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# *The* **NORTH CAROLINA REGISTER**

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**EXECUTIVE ORDER**

**PROPOSED RULES**

**Environment, Health, and Natural Resources**

**Human Resources**

**Insurance**

**Nursing, Board of**

**Secretary of State**

**State Personnel**

**ARRC OBJECTIONS**

**ISSUE DATE: JULY 2, 1990**

**Volume 5 • Issue 7 • Pages 474-513**



## 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.

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# NORTH CAROLINA REGISTER



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**NORTH CAROLINA REGISTER**  
*Publication Schedule*  
 (January 1990 - December 1991)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
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
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04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
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09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92

\* 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 117  
AMENDING EXECUTIVE ORDER NUMBER 108  
TO INCLUDE THE SECRETARY OF THE DEPARTMENT OF REVENUE  
IN THE MEMBERSHIP OF THE NORTH CAROLINA DRUG CABINET**

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

Section 1. Executive Order Number 108, Section 2(a) is hereby amended to read as follows:

- “...(9) the Secretary of the Department of Human Resources;  
(10) the Secretary of the Department of Transportation; and  
(11) the Secretary of the Department of Revenue.”

Section 2. This Order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina this the 30th day of May, 1990.

**TITLE 10 - DEPARTMENT OF HUMAN  
RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 14K .0403; 14M .0202, .0303, .0402 and adopt rules cited as 10 NCAC 14L .0602 and .0603.*

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

*The public hearing will be conducted at 10:30 a.m. on August 8, 1990 at Holiday Inn State Capitol, 320 Hillsborough Street, Raleigh, NC 27603.*

*Comment Procedures: Any interested person may present his/her comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Marilyn Brothers, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-4774 by August 7, 1990. The hearing record will remain open for written comments from July 2, 1990 through August 7, 1990. Written comments must be sent to the above address and must state the rule(s) to which the comments are addressed. Fiscal information on these rules is also available from the same address.*

**CHAPTER 14 - MENTAL HEALTH: GENERAL**

**SUBCHAPTER 14K - CORE LICENSURE RULES  
FOR MENTAL HEALTH: MENTAL  
RETARDATION AND OTHER  
DEVELOPMENTAL DISABILITIES; AND  
SUBSTANCE ABUSE FACILITIES**

**SECTION .0400 - PHYSICAL PLANT**

**.0403 COMPLIANCE WITH BUILDING CODE  
REQUIREMENTS**

(a) As used in this Rule the term "new facility" refers to a facility which has not been licensed previously and for which an initial license is being sought. The term does not refer only to a "new" building but will apply to an "old" building if the building houses a facility for which an initial license is being sought.

(b) Each new facility specified in (d), (e), (f), (g), (h) and (i) of this Rule, with the exception of private home respite, alternative family living and apartment models, and supervised independent living, shall be in compliance with the

current edition of Section 11X of Volume I of the N.C. State Building Code.

(c) Each new facility specified in (d), (e), (f), (g), (h) and (i) of this Rule, with the exception of private home respite, alternative family living and apartment models shall be in compliance with the current edition of Volume II, III and IV of the N.C. State Building Code.

(d) In addition to Building Code requirements specified in (b) of this Rule, new facilities specified in (1), (2), and (3) of this Paragraph shall meet the requirements of the current edition of Volume I-B of the N.C. State Building Code as follows:

(1) Mental retardation or other developmental disability facilities:

(A) group homes for adults with mental retardation or other developmental disabilities serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance; and

(B) group homes for children with mental retardation or other developmental disabilities serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance; and

(C) ~~(A)~~ group homes for individuals with mental retardation or other developmental disabilities and with behavior disorders serving ~~five~~ six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance; and

(D) ~~(B)~~ community center-based respite for individuals with mental retardation, other developmental disabilities, developmental delays or at risk for these conditions serving five or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance.

(2) Mental health facilities:

(A) group homes and residential acute treatment for adult and elderly individuals who are mentally ill serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance; and

(B) residential treatment for children and adolescents serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance.

(3) Substance abuse facilities:

(A) nonhospital medical detoxification for individuals who are substance abusers

serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance;

(B) social setting detoxification for individuals who are alcoholics serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance; and

(C) halfway houses for individuals who are substance abusers serving six or fewer clients who are ambulatory and able to respond on their own and evacuate the facility without assistance.

(e) In addition to Building Code requirements specified in (b) and (c) of this Rule, new facilities specified in (1) and (2) of this Paragraph shall meet the requirements of the current edition of Volume I, Section 510 of the N.C. State Building Code as follows:

(1) Mental retardation or other developmental disability facilities:

(A) group homes for adults with mental retardation or other developmental disabilities serving five or fewer clients all of whom are non-ambulatory or unable to respond and evacuate without assistance, certifiable for Medicaid reimbursement and staffed 24 hours per day with at least two staff awake at all times;

(B) ~~(A)~~ group homes for adults with mental retardation or other developmental disabilities serving more than six ~~residents~~ clients and fewer than ten ~~residents~~ clients who are ambulatory and able to respond on their own to emergency conditions;

(C) ~~(B)~~ group homes for adults with mental retardation or other developmental disabilities serving six or fewer clients of whom one, two or three are non-ambulatory or unable to respond on their own to emergency conditions;

(D) group homes for children with mental retardation or other developmental disabilities serving five or fewer clients all of whom are non-ambulatory or unable to respond and evacuate without assistance, certifiable for Medicaid reimbursement, and staffed 24 hours per day with at least two staff awake at all times;

(E) ~~(C)~~ group homes for children with mental retardation or other developmental disabilities serving ~~five~~ six or fewer ~~residents~~ clients of whom one, two or three are non-ambulatory or unable to respond on their own to emergency conditions;

(F) group homes for individuals with mental retardation or other developmental

disabilities and behavior disorders serving five or fewer clients all of whom are non-ambulatory or unable to respond and evacuate without assistance, certifiable for Medicaid reimbursement, and staffed 24 hours per day with at least two staff awake at all times;

(G) ~~(D)~~ group homes for individuals with mental retardation or other developmental disabilities and with behavior disorders serving ~~five~~ six or fewer of whom one, two or three are non-ambulatory or unable to respond on their own to emergency conditions;

(H) ~~(E)~~ supervised independent living boarding homes for adults with mental retardation or other developmental disabilities serving more than six ~~residents~~ clients and fewer than ten ~~residents~~ clients who are ambulatory and able to respond on their own to emergency conditions;

(I) ~~(F)~~ community center-based respite for individuals with mental retardation, other developmental disabilities, developmental delays or at risk for these conditions serving six or fewer clients of whom one, two or three are non-ambulatory or unable to respond on their own to emergency conditions.

(2) Mental health facilities: residential treatment for individuals serving seven to nine clients who are ambulatory and able to respond on their own and evacuate the facility without assistance.

(f) In addition to Building Code requirements specified in (b) and (c) of this Rule, new facilities specified in (1), (2) and (3) of this Paragraph shall meet the requirements of the current edition of Volume I, Section 409, Institutional Occupancy (1) of the N.C. State Building Code as follows:

(1) Mental retardation or other developmental disability facilities:

(A) specialized community residential services for individuals with mental retardation or other developmental disabilities;

(B) group homes for adults with mental retardation or other developmental disabilities serving six or fewer ~~residents~~ clients of whom more than three are non-ambulatory ~~and or~~ unable to respond on their own to emergency conditions;

(C) group homes for individuals with mental retardation or other developmental disabilities and with behavior disorders ~~with serving six or fewer clients of whom more than three clients who~~ are non-ambulatory or unable to respond on their own to emergency conditions;



- (D) group homes for children with mental retardation or other developmental disabilities with serving six or fewer clients of whom more than three clients who are non-ambulatory or unable to respond on their own to emergency conditions; and
- (E) community center-based respite for individuals with mental retardation, other developmental disabilities, developmental delays or at risk for these conditions serving five or fewer clients of whom more than three are non-ambulatory or unable to respond on their own to emergency conditions.
- (2) Mental health facilities:
- (A) inpatient psychiatric facilities for individuals who are mentally ill;
- (B) residential acute treatment for adult and elderly individuals who are mentally ill; and
- (C) residential treatment for children and adolescents serving ten or more clients.
- (3) Substance abuse facilities:
- (A) inpatient hospital treatment for individuals who are substance abusers; and
- (B) nonhospital medical detoxification for individuals who are substance abusers.
- (g) In addition to Building Code requirements specified in (b) and (c) of this Rule, new facilities specified in (1), (2), (3) and (4) of this Paragraph shall meet the requirements of the current edition of Volume I, Section 405, Business Occupancy (B) of the N.C. State Building Code as follows:
- (1) Mental retardation or other developmental disability facilities: adult developmental activity programs for individuals with substantial mental retardation, severe physical disabilities or other substantial developmental disabilities;
- (2) Mental health facilities:
- (A) psychosocial rehabilitation programs for individuals who are chronically mentally ill;
- (B) day treatment for children and adolescents who are emotionally disturbed; and
- (C) partial hospitalization programs (PHIP) for adult and elderly individuals who are acutely mentally ill;
- (3) Substance abuse facilities:
- (A) outpatient treatment for individuals who are substance abusers;
- (B) outpatient detoxification for individuals who are substance abusers; and
- (C) outpatient methadone services for individuals who are narcotic abusers;
- (4) Facilities serving one or more disability:
- (A) sheltered workshops; and
- (B) day activity facilities for adult and elderly individuals who are mentally ill and/or substance abusers.
- (h) In addition to Building Code requirements specified in (b) and (c) of this Rule, new facilities specified in (1) and (2) of this Paragraph shall meet the requirements of the current edition of Volume I, Section 406, Educational Occupancy (E) of the N.C. State Building Code as follows:
- (1) Mental retardation or other developmental disability facilities: before/after school and summer developmental day services for children with mental retardation or other developmental disabilities; and
- (2) Mental health facilities: day treatment for children and adolescents who are emotionally disturbed.
- (i) In addition to Building Code requirements specified in (b) and (c) of this Rule, new facilities specified in (1) and (2) of this Paragraph shall meet the requirements of the current edition of Volume I, General Construction, Section 411, Residential Occupancy (R) of the N.C. State Building Code as follows:
- (1) Substance abuse facilities:
- (A) social setting detoxification for more than six individuals who are alcoholics;
- (B) residential treatment or rehabilitation for more than six individuals who are substance abusers; and
- (C) halfway houses for more than six individuals who are substance abusers.
- (2) Facilities serving one or more disability: residential therapeutic (habilitative) camps for children and adolescents.
- (j) Volume I (General Construction) is available at a cost of ten dollars (\$10.00); Volume I-B (Uniform Residential Building Code) at a cost of two dollars (\$2.00); Volume II (Plumbing) at a cost of three dollars (\$3.00); Volume III (Heating and Air Conditioning) at a cost of four dollars and fifty cents (\$4.50); and Volume IV (Electrical) at a cost of fifteen dollars (\$15.00) from the N.C. Department of Insurance, P.O. Box 26387, Raleigh, N.C. 27611.
- (k) The material which is adopted by reference in this Rule is adopted in accordance with the provisions of G.S. 150B-14(c).
- Statutory Authority G.S. 122C-26; 143B-147; 150B-14(c).*

#### SUBCHAPTER 14L - LICENSURE RULES FOR MENTAL HEALTH FACILITIES

#### SECTION .0600 - RESIDENTIAL TREATMENT FOR CHILDREN AND ADOLESCENTS WHO ARE MENTALLY ILL



**.0602 CAPACITY**

Each facility shall serve no more than nine children at any one time.

