: Statutory Authority G.S. 148-11; Eff. June 16, 1978; Amended Eff. December 1, 1989.

.0206 TELEPHONE ACCESS TO INMATE

CLIENTS

In exceptional situations where legal deadlines make a personal visit or correspondence impractical, attorneys may initiate a request with the Department's Legal Section for approval to contact inmate clients by telephone. Authorization will be provided to the Superintendent by the Department's Legal Section.

History Note: Statutory Authority G.S. 148-11; Eff. December 1, 1989.

.0207 PRO SE REPRESENTATION

Inmates may represent themselves in legal matters before the courts.

History Note: Statutory Authority G.S. 148-11; Eff. December 1, 1989.

.0208 LEGAL MATERIALS

An inmate may possess legal texts and materials consistent with 5 NCAC 2F .0503 and 5 NCAC 2D .0100. However, such items will not be provided by the Department.

- (1) The amount of legal materials and texts which an inmate may be permitted to keep at the prison facility will be limited based upon the following:
 - (a) The amount of personal storage space provided, based upon the inmate's custody classification;
 - (b) The amount of personal storage space available within the prison facility's physical plant; and

- (c) The security, safety, sanitation and fire hazard considerations affecting the orderly operation of the prison facility.
- (2) Items of personal property, including legal materials, which exceed the amount the prison facility can reasonably accommodate, will be disposed of in accordance with 5 NCAC 2F .0504(a). The inmate may mail the items to an addressee of his/her choice at the inmate's expense. Indigent inmates may have items mailed through the Inmate Welfare Fund.

History Note: Statutory Authority G.S. 148-11; Eff. December 1, 1989.

.0209 INMATE ASSISTANCE

The establishment of the attorney assistance program with a duly licensed legal services contractor negates the need for one inmate to provide legal assistance to another inmate. It shall be a disciplinary infraction for inmates to provide legal assistance to other inmates or to otherwise practice law, as defined by G.S. 84-2.1. Inmates who violate this Rule may be charged with violating disciplinary offense No. 39 and/or prosecuted under G.S. 84-4 and 84-8.

History Note: Statutory Authority G.S. 84-2.1; 84-4; 84-8; 148-11; Eff. December 1, 1989.

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3	Auditor, Department of State
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4	Auctioneers, Commission for
6	Barber Examiners, Board of
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44	Osteopathic Examination and Registration, Board of
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48	Physical Therapy Examiners, Board of
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52	Podiatry Examiners, Board of
53	Practicing Counselors, Board of
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- AO - Administrative Order
- AG - Attorney General's Opinions
- C - Correction
- FR - Final Rule
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