*Statutory Authority G.S. 122C-26; 143B-147.*

**.0603 HOURS OF OPERATION**

Each facility shall operate 24 hours per day, at least five days per week, at least 50 weeks per year, excluding legal holidays.

*Statutory Authority G.S. 122C-26; 143B-147.*

**SUBCHAPTER 14M - LICENSURE RULES FOR MENTAL RETARDATION/DEVELOPMENTAL DISABILITIES FACILITIES**

**SECTION .0200 - GROUP HOMES FOR INDIVIDUALS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES AND WITH BEHAVIOR DISORDERS**

**.0202 CAPACITY**

(a) The facility shall serve ~~a maximum of five clients~~ no more than six individuals at any one time.

(b) No facility shall designate any bed for the continuous provision of respite services.

*Statutory Authority G.S. 122C-26; 143B-147.*

**SECTION .0300 - GROUP HOMES FOR ADULTS WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES**

**.0303 COMPLIANCE WITH GROUP HOME STANDARDS**

(a) The standards for ~~private~~ group homes for developmentally disabled adults ~~which are licensed under G.S. 131-D and as defined described in the manual titled "Minimum and Desired Standards and Regulations for Group Homes for Developmentally Disabled Adults" (10 NCAC 42B .0900 - .2300) published by the N.C. Department of Human Resources shall also apply to group homes operated by an area program except for Sections .1000, .2200 and .2300 of Subchapter 10 NCAC 42B and with the exception outlined in (b) of this Rule. This publication is available free of charge from the N.C. Department of Human Resources, Division of Social Services, 325 N. Salisbury Street, Raleigh, N.C. 27611.~~ all private non-profit, private for profit or area operated group homes for developmentally disabled adults licensed under G.S. 122-C. These standards shall not apply to any group home certified as an Intermediate Care Facility for the Mentally Retarded or any group home holding a current certificate of need to be developed as an Intermediate Care Facility for

the Mentally Retarded. Sections .1000, .2200 and .2300 of Subchapter 10 NCAC 42B shall not apply to area operated group homes. This publication is available free of charge from the N.C. Department of Human Resources, Division of Social Services, 325 N. Salisbury Street, Raleigh, North Carolina 27611.

(b) The provision in 10 NCAC 42C .2401 (which is cross-referenced in 10 NCAC 42B .1701) that prohibits the admission of people "with disease in a communicable stage or carrier state" shall not prohibit the admission of residents who are hepatitis B carriers to a home operated by a public agency if the home is in compliance with the Rules codified in 10 NCAC 18H .0107 through .0115; HEPATITIS B SCREENING AND VACCINATION OF RESIDENTS AND DIRECT CARE EMPLOYEES IN GROUP HOMES FOR MENTALLY RETARDED ADULTS.

(c) The rules which are adopted by reference in this Rule are adopted in accordance with the provisions of G.S. 150B-14(c).

*Statutory Authority G.S. 122C-26; 143B-147; 150B-14(c).*

**SECTION .0400 - GROUP HOMES FOR CHILDREN WITH MENTAL RETARDATION OR OTHER DEVELOPMENTAL DISABILITIES**

**.0402 CAPACITY**

(a) The facility shall serve no more than ~~five~~ six children at any one time.

(b) No facility shall designate any bed for the continuous provision of respite services.

*Statutory Authority G.S. 122C-26; 143B-147.*

**TITLE II - 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 10 .1107.*

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

*The public hearing will be conducted at 10:00 a.m. on August 15, 1990 at 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: Written comments may be sent to Pete Murdza, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at*

the public hearing. Anyone having questions should call Pete Murdza at (919) 733-3284, or Ellen Sprenkel at (919) 733-4700.

CHAPTER 10 - FIRE AND CASUALTY  
DIVISION

SECTION .1100 - RATE FILINGS

.1107 NONESSENTIAL LINES  
QUESTIONNAIRE

The information required by N.C.G.S. 58-480(e) G.S. 58-41-50 for those lines of business described in Rule .1102 (1) of this Section 11 NCAC 10 .1102(5) shall be submitted by the completion of a Rate Rate Loss Cost Filing Questionnaire and the necessary supplementary exhibits to which the questionnaire refers.

(1) The Rate Rate Loss Cost Filing Questionnaire shall contain the following information:

- (a) Name of Company-Rating company/ Licensed rating organization;
- (b) Filer's Federal Employer's Number;
- (c) Filer's file number;
- (d) Type of filing;
- (e) Line(s) of insurance, as shown on Page 14 of the Annual Statement;
- (f) Subline Program title;
- (g) Type of policies involved;
- (h) Reasons for the filing;
- (i) Proposed effective date and rules of implementation;
- (j) Filer's approximate market share of North Carolina written premium for the line(s) involved;
- (k) Percentage rate change proposed;
- (l) Estimated total dollar impact of the filing upon North Carolina policyholders;
- (m) Whether the filing will increase the premium of any North Carolina policyholder;
- (n) Type of premium data included;
- (o) Exposure unit used;
- (p) Type of loss data included;
- (q) Permissible loss ratio, permissible loss and LAE ratio, or permissible loss, LAE, and fixed expense ratio;
- (r) Whether any expenses are treated as fixed;
- (s) Credibility information;
- (t) Loss development information;
- (u) Trend information;
- (v) Underwriting profit information;
- (w) Changes in methodologies;
- (x) Certification of accuracy.

(2) Also submit supplementary exhibits ~~shall also be submitted~~ containing the following information:

- (a) The effect of the proposed filing on active filings affecting the line or subline;
  - (b) A comparison of current and proposed rates;
  - (c) Five-year rate filing history;
  - (d) Premium and loss data (North Carolina and countrywide);
  - (e) Expense data (North Carolina and countrywide);
- (3) In filings For a filing derived from a rate filing made by a licensed rating organization rate or loss cost filing, and in filings that incorporate without modification loss costs that have been filed by a licensed rating organization, substitute a supplementary exhibit shall be substituted for the section of items in the questionnaire containing the information described in Paragraphs Sub-paragraphs (1)(n) through (1)(v).
- (a) For all both these types of rating organization filings, this exhibit shall contain the following information:
    - (i) The name of the licensed rating organization;
    - (ii) The relationship of the company to the licensed rating organization;
    - (iii) The applicable licensed rating organization filing;
    - (iii) Eligibility requirements and restrictions applicable to the filing;
    - (iv) The type of licensed rating organization filing;
    - (v) Eligibility requirements and restrictions applicable to the company's filing.
  - (b) In cases where the licensed rating organization files final rates, this exhibit shall also identify the basis for the differences between the company's proposed rates and those filed by the rating organization.
  - (c) In cases where the licensed rating organization files loss costs, this exhibit shall also contain the following information:
    - (i) Permissible loss ratio, permissible loss and LAE ratio, or permissible loss, LAE, and fixed expense ratio;
    - (ii) Whether any expenses are treated as fixed;
    - (iii) An explanation of the derivation of the expense provisions and of their incorporation into the final rates;
    - (iv) Underwriting profit information.
- (4) For loss cost filings made by licensed rating organizations, the following modifications apply to the requirements in this Rule:
- (a) Substitute percentage loss cost change proposed in Subparagraph (1)(k).
  - (b) Omit the information described in Sub-paragraphs (1)(j) through (1)(n), (1)(q).

- (1)(r), and (1)(v) and the items in Subparagraph (1)(u) relating to premium trend.
- (c) In the exhibit described in Subparagraph (2)(b), compare current and proposed loss costs.
- (d) In the exhibit described in Subparagraph (2)(c), provide a five-year loss cost filing history.
- (e) In the exhibit described in Subparagraph (2)(d), omit those items relating to premium.
- (f) Omit the exhibit described in Subparagraph (2)(e).
- (5) For installment premium payment plan filings, substitute a different questionnaire, containing the following information:
- (a) Name of Company Licensed rating organization;
- (b) Filer's Federal Employer Number;
- (c) Filer's file number;
- (d) Type of filing;
- (e) Line(s) of insurance;
- (f) Reasons for the filing;
- (g) Proposed effective date and rules of implementation;
- (h) Filer's approximate market share of North Carolina written premium for the line(s) involved;
- (i) Percentage rate change proposed;
- (j) Estimated total dollar impact of the filing upon North Carolina policyholders;
- (k) A comparison of the current and proposed installment fees;
- (l) Filer's distribution of number of policies and premium by installment payment options;
- (m) Certification of accuracy.

Statutory Authority G.S. 58-2-40; 58-41-50.

\* \* \* \* \*

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 16 .0101 - .0107.

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

The public hearing will be conducted at 10:00 a.m. on August 15, 1990 at Third Floor Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611.

**Comment Procedures:** Written comments may be sent to Pete Murdza, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Pete Murdza at (919) 733-3284, or Ellen Sprenkel at (919) 733-4700.

## CHAPTER 16 - ACTUARIAL SERVICES DIVISION

### SECTION .0100 - FIRE AND CASUALTY STATISTICAL DATA

#### .0101 APPLICABILITY

The following Rules describe certain statistical data that shall be submitted to the Actuarial Services Division on a regular basis.

- (1) 11 NCAC 16 .0102 applies to all fire and casualty companies licensed or approved to do business in North Carolina.
- (2) 11 NCAC 16 .0103 applies to all companies that write North Carolina nonfleet private passenger automobile insurance and to all statistical organizations that collect data relating to that line of insurance.
- (3) 11 NCAC 16 .0104 applies to all companies that write North Carolina professional liability insurance and all North Carolina self-insurers of professional liability exposures.
- (4) 11 NCAC 16 .0105 applies to all companies that provide professional liability insurance to more than two percent of the insured physicians and surgeons in North Carolina.
- (5) 11 NCAC 16 .0106 applies to all companies that write North Carolina credit property insurance.
- (6) 11 NCAC 16 .0107 applies to all companies that write North Carolina nonfiling insurance.

Statutory Authority G.S. 58-2-40(1); 58-2-190.

#### .0102 LOSS RESERVES

Shortly after a company is licensed, approved, or registered to do business in North Carolina, the Actuarial Services Division will mail to the company forms, instructions, and a diskette so that the company can complete the two items involving loss reserve information described in this Rule. The company will have two months from the receipt of the request to comply. (Note: Companies that are part of a group pooling arrangement may submit consolidated information.)

- (1) The reproduction on diskette of the following portions of Schedules O and P of the company's Annual Statements for the years



1981-1988 or for those years during that period when the company was in operation:

- (a) Schedule O, Parts 3, 4, and 5;
  - (b) Schedule P, Parts 1A through 1F.
- (2) The completion of a series of interrogatories concerning the company's loss reserving practices.

*Statutory Authority G.S. 58-2-190.*

#### **.0103 NONFLEET PRIVATE PASSENGER AUTOMOBILE INSURANCE**

All companies writing North Carolina nonfleet private passenger automobile insurance shall collect the statistical data described in this Rule and shall report such data to their statistical agent in a timely fashion. The statistical agents shall thereupon provide the data on a combined basis to the Actuarial Services Division. (Note: If any data required by this Rule are not being collected and reported, or are not readily available to an individual company prior to January 1, 1992, then the company shall commence as of that date to collect and report such data prospectively.)

- (1) Premium, Exposure, Loss, and Claim Experience. Provide written and earned exposures, written and earned premiums, number of paid and incurred claims, and paid and incurred total losses biannually for each of the latest six accident or calendar half-years in the following detail:

- (a) by coverage;
- (b) by type of exposure (voluntary, involuntary, standard, or substandard);
- (c) by territory;
- (d) by class;
- (e) by limit deductible;
- (f) by cause or type of loss for comprehensive coverage.

(Note: Simultaneous division of the data by class, by territory and by limit is not required. Rather data shall be provided divided simultaneously by territory and by limit, simultaneously by summarized class and by limit, and simultaneously by summarized class and by territory.)

- (2) Loss and Premium Experience by Zip Code. Provide data by zip code annually in the following detail:

- (a) calendar year earned or written premium for all coverages combined;
- (b) accident year incurred losses and incurred claims valued at 15 months for bodily injury and property damage coverages;
- (c) calendar year incurred losses and incurred claims valued at 15 months for comprehensive and collision coverages;

- (d) calendar year voluntary earned exposures separately for bodily injury and property damage, comprehensive, and collision;
- (e) calendar year involuntary earned exposures for bodily injury and property damage;
- (f) calendar year substandard earned exposures for comprehensive and collision;
- (g) calendar year exposures for bodily and property damage for classes 1A, 1B, 1C, 3, and 1AF.

- (3) Loss Trend Experience. Provide earned exposures, earned premiums, number of claims, paid or incurred losses, loss frequency, and loss severity quarterly for each of the latest 16 three-month and twelve-month calendar periods in the following detail:

- (a) For bodily injury coverage:
  - (i) basic limits and total limits paid trends including allocated loss adjustment expense;
  - (ii) basic limits and total limits paid trends excluding allocated loss adjustment expense;
  - (iii) basic limits and total limits incurred trends including allocated loss adjustment expense;
  - (iv) basic limits and total limits incurred trends excluding allocated loss adjustment expense.
- (b) For property damage coverage, the same trends provided for bodily injury.
- (c) For medical payments coverage, total limits paid trend excluding allocated loss adjustment expense.
- (d) For uninsured motorist bodily injury coverage:
  - (i) total limits paid trend excluding allocated loss adjustment expense;
  - (ii) total limits incurred trend excluding allocated loss adjustment expense.
- (e) For comprehensive coverage:
  - (i) paid trend excluding allocated loss adjustment expense for exposures with no deductible;
  - (ii) paid trend excluding allocated loss adjustment expense separately for exposures with deductibles of fifty dollars (\$50.00), one hundred dollars (\$100.00), two hundred dollars (\$200.00), two hundred fifty dollars (\$250.00), five hundred dollars (\$500.00), and one thousand dollars (\$1000.00);
  - (iii) paid trend excluding allocated loss adjustment expense for all exposures not otherwise included.
- (f) For collision coverage:



- (i) paid trend excluding allocated loss adjustment expense separately for exposures with deductibles of fifty dollars (\$50.00), one hundred dollars (\$100.00), two hundred dollars (\$200.00), two hundred fifty dollars (\$250.00), five hundred dollars (\$500.00), and one thousand dollars (\$1000.00);
- (ii) paid trend excluding allocated loss adjustment expense for all exposures not otherwise included.
- (4) Liability Loss Development Experience. Provide loss and earned exposure data at annual evaluation dates from 15 to 63 months biannually for at least ten accident or fiscal/accident years in the following detail:
  - (a) For bodily injury and property damage coverages (separately for voluntary business and for ceded business, and on a combined basis):
    - (i) basic limits paid losses;
    - (ii) basic limits incurred losses;
    - (iii) total limits paid losses;
    - (iv) total limits incurred losses;
    - (v) paid claims;
    - (vi) incurred claims;
    - (vii) estimated premium for the corresponding calendar year;
    - (viii) estimated exposures for the corresponding calendar year.
  - (b) For medical payments coverage (separately for voluntary business and for ceded business, and on a combined basis):
    - (i) total limits paid losses;
    - (ii) total limits incurred losses;
    - (iii) paid claims;
    - (iv) incurred claims;
    - (v) estimated premium for the corresponding calendar year;
    - (vi) estimated exposures for the corresponding calendar year.
  - (c) For uninsured and underinsured motorist coverage:
    - (i) total limits paid losses;
    - (ii) total limits incurred losses;
    - (iii) paid claims;
    - (iv) incurred claims;
    - (v) estimated premium for the corresponding calendar year;
    - (vi) estimated exposures for the corresponding calendar year.
- (5) Physical Damage Age and Symbol Trend Experience. Provide the average age and symbol value for each of the latest 26-month periods biannually for the following coverages:

- (a) full coverage comprehensive;
- (b) comprehensive coverage with a fifty dollar (\$50.00) deductible;
- (c) comprehensive coverage with a one hundred dollar (\$100.00) deductible;
- (d) collision coverage with a one hundred dollar (\$100.00) deductible;
- (e) collision coverage with a two hundred fifty dollar (\$250.00) deductible;
- (f) collision coverage with a five hundred dollar (\$500.00) deductible.

*Statutory Authority G.S. 58-2-190.*

#### **.0104 PROFESSIONAL LIABILITY INSURANCE**

To fulfill the requirements of G.S. 58-2-170, every insurer, self-insurer, and risk retention group that provides professional liability insurance in North Carolina shall complete annually a Professional Liability Report form. This form is contained on a diskette that is mailed in the early part of each year (applicable to the prior year) by the Actuarial Services Division. Unless otherwise specified, an automatic extension of three months will be granted, making the report due on May 1. Individual companies shall supply the information described in this Rule on both a net and a direct basis. (Note: All licensed insurers, approved surplus lines carriers, and registered risk retention groups that do not insure any professional liability exposures in North Carolina shall submit a statement to that effect, which will be kept in the Department's files. If subsequently such a company begins to insure such exposures, it shall notify the Department within 30 days of this change. All self-insurers of professional liability exposures must notify the Department of their status as self-insurers in a letter to the Actuarial Services Division.)

- (1) Number of claims pending at the beginning of the year;
- (2) Number of claims pending at the end of the year;
- (3) Claims closed with payment (after court judgment, other, and total);
- (4) Claims closed without payment (after court judgment, other, and total);
- (5) Amount of claims closed with payment of court judgment (highest, lowest, average, median);
- (6) Amount of claims closed with payment of out of court settlement (highest, lowest, average, median);
- (7) Total payments made prior to the latest year on claims closed in that year;
- (8) Total payments made in the latest year on claims pending at the end of that year;

- (9) Average loss reserve per claim pending at the beginning of the year and at the end of the year (case reserve, IBNR reserve, total);
- (10) Direct premium written and earned;
- (11) Allocated loss adjustment expenses paid, unallocated loss adjustment expenses paid, and other underwriting expenses paid;
- (12) Average loss reserve per claim pending at the beginning of the year and at the end of the year (case allocated reserve, IBNR allocated reserve, unallocated reserve, total).

*Statutory Authority G.S. 58-2-170; 58-2-190.*

#### **.0105 PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY INSURANCE**

All companies that insure more than two percent of the insured physicians and surgeons in North Carolina shall provide the following data on an annual basis and in a timely fashion to the Actuarial Services Division. (Note: The data may be submitted separately or as part of a rate filing made during a calendar year. If a company does not currently collect any data required by this Rule, then that company shall commence as of the effective date of this Rule to collect such data prospectively.)

- (1) Number of insured doctors by specialty (North Carolina only);
- (2) Basic limits losses and ultimate claims for the most recent ten accident or report years at the most recent evaluation date (North Carolina and countrywide);
- (3) Class one frequency, basic limits severity, and basic limits pure premium for the most recent ten accident or report years at the most recent evaluation date (North Carolina and countrywide);
- (4) Exposure distributions separately by class, by maturity, and by increased limits factor for the most recent ten calendar years (North Carolina only);
- (5) Percentage of claims closed with neither a loss payment nor an allocated loss adjustment payment and the percentage of claims closed with only an allocated loss adjustment payment for the most recent ten calendar and for the most recent ten accident or report years at the most recent evaluation date (North Carolina only).

*Statutory Authority G.S. 58-2-40(i); 58-2-190; 58-41-50(14).*

#### **.0106 CREDIT PROPERTY INSURANCE**

To fulfill the requirements of G.S. 58-57-90, each writer of North Carolina credit property insurance shall by April 1 of each year submit the

data described in this Rule to the Actuarial Services Division. (Note: If a company does not currently collect any data required by this Rule, that company shall commence as of the effective date of this Rule to collect such data prospectively.)

- (1) North Carolina premium, loss, and expense for each of the five latest calendar years on a direct basis:

- (a) Written premium;
- (b) Earned premium;
- (c) Paid losses and claims;
- (d) Incurred losses and claims;
- (e) Paid loss adjustment expense;
- (f) Incurred loss adjustment expense;
- (g) Incurred commissions and brokerage expenses;
- (h) Incurred other acquisition costs;
- (i) Incurred premium taxes;
- (j) Other incurred expenses;
- (k) Incurred loss and loss adjustment expense ratio;
- (l) Incurred loss and expense ratio;
- (m) Dividends paid;
- (n) Retrospective rate credits paid.

- (2) Investment income on loss, loss expense, and unearned premium reserves on a direct basis:

- (a) Loss reserve at the beginning of the year;
- (b) Loss reserve at the end of the year;
- (c) Loss expense reserve at the beginning of the year;
- (d) Loss expense reserve at the end of the year;
- (e) Unearned premium reserve at the beginning of the year;
- (f) Unearned premium reserve at the end of the year;
- (g) Investment income earned on loss, loss expense, and unearned premium reserves.

- (3) Nonrefundable fees collected:

- (a) Total number of transactions;
- (b) Transactions involving insured values less than two hundred fifty dollars (\$250.00);
- (c) Transactions involving insured values of two hundred fifty dollars (\$250.00) or more but less than five hundred dollars (\$500.00);
- (d) Transactions involving insured values of five hundred dollars (\$500.00) or more.

- (4) Insured values:

- (a) Insured values for single interest insurance at the beginning of the year;
- (b) Insured values for single interest insurance at the end of the year;
- (c) Insured values for dual interest insurance at the beginning of the year;

## PROPOSED RULES

- (d) Insured values for dual interest insurance at the end of the year.
- (5) Supplementary information:
  - (a) Identification of the Page 14 Annual Statement line under which the experience is reported;
  - (b) Explanations for any changes in premiums, loss ratios, or expense ratios that are greater than 50 percent of the previous year's value.

*Statutory Authority G.S. 58-57-90(b).*

### **.0107 NONFILING INSURANCE**

So that the Commissioner may fulfill his duties under G.S. 53-177, all writers of North Carolina nonfiling insurance shall submit the following information for the previous calendar year to the Actuarial Services Division by March 1 of each year:

- (1) Written premium;
- (2) Earned premium;
- (3) Earned exposures;
- (4) Incurred losses;
- (5) Number of incurred claims; and
- (6) Incurred expenses.

*Statutory Authority G.S. 53-177; 58-2-40(i).*

### **TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Marine Fisheries Commission intends to amend rule(s) cited as 15A NCAC 3B .0102, .0105, .0501, .0901, .0907, .1002, .1101, .1503; 3C .0203, .0311.*

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

*The public hearing will be conducted at 7:00 p.m.:*

August 1, 1990  
Ocracoke School  
Ocracoke, NC

August 6, 1990  
Joslyn Hall  
Carteret Community College  
Morehead City, NC

August 7, 1990  
Commissioner's Room

*Onslow County Courthouse*  
*Jacksonville, NC*

August 8, 1990  
*Brunswick County Government Complex*  
*Highway 17*  
*Bolivia, NC*

*Business Session will be August 9, 1990, at 9:00 a.m. at the Carolina Power and Light Media Center, Southport, N.C.*

*Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than August 8, 1990.*

### **CHAPTER 3 - MARINE FISHERIES**

#### **SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS**

#### **SECTION .0100 - GENERAL REGULATIONS**

#### **.0102 DEFINITIONS**

(b) The following additional terms are hereby defined:

- (11) Mechanical methods for clamming: includes, but not limited to, toothed dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers and/or deflector plates with or without trawls, and any other method that utilizes mechanical or hydraulic power to harvest clams.

- (A) Hydraulic - any method utilizing water pressure to harvest clams including, but not limited to, kicking with propellers and/or deflector plates with or without trawls or cages and hydraulic clam dredging boats with escalators.

- (B) Towed - any clam harvesting gear towed by engine power including, but not limited to, dredges, clam trawls or cages, stick rakes, and hand rakes.

- (C) Mechanical lifting gear - any clam harvesting device operated by or lifted with mechanically powered lifting gear including, but not limited to, patent tongs when not towed by engine power.

*Statutory Authority G.S. 113-134; 143B-289.4.*

#### **.0105 LEGAL SIZES AND CREEL LIMITS**



(a) Crab minimum size and tolerance limits are presented in 15A NCAC 3B .0800.

(b) Clam minimum size and creel limits are presented in 15A NCAC 3B .0900.

(c) Sea scallop minimum size and tolerance limits are presented in 15A NCAC 3B .1005.

(d) Oyster minimum size, creel, and tolerance limits are presented in 15A NCAC 3B .1100.

(e) The lobster minimum size limit is presented in 15A NCAC 3B .1200.

(f) Striped bass legal sizes and creel limits are presented in 15A NCAC 3B .1500 and 3F .0100.

(g) Red Drum:

(1) It is unlawful to take or possess more than two red drum exceeding 32 inches in length in any one day, except that this daily possession limit may be reduced by proclamation in accordance with Subparagraph (g)(4) of this Rule.

(2) It is unlawful to possess red drum less than 14 inches in length, except that this minimum size limit may be increased by proclamation in accordance with Subparagraph (g)(4) of this Rule.

(3) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

(4) The Fisheries Director, may by proclamation, impose any or all of the following additional restrictions on the taking of red drum:

- (A) Specify areas,
- (B) Specify seasons,
- (C) Specify quantity,
- (D) Specify means methods, and
- (E) Specify size.

(h) It is unlawful to land or possess aboard a vessel any striped bass, red drum, spotted seatrout or flounder mutilated to the extent that accurate length measurements cannot be made.

(i) It is unlawful for individuals claiming exemption from the oyster, scallop and clam license required by G.S. 113-154(a) to take or possess more than the quantities specified in G.S. 113-152(f).

(j) It is unlawful to possess flounder less than 13 inches in length.

(k) It is unlawful to possess spotted seatrout (speckled trout) less than 12 inches in length.

(l) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or King Mackerel, in the aggregate, in any one day. The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of Spanish and or King Mackerel:

(1) Specify areas,

(2) Specify seasons,

(3) Specify quantity,

(4) Specify means methods, and

(5) Specify size.

Any proclamation prepared under this authority must be approved by the Marine Fisheries Commission prior to issuance.

(m) Inland game fish, except spotted seatrout, taken incidental to any licensed commercial fishing operation may be retained to the extent permitted by regulations of the Wildlife Resources Commission.

(n) The Fisheries Director may, by proclamation, until September 1, 1991, impose any or all of the following restrictions in the shark fishery:

- (1) Specify size,
- (2) Specify seasons,
- (3) Specify areas,
- (4) Specify quantity,
- (5) Specify means methods, and
- (6) Require submission of statistical and biological data.

(o) The Fisheries Director may, by proclamation, until September 1, 1991, impose any or all of the following restrictions in the fishery for species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region:

- (1) Specify size,
- (2) Specify seasons,
- (3) Specify areas,
- (4) Specify quantity,
- (5) Specify means methods, and
- (6) Require submission of statistical and biological data.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

#### SECTION .0500 - DREDGES, POTS, RAKES AND OTHER FISHING DEVICES

##### .0501 DREDGES AND MECHANICAL METHODS

(a) It is unlawful to use or have aboard a vessel any dredge weighing more than 100 pounds, except for taking clams in the Atlantic Ocean.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

#### SECTION .0900 - CLAMS

##### .0901 SIZE AND HARVEST LIMIT, PERMIT, METHOD OF TAKING CLAMS

(a) It is unlawful to take, land, or possess aboard a vessel more than ~~6,250~~ 5,000 clams per fishing operation from public bottom in internal waters except that the harvest limit may be re-



duced by proclamation in accordance with Subparagraph (c)(3) of this Rule. It is unlawful to take, possess, sell or purchase any clams (except Rangia or freshwater clams) less than one inch thick, except that this minimum size limit may be increased by proclamation in accordance with Subparagraph (c)(3) of this Rule, or except in accordance with 15A NCAC 3B .0907(b). Clams shall be culled by the catcher where taken and all clams of less than legal size with their shell, shall be immediately returned to the bottom where taken. The Fisheries Director and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of clams being graded and may require seizure and return to public bottom or other disposition as authorized by law of the entire quantity being graded or any portion thereof.

(b) It is unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, except as provided in Paragraph (c) of this Rule. Regardless of the areas which may be opened, it is unlawful: to take clams by any method other than hand tongs, hand rakes as described in 15A NCAC 3B .0505, or by hand in any live oyster bed, or in any established bed of aquatic vegetation which is defined as those marine and estuarine areas of North Carolina where eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*), widgeon grass (*Ruppia maritima*), and smooth or salt water cordgrass (*Spartina alterniflora*) that may exist together or separately. These vegetation beds occur in both subtidal and intertidal zones, and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of and consists of entire plants (which during some seasons may be mostly underground) including the above ground leaves and the below ground rhizomes, together with the sediment in which the plant grows.

(c) Permit requirements and the season for taking clams with mechanical methods are as follows:

(1) It is unlawful to take clams by the use of mechanical methods except by special permit. Such permits may impose conditions and requirements reasonably necessary for management and enforcement purposes.

(2) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods from public bottom except that the Fisheries Director, may, by proclamation:

(A) Open and close the season at any time in the Atlantic Ocean and only between December 1 through March 31 in internal

waters for the use of mechanical clam harvesting gear as defined in 15A NCAC 3B .0102(11).

(B) Open and close the season at any time of the year for the use of mechanical lifting clam harvesting gear as defined in 15A NCAC 3B .0102(11)(C).

(3) The Fisheries Director is further empowered to impose any or all of the following restrictions during any open season established by proclamation in Subparagraph (c)(2) of this Rule:

- (A) Specify number of days, and
- (B) Specify areas,
- (C) Specify time period,
- (D) Specify quantity and/or size, and
- (E) Specify means/methods. Any proclamation specifying means and/or methods must be approved by the Marine Fisheries Commission prior to issuance.

(4) ~~(3)~~ For temporary openings made upon the recommendation of Shellfish Sanitation, for maintenance dredging operations, for the taking of Rangia clams, or for relaying of polluted clams to private leases, deeds, or grants as permitted by 15A NCAC 3B .0906, season and harvest limits as set by ~~15A NCAC 3B .0904~~ in Paragraph (a) of this Rule may not apply.

(d) It is unlawful for any person to take clams from any shellfish management area which has been closed and posted by the state, except that the Fisheries Director, may open specific areas to allow the taking of clams and may designate time, place, character, or dimensions of any method or equipment that may be employed.

(e) The Fisheries Director may, by proclamation, open only areas in Core and Bogue Sounds, Newport, North, White Oak and New Rivers and the Intracoastal Waterway north of "BC" Marker at Topsail Beach which have been opened at any time from January, 1977, through September, 1988, and the Atlantic Ocean to the harvest of clams by mechanical methods as defined in 15A NCAC 3B .0102(11)(A) and (B). Other areas opened for purposes as set out in ~~Rule .0904 (c) (3)~~ Subparagraph (c)(4) of this Rule will open only for those purposes.

(f) It is unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick deflector plates normally used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a ~~open~~ mechanical clam harvest season in internal waters in accordance with Subparagraph (c)(2)(A) of this Rule. A period of 14 days before and after the ~~mechanical clam harvest~~ season as specified will be allowed for the installation

and removal of kick deflector plates and clam trawls or cages. Vessels with permits for activities provided for in 15A NCAC 3B Rules .0903, .0906, Section .1600, and 3C .0203, shall be exempt from this Rule during the times such activities are permitted.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

#### .0907 CLAM HATCHERIES

(a) A clam hatchery is defined as any operation which obtains clams through the process of artificial spawning and or culture methods. A clam hatchery permit is required in accordance with 15A NCAC 3C .0212.

(b) ~~It is unlawful to possess undersized clams from a hatchery unless such clams are identified in a manner that will permit immediate determination of the point of origin and the ultimate destination.~~

(b) ~~(c)~~ Possession and sale of clams by a hatchery or clam aquaculture operation and purchase and possession of clams from a hatchery or clam aquaculture operation shall be exempt from bag and size limit restrictions in 15A NCAC 3B .0901(a). ~~except that it is unlawful to possess, sell, or transport undersize clams for purposes other than grow out to legal size for market. It is unlawful to possess, sell, purchase, or transport such clams unless they are identified in a manner that will permit immediate determination of the point of origin and the ultimate destination.~~

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

### SECTION .1000 - SCALLOPS

#### .1002 BAY SCALLOP SEASON AND HARVEST LIMITS

(a) It is unlawful to take bay scallops except that the Fisheries Director may, by proclamation, open the season for harvest, sale, possession and transport of bay scallops for up to four days in December and between the second Monday in January and the last Friday in May. The Fisheries Director may, by proclamation, provide for an open season during the period August 1 through September 15 to hand harvest only (by hand, dip nets, scoops, hand tongs and hand rakes). The Fisheries Director is further empowered to impose any or all of the following restrictions:

- (1) Specify number of days,
- (2) Specify areas,

- (3) Specify means and methods which may be employed in the taking,
- (4) Specify time period, and
- (5) Limit the quantity.

(b) For any season provided from December through May, it is unlawful to take more than 20 standard U.S. bushels per person ~~in any one~~ per day or to exceed a total of 40 standard U.S. bushels per day in any combined fishing operation ~~per day except as specified in (d) of this Rule.~~ that these harvest limits may be reduced by proclamation in accordance with Paragraph (a) of this Rule.

(c) For any season provided from August 1 through September 15, it is unlawful to take more than ten standard U.S. bushels per person ~~in any one~~ per day or exceed a total of 20 standard U.S. bushels per day in any combined fishing operation ~~per day except as specified in (d) of this Rule.~~ that these harvest limits may be reduced by proclamation in accordance with Paragraph (a) of this Rule.

(d) It is unlawful to take bay scallops between sunset and sunrise, or on Saturdays or Sundays, except that one-half bushel per person, not to exceed one bushel per vessel may be taken by hand rakes, hand tongs, dip nets, and by hand for personal consumption on Saturday and Sunday during the regular open season.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

### SECTION .1100 - OYSTERS

#### .1101 OYSTER SEASON

(a) It is unlawful to take, buy, sell, or possess any oysters from public bottoms except during the open season which begins October 15 for hand harvest, and November 1 for ~~dredges, mechanical methods and extends~~ may extend through March 31. During the open season, the Fisheries Director may, by proclamation, close and open any of the various waters to the taking of oysters and may impose any or all of the following restrictions:

- (1) Specify number of days,
- (2) Specify areas,
- (3) Specify means and methods which may be employed in the taking,
- (4) Specify time period, and
- (5) Limit the quantity.

(b) It is unlawful to take, land, or possess aboard a vessel more than 50 bushels of oysters at any one time, except that this trip limit may be reduced or modified to a person or daily limit by proclamation in accordance with Paragraph (a) of this Rule.

*Statutory Authority G.S. 113-134; 113-182; 113-201; 113-221; 143B-289.4.*

**SECTION .1500 - STRIPED BASS AND MULLET**

**.1503 STRIPED BASS: SIZE AND CREEL LIMIT, INTERNAL COASTAL WATERS**

(a) It is unlawful to possess striped bass harvested from internal coastal waters less than 14 inches long (total length), except that this minimum size limit may be increased by proclamation in accordance with 15A NCAC 3B .1502. Fish that do not meet the minimum size limit shall immediately be returned to the waters ~~where~~ from which taken regardless of condition.

(b) It is unlawful for any person to possess more than three striped bass in any one day taken by hook-and-line from internal coastal waters, except that this possession list may be reduced by proclamation in accordance with 15A NCAC 3B .1502.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

**SUBCHAPTER 3C - LICENSES: PERMITS: AND LEASES**

**SECTION .0200 - PERMITS**

**.0203 PERMIT FOR MECHANICAL HARVEST OF CLAMS**

(a) It is unlawful to harvest clams by the use of mechanical methods from public or private bottom without first obtaining a permit as provided in 15A NCAC 3B .0901. Such permits may limit the types of mechanical clamming methods as defined in 15A NCAC 3B .0102(1)(A), (B), and (C) and the season or seasons in accordance with 15A NCAC 3B .0901(c)(2)(A) and (B). Permits are valid only in areas, at times, and under conditions specified by the Fisheries Director based on concerns for other fisheries resources in the vicinity of the areas within which such activity is permitted.

(b) The permit will be revoked or suspended under the following conditions:

- (1) If any permit holder refuses to provide clam harvest information upon contact by division staff, either by telephone or in person, his permit shall be suspended. Permits may be reinstated ten days after requested information is provided.
- (2) Upon conviction of violation of any marine fisheries law, regulation, or proclamation involving the use of mechanical methods, the owner's permit will be sus-

pending for no less than the following time periods: first conviction -- 10 days; second conviction within three years -- 30 days; third conviction within three years -- 60 days; and upon the fourth conviction within a three-year period, the permit will be permanently revoked.

- (3) Upon conviction of violation of 15A NCAC 3B .1111 or conviction of taking clams with the use of mechanical methods from coastal waters that are closed by proclamation because of pollution, the owner's permit will be suspended for 30 days for the first conviction, and after the second conviction within a three-year period the permit will be permanently revoked.

- (4) In the event the person makes application for a new permit during the period of suspension, no new permit will be issued during the time specified in this Rule. In cases of permanent revocation the minimum waiting period before application for a new permit will be considered will be six months; then only after a hearing before the Fisheries Director or his agent and a finding that issuance of the permit will be in the best interest of fisheries management may a new permit be issued.

*Statutory Authority G.S. 113-134; 113-182; 143B-289.4.*

**SECTION .0300 - SHELLFISH LEASES AND FRANCHISES**

**.0311 CANCELLATION**

(a) In addition to the grounds established by G.S. 113-202, the Secretary will begin action to terminate leases and franchises for failure to produce and market at least 25 bushels of oysters and/or clams per lease acre per year, averaged over the most recent three-year period after January 1 following the second anniversary of an initial lease and throughout the term of a renewal lease.

(b) Action to terminate a shellfish franchise shall begin when there is reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. The Division shall investigate all such rights issued in perpetuity to determine whether the Secretary should request that the Attorney General initiate an action pursuant to G.S. 146-63 to vacate or annul the letters patent granted by the state.



(c) In the event action to terminate a lease ~~or franchise~~ is begun, the owner shall be notified by registered mail and given a period of 30 days in which to correct the situation. Petitions to review the Secretary's decision must be filed with the Office of Administrative Hearings consistent with the provisions of 26 NCAC Chapter 3. The owner may appeal the Secretary's decision to terminate to the Marine Fisheries Commission as set out in G.S. 113-202(p).

Statutory Authority G.S. 113-134; 113-201; 143B-289.4.

## TITLE 18 - SECRETARY OF STATE

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Secretary of State, Corporations Division intends to amend rules cited as 18 NCAC 4 .0101 - .0102, .0205 - .0206, .0302 - .0303, .0305 - .0308, .0311 - .0314, .0401 - .0402, .0501 - .0504; adopt rules cited as 18 NCAC 4 .0316 and repeal rules cited as 18 NCAC 4 .0301, .0310, .0315.*

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

*The public hearing will be conducted at 10:00 a.m. on August 7, 1990 at Department of Secretary of State, 300 North Salisbury Street, Room 302, Raleigh, North Carolina 27603-5909.*

*Comment Procedures: Any interested person may present written comments for consideration by the Corporations Division. The hearing record will remain open for receipt of comments from July 3, 1990, through August 7, 1990. Written comments should be received by the Division by midnight on August 6, 1990, to be considered as part of the hearing record. Comments should be addressed to:*

Jerry D. Daniel  
Director  
Office of Secretary of State  
Corporations Division  
300 North Salisbury Street  
Room 302  
Raleigh, North Carolina 27603-5909

*Any person may present oral comments at the hearings. Requests to speak should be presented in writing to Mr. Daniel at the above address no later than five days before the date of the respective hearing. Additional comments may be allowed by the Division by sign up at the public*

*hearing as time allows. All presentations will be limited to 5 minutes. No fiscal note has been prepared pursuant to G.S. 150B-11(3) in connection with these proposed changes to the administrative rules of the Division, as the proposed changes will not require the expenditure or distribution of state funds.*

## CHAPTER 4 - CORPORATIONS DIVISION

### SECTION .0100 - GENERAL PROVISIONS

#### .0101 LOCATION AND HOURS

The corporations Division of the Department of the Secretary of State is located in Room 302, Legislative Office Building, 300 North Salisbury Street, Raleigh, NC ~~27611~~, 27603-5909. The hours of the Division are ~~7:30~~ 8:00 a.m. until ~~5:30~~ 5:00 p.m. Monday through Friday excepting legal holidays.

Statutory Authority G.S. 55-1-30.

#### .0102 ADMINISTRATION AND FUNCTIONS

(a) The Chief Officer of the Division is the ~~Corporations Attorney~~, Director.

(b) The Division is responsible for filing and maintaining ~~charter~~ documents on behalf of corporations and limited partnerships whenever filing with the Secretary of State is specified by statute.

(c) The Division prepares and certifies copies of documents on file upon request. Statutory fees are charged for preparation and certification.

(d) The Division provides information in response to written or telephone inquiry, based on information contained in documents on file. There is no fee for providing information by telephone or letter.

(e) The Division certifies to facts contained in documents on file, based on an examination of its documents and indices.

(f) ~~The division files and maintains applications and grants certificates of authority for foreign corporations to transact business in this state. It files and maintains supplementary documents on behalf of such corporations in accordance with applicable statutes.~~

(g) ~~The division issues certificates of suspension and certificates of reinstatement of corporations in accordance with applicable statutes.~~

Statutory Authority G.S. 55-1-22; 55-1-25; 55-1-30; 55A-5; 55A-81; 59-206.

### SECTION .0200 - PAYMENT OF FEES AND TAXES

#### .0205 OVERPAYMENT



If the ~~Corporations Attorney~~ Director determines that an overpayment of tax or fees by check or money order is so large that it is not in the interest of the state to issue a refund, he shall require tender of the exact amount of tax or fees prior to filing, preparation of copies, or certification.

*Statutory Authority G.S. 55-1-30; 55A-81.*

**.0206 DOCUMENTS NOT SPECIFICALLY PROVIDED FOR**

When any document is filed for any corporation organized under a statute other than one found in G.S. Chapter 55 or 55A, and no fee is specifically provided in the applicable statute, the fee or tax for such filing shall be the fee or tax provided in G.S. ~~55-155; G.S. 55-156; 55-1-22; G.S. 55A-77; or G.S. 55A-78~~ for a comparable type of document, and if no comparable type of document exists, the fee shall be the fee provided in G.S. ~~55-155(a)(20)~~ 55-1-22(a)(26) or G.S. 55A-77(a)(17).

*Statutory Authority G.S. 55-1-22; 55A-77; 55A-78.*

**SECTION .0300 - FILING OF DOCUMENTS**

**.0301 GENERAL PROVISIONS (REPEALED)**

*Statutory Authority G.S. 55-168; 55-170; 55A-81; 55A-83; 55B-13; 105-230; 105-232.*

**.0302 EXECUTION**

(a) ~~When execution is required by a person in any capacity, a document which does not indicate that the execution it contains is in the capacity required shall be rejected.~~

(b) When execution is required by any person acting in the capacity of officer, director, incorporator, or registered agent, execution by a holder of a power of attorney, by a personal representative, or by a legal guardian of the person shall be rejected.

(c) ~~When execution is required by any person in the capacity of shareholder, execution by holder of power of attorney or proxy, personal representative, or legal guardian of the person shall be accepted.~~

*Statutory Authority G.S. 55-1-20; 55-1-30; 55A-4; 55A-81.*

**.0303 REJECTION**

If the ~~Corporations Attorney~~ Director finds that a document submitted for filing pursuant to a provision of Chapter 55A or Chapter 59 does not conform to law in any respect, he shall by return

mail or other appropriate method remit the document and fee submitted to the person who submitted ~~same, such document~~, accompanied by ~~a recitation, an explanation~~, in adequate detail, of the deficiency. The date of filing of such document shall be the date upon which the document is ~~received~~ filed by the Division in such form as shall conform to law.

*Statutory Authority G.S. 55A-4; 55A-81; 59-206.*

**.0305 CORRECTIVE FILINGS -- NONPROFIT CORP AND LIMITED PARTNERSHIPS**

(a) Any error in the name of the registered agent or the location of the registered office which appears in any document which has been filed by or on behalf of a nonprofit corporation may be corrected by filing statement of change of registered office or registered agent.

(b) Subject to Paragraph (a) of this Regulation, Rule, any error in the articles of incorporation of a nonprofit corporation which have been filed shall be corrected only by filing articles of amendment.

(c) Subject to Paragraph (a) of this Regulation, Rule, any error in a restated charter of a nonprofit corporation which has been filed shall be corrected only by filing a restated charter.

(d) Subject to Paragraph (a) of this Regulation, Rule, any error in articles of merger or consolidation of nonprofit corporations which have been filed shall be corrected only by filing articles of amendment executed only by the surviving or new corporation. ~~only.~~

(e) Subject to Paragraph (a) of this Regulation, Rule, any error in an application for a certificate of authority which has been filed by or on behalf of a foreign nonprofit corporation shall be corrected only by filing an application for an amended certificate of authority.

(f) An error in a certificate of limited partnership which has been filed by or on behalf of a domestic limited partnership or in an application for registration which has been filed by a foreign limited partnership shall be corrected only by the filing of an amended certificate of limited partnership or an amended application for registration.

(g) ~~(f)~~ In any case ~~where~~ in which there is an error in any document which has been filed by or on behalf of a North Carolina nonprofit corporation and for which the manner of correction is not specified in Paragraphs (a) through (e) of this Regulation, Rule, the only methods of correcting such error shall be either:

(1) filing a document pursuant to the same statute pursuant to which the filing containing the error was made, or

- (2) filing articles of amendment. ~~if the document containing the error was executed by and filed on behalf of a North Carolina corporation.~~

(h) ~~(g)~~ No document filed to correct an error shall make reference to the error or to "correction" or "corrected" in its caption, but such error may be recited elsewhere in the document.

Statutory Authority G.S. 55A-81; 59-202; 59-905.

#### .0306 ARTICLES OF INCORPORATION - NONPROFIT CORPORATIONS

(a) ~~When shares are authorized which have no par value, no statement shall be included in articles of incorporation which gives an aggregate dollar amount of authorized capital.~~

(b) ~~Unless articles of incorporation authorize shares of no par value, minimum amount of consideration shall be no less than the least par value of any single share of any class of shares authorized.~~

(c) (a) The address of each director and incorporator and the address of the registered office in articles of incorporation shall contain a street address if the address lists a city with a population of 5,000 or more persons according to the latest U.S. Census. In any instance where street address is required, name of building, rural route number, or name of road or street shall be accepted in lieu of street address, but post office box number alone shall not be accepted.

(b) Articles of incorporation which contain bylaws or in which bylaws are incorporated by reference shall be rejected. Reference may be made in articles of incorporation to bylaw provisions so long as such provisions are not thereby incorporated in the charter.

(c) ~~Articles of incorporation filed pursuant to G.S. 55A-7 shall contain some specific statement of purpose in addition to any general or "all purpose" clause and in addition to statements which have the effect only of limiting purpose to tax exempt activities.~~

(d) (c) Articles of incorporation filed pursuant to G.S. 55A-7 shall list names and addresses of a minimum of three initial directors.

Statutory Authority G.S. 55-2-02; 55A-7; 55A-20.

#### .0307 APPLICATION FOR RESERVATION OF CORPORATE NAME

(a) If applicant requests reservation of more than one corporate name, a separate application shall be submitted for each name.

(b) The date of filing shall be the first day in determining the date of expiration of reservation.

for 90 days. The reservation shall expire immediately after the termination of filings by the Division on the ninetieth final day of the reservation period. If the ninetieth final day of the reservation period is not an operating day of the Division, the reservation shall nevertheless expire on the ninetieth such final day. ~~A reservation of the same name may be filed by the same party or on behalf of the same party; if the name is then available, at any time subsequent to the termination of filings on the first operating day of the division subsequent to the expiration of the previous reservation.~~

(c) A person who wishes to reserve a particular corporate name after having reserved that name on a previous occasion may apply to reserve such name again after the elapse of one full business day following the expiration of the previous reservation.

Statutory Authority G.S. 55-4-02; 55A-10.

#### .0308 REGISTERED OFFICE AND REGISTERED AGENT

(a) In the event that a corporation has never designated a registered office or registered agent, or in the event that the registered agent has resigned, the corporation may designate a registered agent and or registered office.

(b) ~~(a)~~ The fee for filing a designation shall be the fee specified in G.S. ~~55-155(a)(20)~~ 55-1-22(a)(9) or G.S. 55A-77(a)(17), as applicable.

(b) ~~Designation may be filed only in the instance provided in G.S. 55-13(b) or G.S. 55A-14(b) or when registered agent has resigned.~~

(c) ~~Change may be filed when registered agent has resigned. Change may not be filed in the instance provided in G.S. 55-13(b) or G.S. 55A-14(b). The information required for the designation of a registered agent or a registered office shall be set forth in a statement which shall be substantially the same as that provided for in G.S. 55-5-02, G.S. 55-15-08, G.S. 55A-12, or G.S. 55A-65, except that it shall be unnecessary to set forth information concerning the current registered agent or current registered office.~~

(d) A designation shall be in a form identical to that provided in G.S. 55-14 or G.S. 55A-12 except that the words "designation" or "designated" shall be substituted for the words "change" or "changed" where those words appear. With respect to documents permitted to be filed with the Office of the Secretary of State, a person shall consistently use the same name and same business office address in each instance in which that person serves as registered agent for any corporation.

(e) A person who serves as registered agent for more than one corporation may notify the Secretary of State of the change of the address of the registered offices of such corporations by attaching a list of the names of those corporations to the statement required to be filed by G.S. 55-5-02 or G.S. 55-15-08.

*Statutory Authority G.S. 55-1-22; 55-1-30; 55-5-01; 55-5-02; 55-15-07; 55-15-08; 55A-11; 55A-12; 55A-65; 55A-75; 55A-77; 55A-81.*

**.0310 TAX ON FILING DOC WHICH INCREASE AUTHORIZED CAPITAL (REPEALED)**

*Statutory Authority G.S. 55-147; 55-148; 55-156.*

**.0311 ART OF MERGER/SHARE EXCH PURSUANT TO G.S. 55-11-07 OR 55A-42.1**

(a) Articles of merger between domestic and foreign corporations shall be executed by each corporation which is a party to the merger. Each foreign corporation which is a party to a merger or a share exchange pursuant to G.S. 55-11-07 or G.S. 55A-42.1 shall be identified in the articles of merger or share exchange by state or country of incorporation. Articles of merger filed pursuant to G.S. ~~55-111~~ 55-11-07 or G.S. 55A-42.1 shall contain:

- (1) a statement that the merger is permitted by the law of the state or country of incorporation of each foreign corporation which is a party, and
- (2) a statement that each foreign corporation which is a party has complied or shall comply with the applicable laws of its state or country of incorporation regarding such merger.

(b) Filing pursuant to G.S. ~~55-111~~ 55-11-07 or G.S. 55A-42.1 shall have the same effect as filing pursuant to G.S. ~~55-150~~ 55-15-20 or G.S. 55A-72 for any foreign corporation which has authority to transact business in this state, which is a party to such merger, and which is not the surviving corporation.

*Statutory Authority G.S. 55-11-07; 55A-42.1.*

**.0312 APPL FOR CERT OF AUTHORITY BY FOREIGN PROF CORPORATION**

(a) Application for certificate of authority shall contain some specific statement of purpose in addition to any general or "all purpose" clause included in the application.

(b) Reference in application to purpose in the charter of the corporation shall not be accepted unless enough extra copies of charter, in addition to the certified copy required by G.S. 55-139, are

provided to attach to each copy of the application.

(c) If any a foreign corporation which renders professional services as defined in G.S. 55B-2(6) applies for a certificate of authority, by an application which lists as its purpose the rendering of professional services as defined in G.S. 55B-2(6), each copy of such application shall be accompanied by a certificate of the applicable North Carolina licensing board, making the same certification as is required for articles of incorporation pursuant to G.S. 55B-4(4). This requirement shall not apply to any corporation which was organized prior to June 5, 1969, and was permitted by the law of its jurisdiction of incorporation to render such services prior to June 5, 1969.

*Statutory Authority G.S. 55-15-03; 55B-2; 55B-4; 55B-15.*

**.0313 FILING MERGER INVOLVING FOREIGN CORPORATION**

(a) If one or more parties to a merger filed pursuant to G.S. ~~55-148~~ or G.S. 55A-70 is a domestic corporation, the filing of articles of merger pursuant to G.S. ~~55-100~~ and G.S. ~~55-111~~ or G.S. 55A-41 and G.S. 55A-42.1 shall take place prior to or simultaneous to simultaneously with the filing of articles of merger pursuant to G.S. ~~55-148~~ or G.S. 55A-70.

(b) Filing The filing of articles of merger pursuant to G.S. ~~55-148~~, G.S. 55A-70 G.S. ~~55-100~~, or G.S. 55A-41 shall be deemed a substitute for an shall have the same effect as the filing of an application for withdrawal pursuant to G.S. ~~55-150~~ or G.S. ~~55A-82~~ for 55A-72 by any foreign corporation which has authority to transact business in this state, which is a party to such merger, and which is not the surviving corporation.

(c) If a foreign corporation has been authorized authority to transact business in this state and is a non-surviving party to a statutory merger, the filing under G.S. ~~55-148~~ of the articles of merger by the surviving corporation shall be accepted by the Division with the same effect as the equivalent of a filing pursuant to G.S. ~~55-150~~ or G.S. ~~55A-41~~, of an application for withdrawal, even if the surviving corporation does not have authority has not been authorized to transact business in this state.

*Statutory Authority G.S. 55A-41; 55A-42.1; 55A-70; 55A-72; 55A-81.*

**.0314 FILING EVIDENCE OF DISSOLUTION OF FOREIGN NONPROFIT CORP**



Filing The filing of a copy of any final document of dissolution bearing an original certification of the appropriate official of the state or country of incorporation shall be deemed a substitute for and shall have the same effect as the filing of an application for withdrawal pursuant to G.S. ~~55-150~~ or G.S. 55A-72.

*Statutory Authority* G.S. 55A-72; 55A-81.

**.0315 FILING PURSUANT TO G.S. 55-164.1  
(REPEALED)**

*Statutory Authority* G.S. 55-164.1.

**.0316 FORM FOR ANNUAL REPORT**

A corporation filing its annual report in order to comply with G.S. 55-16-22 must use the annual report form promulgated by the Secretary of State. Exact copies of the annual report form provided by the Corporations Division may be made and used to satisfy the annual filing requirement. However, annual reports with formats different for the form prescribed by the Corporations Division will not be accepted for filing.

*Statutory Authority* G.S. 55-1-21.

**SECTION .0400 - CERTIFICATIONS**

**.0401 DOCUMENTS**

(a) Copies of documents ~~on file~~ filed with respect to a nonprofit corporation may be certified as charter documents only if such copies begin chronologically with articles of incorporation or other document of incorporation, latest restated charter, or the latest articles of amendment or articles of merger purporting to rewrite the charter in its entirety. If requested, the copies to be certified as charter documents shall include only such beginning document, all subsequent articles of amendment, and all subsequent articles of merger. If not otherwise requested, copies to be certified as charter documents ~~certification as charter documents~~ shall begin chronologically with the latest restated or rewritten charter and shall include all subsequent documents on file.

(b) Copies of documents filed with respect to corporations subject to the provisions of Chapter 55 may be certified as the articles of incorporation of such corporation only if such copies begin chronologically with the articles of incorporation or other documents of incorporation, the latest restated articles of incorporation, or the latest articles of amendment or articles of merger purporting to rewrite the corporation's articles of incorporation in their entirety. If requested, the documents requested to be so certified shall

include only such beginning document, all subsequent articles of amendment, and all subsequent articles of merger. If not otherwise requested, such documents to be certified shall begin chronologically with the latest restated or rewritten articles of incorporation and shall include all related documents subsequently filed.

(c) When certification of a certificate of limited partnership of a domestic limited partnership or a certificated of authority of a foreign limited partnership is requested, such certification shall include the original certificate of limited partnership or certificate of authority and all amendments or changes thereto.

*Statutory Authority* G.S. 55-1-30; 55A-81; 59-206.

**.0402 CERT OF FACTS/CERT OF EXISTENCE  
/AUTHORIZATION**

(a) No certification of facts, certificate of existence, or certificate of authorization shall contain information relating to more than one corporation unless such information pertains to a merger to which such corporations were parties.

(b) The fee for each certificate of existence or certificate of authorization for corporations subject to the provisions of Chapter 55 shall be the fee specified in G.S. 55-1-22. For corporations subject to the provisions of Chapter 55A, the fee for each certification of facts or each copy thereof shall be the fee specified in G.S. 55-155(a)(28) or G.S. 55A-77(a)(15) for affixing certificate and seal. For limited partnerships, the fee for each certified document shall be the fee specified in G.S. 59-1106(7).

*Statutory Authority* G.S. 55-1-22; 55-1-30; 55A-77; 55A-81; 59-1106.

**SECTION .0500 - CORPORATE NAME**

**.0501 GENERAL**

(a) The Secretary of State expressly reserves the right pursuant to G.S. ~~55-12~~, 55-4-01, G.S. 55A-10, G.S. ~~55-137~~, 55-15-06, G.S. 55A-60, or any other applicable statute, to reject filing of any document conferring a corporate name, if he determines that such corporate name is contrary to law.

(b) ~~The~~ With respect to corporations subject to the provisions of Chapter 55A, the Secretary of State shall accept consent of a corporation with a ~~similar~~ name similar to the proposed name proposed to be used by another corporation only as only one factor in determining whether a ~~such~~ proposed name is contrary to law, and shall make his determination based upon all the circum-



stances as they appear, when the proposed name is submitted, in accordance with the applicable ~~statutes.~~ statutes. The Secretary of State, ~~reserves the right to proceed with filing a name which would otherwise be deceptively similar~~ upon receipt of such a consent, may allow the use of such a proposed name, but shall not permit the use of a ~~no~~ name which is the same as ~~an existing~~ a name shall be permitted. which is reserved or registered or which has been approved for use at that time. Should the use of a name which is identical to one which is reserved or registered or which has been approved for use ~~same name~~ be granted by error, the Secretary of State shall charge no tax or fee for filing articles of amendment to correct such error.

(c) ~~Without limiting the right of the Secretary of State to reject a corporate name which is contrary to law, the following regulations regarding corporate name are hereby adopted.~~ When a corporation applies to the Secretary of State for authorization to use a name which is not distinguishable upon his records from names described in G.S. 55-4-01(b) or G.S. 55-15-06(b), and provides the consent of another corporation to such use, the undertaking required of the consenting corporation by G.S. 55-4-01(c)(1) or by G.S. 55-15-06(c)(1) shall consist of the consenting corporation's amendment to the appropriate document filed with the division effecting a change of that corporation's name to a name distinguishable on the records of the Secretary of State from the name sought to be used by the applying corporation.

Statutory Authority G.S. 55-4-01; 55-15-06; 55A-10; 55A-60; 55A-81.

#### .0502 WORDS PROHIBITED IN ADDITION TO STATUTORY PROHIBITIONS

(a) The words "engineer" or "engineering" ~~or "engineered,"~~ or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with Rule .0312(c) of this Chapter.

(b) The words "surveyor," "survey," "surveying," or their derivatives shall not be included in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with .0312(c) of this Chapter, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than land surveying.

(c) The words "architecture," "architectural," "architect," or their derivatives shall not be in-

cluded in the corporate name for a corporation unless it is organized pursuant to G.S. Chapter 55B or, if it is a foreign corporation, unless it complies with .0312(c) of this Chapter, provided that the words specified shall not be prohibited in any case where such words are modified by another word or words in such manner as to indicate activity other than design of structures.

(d) The word "co-op" shall not be included in the corporate name of a corporation unless it is organized or domesticated pursuant to G.S. Chapter 54 Subchapter V, 55-139.

(e) ~~The following words shall not be included in a corporate name: "army," "navy," "airforce," "coast guard," "mail," "postoffice," or "postal."~~

(f) ~~(e)~~ When a document is submitted conferring a corporate name containing the word "wholesale," unless the purpose clause of the document indicates clearly that the corporation shall not engage in retail sales, the Corporations Attorney shall not file the articles unless he finds, pursuant to written assurance by the principals or their attorney, that the corporation shall comply with G.S. 75-29.

(g) ~~(f)~~ The corporate name for a business corporation shall not contain the word "realtor."

(h) ~~(g)~~ The corporate name for a business corporation shall not contain the word "insurance" followed directly by a corporate ending or the word "insurance" followed directly by a geographical designation and a corporate ending.

Statutory Authority G.S. 54-139; 55-4-01; 55A-10.

#### .0503 DECEPTIVELY SIMILAR AND DISTINGUISHABLE NAMES

(a) A ~~proposed corporate name proposed to be used by a corporation subject to the provisions of Chapter 55A~~ shall not be permitted where it begins with two or more words which are the same as an existing corporate name where the only substantial difference between the two names is the addition or deletion of another word such as "services", "sales", "associates", "industries", "enterprises", or any other word which does not indicate the type of business to be pursued by the corporation.

(b) A ~~proposed corporate name proposed to be used by a corporation subject to the provisions of Chapter 55A~~ shall not be permitted where the only substantial difference between it and an existing corporate name is the addition or deletion of a geographical designation, unless such geographical designation added is the name of a city or county other than the city or county of the then registered office of the existing cor-

poration, or the geographical designation deleted is the name of a city or county other than the city or county of the registered office of the proposed corporation. This provision is subject to G.S. 55-137 and G.S. 55A-60.

(c) Corporate endings are Words indicating corporateness, such as "company", "co.", limited, "ltd.", "corporation", "corp.", "incorporated", "inc.", "professional association", and "p.a." Corporate endings shall be disregarded in determining if a proposed corporate name is distinguishable upon the records of the Secretary of State (in the case of a corporation subject to the provisions of Chapter 55) or permissible (in the case of a corporation subject to Chapter 55A), provided that such words appear at the end of the proposed corporate name. Such words shall not be disregarded in such determination when they appear in the body, rather than at the ending, of the proposed corporate name.

(d) Words such as "the," "and," "a," "of," "for," as well as all punctuation, including hyphen, apostrophe followed by letter "s," as well as singular or plural form of a particular word, shall be disregarded in determining whether a particular name is permissible. Articles, conjunctions, prepositions, singular or plural forms of a particular word, punctuation, spaces, and the substitution of an Arabic numeral for a word shall be disregarded in determining whether a proposed corporate name is distinguishable upon the records of the Secretary of State or otherwise permissible for use in a proposed corporate name.

Statutory Authority G.S. 55-4-01; 55A-10.

#### .0504 FILING FICTITIOUS OR ASSUMED NAME FOR FOREIGN CORPORATION

(a) A foreign corporation whose corporate name contains a word which is prohibited by statute or by Rule .0502 of this Chapter shall agree to use an assumed or fictitious name ~~in the same manner as provided in G.S. 55-137 55-15-06 or G.S. 55A-60.~~

(b) A foreign corporation which has been granted authority to transact business in this State and which desires to add to or delete from an assumed name or to adopt a fictitious name in order to avoid a conflict or because of removal of or remove a conflict over the use of a name, or which desires to change its assumed or fictitious name, shall file pursuant to G.S. ~~55-137 55-15-04~~ or G.S. 55A-71.

(c) No assumed or fictitious name shall be ~~listed on the indices of~~ filed with the Division or in any document filed unless required by (a) of

~~this Rule, G.S. 55-137, or G.S. 55A-60.~~ statute or administrative rule.

Statutory Authority G.S. 55-15-04; 55-15-06; 55A-60; 55A-71.

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*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Secretary of State, Securities Division intends to adopt rule(s) cited as 18 NCAC 6 .1210.*

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

*The public hearing will be conducted at 10:00 a.m. on August 15, 1990 at Department of Secretary of State, Securities Division, 300 N. Salisbury St. - Room 404, Raleigh, NC 27603-5909.*

*Comment Procedures: Any interested person may present written comments for consideration by the Securities Division. The hearing record will remain open for receipt of comments from July 3, 1990, through August 15, 1990. Written comments should be received by the Division by midnight on August 14, 1990, to be considered as part of the hearing record. Comments should be addressed to:*

Stephen M. Wallis  
Deputy Securities Administrator  
Office of Secretary of State  
Securities Division  
300 N. Salisbury St.  
Room 404  
Raleigh, NC 27603-5909

*Any person may present oral comments at the hearings. Requests to speak should be presented in writing to Mr. Wallis at the above address no later than five days before the date of the respective hearing. Additional comments may be allowed by the Division by sign up at the public hearing as time allows. All presentations will be limited to five minutes. No fiscal note has been prepared pursuant to G.S. 150B-11(3) in connection with this proposed change to the administrative rules of the Division, as the proposed change will not require the expenditure or distribution of State funds.*

## CHAPTER 6 - SECURITIES DIVISION

### SECTION .1200 - EXEMPTIONS

**.1210 SECURITIES EXCHGS/AUTO  
QUOTATION SYS APPROVED/  
ADMINISTRATOR**

For purposes of G.S. 78A-16(15), the following securities exchanges and automated quotation systems are approved provided such exchanges or systems comply with the provisions of Paragraphs (1) through (4) of the Memorandum of Understanding regarding a Model Uniform Marketplace Exemption From State Securities Registration Requirements [SEC Release 33-6810 (December 16, 1988), CCH NASAA Reports, par. 11,120]:

- (1) New York Stock Exchange,
- (2) American Stock Exchange,
- (3) Pacific Stock Exchange,
- (4) Midwest Stock Exchange,
- (5) NASDAQ National Market System.

*Statutory Authority G.S. 78A-16(15).*

**TITLE 21 - OCCUPATIONAL LICENSING  
BOARD**

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Nursing intends to repeal rule(s) cited as 21 NCAC 36 .0222; and adopt rule(s) cited as 21 NCAC 36 .0224 - .0225.*

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

*The public hearing will be conducted at 4:00 p.m. on August 16, 1990 at North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.*

*Comment Procedures: Any person wishing to address the Board relevant to proposed rules should notify the Board by noon on August 15, 1990, register at the door the day of the hearing, and present the Hearing Officer with a written copy of the oral testimony. Oral testimony will be limited to three minutes per speaker. Written comments only should be directed, five days prior to the hearing date, to the N.C. Board of Nursing, P.O. Box 2129, Raleigh, NC 27602.*

**CHAPTER 36 - BOARD OF NURSING**

**SECTION .0200 - LICENSURE**

**.0222 COMPONENTS OF NURSING PRACTICE  
(REPEALED)**

*Statutory Authority G.S. 90-171.20(7),(8); 90-171.23(b).*

**.0224 COMPONENTS OF NURSING PRACTICE  
FOR THE REGISTERED NURSE**

(a) The responsibilities which any registered nurse can safely accept are determined by the variables in each nursing practice setting. These variables include:

- (1) the nurse's own qualifications including:
  - (A) basic educational preparation; and
  - (B) knowledge and skills subsequently acquired through continuing education and practice;
- (2) the complexity and frequency of nursing care needed by a given client population;
- (3) the proximity of clients to personnel;
- (4) the qualifications and number of staff;
- (5) the accessible resources; and
- (6) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.

(b) Assessment is an ongoing process and consists of the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client.

(1) Collection of data includes:

- (A) obtaining data from relevant sources regarding the biological, psychological, social and cultural factors of the client's life and the influence these factors have on health status, including:
  - (i) observations of appearance and behavior;
  - (ii) measurements of physical structure and physiological functions;
  - (iii) information regarding available resources; and
- (B) verifying data collected.

(2) Interpretation of data includes:

- (A) analyzing the nature and interrelationships of collected data; and
- (B) determining the significance of data to client's health status, ability to care for self, and treatment regimen.

(3) Formulation of a nursing diagnosis includes:

- (A) describing actual or potential responses to health conditions. Such responses are those for which nursing care is indicated, and/or for which referral to medical or community resources is appropriate; and
- (B) developing a statement of a client problem identified through interpretation of collected data.

(c) Planning nursing care activities includes identifying the client's needs and selecting or modifying nursing interventions related to the



findings of the nursing assessment. Components of planning include:

- (1) prioritizing nursing diagnoses and needs;
- (2) setting goals and outcome criteria;
- (3) initiating or participating in multidisciplinary planning;
- (4) developing a plan of care which includes determining and prioritizing nursing interventions; and
- (5) identifying resources based on necessity and availability.

(d) Implementation of nursing activities is the initiating and delivering of nursing care according to an established plan, which includes, but is not limited to:

- (1) procuring resources;
- (2) actualizing nursing interventions and medical orders consistent with 21 NCAC 36 .0221(c);
- (3) performing nursing interventions;
- (4) analyzing responses to nursing interventions;
- (5) modifying nursing interventions; and
- (6) delegating to and supervising nursing activities of other licensed and unlicensed personnel consistent with Paragraph (a) and (i) of this Rule, G.S. 90-171.20 (7) d and i, and 21 NCAC 36 .0401.

(e) Evaluation consists of determining the extent to which desired outcomes of nursing care are met and planning for subsequent care. Components of evaluation include:

- (1) collecting evaluative data from relevant sources;
- (2) analyzing the effectiveness of nursing interventions; and
- (3) modifying the plan of care based upon newly collected data, change in the client's status, and expected outcomes.

(f) Reporting and Recording by the registered nurse are those communications required in relation to all aspects of nursing care.

- (1) Reporting means the communication of significant information to other persons responsible for, or involved in, the care of the client. The registered nurse is accountable for:
  - (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
  - (B) communicating within a time period which is consistent with the client's need for care;
  - (C) evaluating the nature or responses to information reported; and

(D) determining whether further communication is indicated.

- (2) Recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:

- (A) be pertinent to the client's health care;
- (B) accurately describe all aspects of nursing care including assessment, planning, implementation and evaluation;
- (C) be completed within a time period consistent with the client's need for care;
- (D) reflect the communication of significant information to other persons; and
- (E) verify the proper administration and disposal of controlled substances.

(g) Collaborating involves communicating and working cooperatively with individuals whose services may have a direct or indirect effect upon the client's health care. The role of the registered nurse in collaborating in client care includes:

- (1) initiating, coordinating, planning, and implementing nursing or multidisciplinary approaches for the client's care;
- (2) participating in decision-making and in cooperative goal-directed efforts;
- (3) seeking and utilizing appropriate resources in the referral process; and
- (4) safeguarding confidentiality.

(h) Teaching and Counseling clients is the responsibility of the registered nurse, consistent with G.S. 90-171.20(7)g.

- (1) teaching and counseling consist of providing accurate and consistent information, demonstrations and guidance to clients, their families or significant others regarding the client's health status and health care for the purpose of:

- (A) increasing knowledge;
- (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
- (C) promoting the client's ability to make informed decisions.

- (2) teaching and counseling include, but are not limited to:

- (A) assessing the client's needs and abilities;
- (B) adapting teaching content and methods to the identified needs and abilities of the client(s);
- (C) evaluating effectiveness of teaching and counseling; and
- (D) making referrals to appropriate resources.

(i) Managing the delivery of nursing care through the on-going supervision, teaching and evaluation of nursing personnel is the responsi-

bility of the registered nurse as specified in the legal definition of the practice of nursing and includes, but is not limited to:

- (1) continuous availability for direct participation in nursing care, onsite when necessary, as indicated by client's status and by the variables cited in Paragraph (a) of this Rule;
  - (2) assessing capabilities of personnel in relation to client status and plan of nursing care;
  - (3) delegating responsibility or assigning nursing care functions to personnel qualified to assume such responsibility and to perform such functions;
  - (4) accountability for nursing care given by all personnel to whom that care is delegated; and
  - (5) direct observation of clients and evaluation of nursing care given.
- (j) Administering nursing services is the responsibility of the registered nurse as specified in the legal definition of the practice of nursing in G.S. 90-171.20 (7) i, and includes, but is not limited to:

- (1) identification of standards, policies and procedures related to the delivery of nursing care;
- (2) planning for and evaluation of the nursing care delivery system; and
- (3) management of licensed and unlicensed personnel who provide nursing care consistent with Paragraphs (a) and (i) of this Rule and which includes:
  - (A) defined levels of accountability and responsibility within the nursing organization;
  - (B) a mechanism to validate qualifications, knowledge, and skills of nursing personnel;
  - (C) provision of educational opportunities related to expected nursing performance; and
  - (D) validation of the implementation of a system for performance evaluation.

*Statutory Authority G.S. 90-171.20(7); 90-171.23(b); 90-171.43(4).*

#### **.0225 COMPONENTS OF NURSING PRACTICE FOR THE LICENSED PRACTICAL NURSE**

(a) The responsibilities for performing delegated nursing activities which any licensed practical nurse can safely accept are determined by the variables in each nursing practice setting. These variables include:

- (1) the nurse's own qualifications in relation to client need and plan of nursing care, including:
    - (A) basic educational preparation; and
    - (B) knowledge and skills subsequently acquired through continuing education and practice;
  - (2) the degree of supervision by the registered nurse consistent with Paragraph (d)(3) of this Rule;
  - (3) the stability of each client's clinical condition;
  - (4) the complexity and frequency of nursing care needed by each client or client group;
  - (5) the accessible resources; and
  - (6) established policies, procedures, practices, and channels of communication which lend support to the types of nursing services offered.
- (b) Assessment is an ongoing process and consists of participation in the determination of nursing care needs based upon collection and interpretation of data relevant to the health status of a client, and according to structured written guidelines, policies and forms.
- (1) collection of data consists of obtaining data from relevant sources regarding the biological, psychological, social and cultural factors of the client's life and the influence these factors have on health status, including:
    - (A) observations of appearance and behavior;
    - (B) measurements of physical structure and physiologic function;
    - (C) information regarding available resources.
  - (2) interpretation of data is limited to:
    - (A) participation in the analysis of collected data by recognizing existing relationships between data gathered and a client's health status and treatment regimen; and
    - (B) determining a client's need for immediate nursing interventions based upon data gathered regarding the client's health status, ability to care for self, and treatment regimen consistent with Paragraph (a)(6) of this Rule.
  - (c) Planning nursing care activities includes participation in the identification of client's needs related to the findings of the nursing assessment. Components of planning include:
    - (1) utilization of assessment data in making decisions regarding implementation of nursing interventions and medical orders and plan of care;
    - (2) participation in multidisciplinary planning by providing resource data; and

- (3) identification of nursing interventions for review by the registered nurse.
- (d) Implementation of nursing activities consists of delivering nursing care according to an established health care plan and as delegated by the registered nurse or other person(s) authorized by law as specified in G.S. 90-171.20 (8) (c).
  - (1) Nursing activities and responsibilities which may be delegated to the licensed practical nurse include:
    - (A) procuring resources;
    - (B) actualizing nursing interventions and medical orders consistent with Paragraph (c) of 21 NCAC 36 .0221;
    - (C) performing nursing interventions;
    - (D) recognizing responses to nursing interventions;
    - (E) modifying immediate nursing interventions based on changes in a client's status; and
    - (F) delegating specific nursing tasks as outlined in the plan of care and consistent with Paragraph (d)(2) of this Rule, and 21 NCAC 36 .0401.
  - (2) The licensed practical nurse may participate, consistent with 21 NCAC 36 .0224(d)(6), in implementing the health care plan by delegating nursing care activities to other licensed practical nurses and unlicensed personnel qualified to perform such activities and providing all of the following criteria are met:
    - (A) validation of qualifications of personnel to whom nursing activities may be delegated;
    - (B) continuous availability of a registered nurse for supervision consistent with 21 NCAC 36 .0224(i) and Paragraph (d)(3) of this Rule;
    - (C) accountability maintained by the licensed practical nurse for responsibilities accepted, including nursing care given by self and by all other personnel to whom such care is delegated;
    - (D) participation by the licensed practical nurse in on-going observations of clients and evaluation of clients' responses to nursing actions; and
    - (E) provision of supervision limited to the validation that tasks have been performed as delegated and according to established standards of practice.
  - (3) The degree of supervision required for the performance of any delegated nursing activity by the licensed practical nurse when implementing nursing care is determined by variables which include, but are not limited to:
    - (A) educational preparation of the licensed practical nurse, including both the basic educational program and the knowledge and skills subsequently acquired by the nurse through continuing education and practice;
    - (B) stability of the client's clinical condition, which involves both the predictability and rate of change. When a client's condition is one in which change is highly predictable and would be expected to occur over a period of days or weeks rather than minutes or hours, the licensed practical nurse participates in care with minimal supervision. When the client's condition is unpredictable or unstable, the licensed practical nurse participates in the performance of the task under close supervision of the registered nurse or other person(s) authorized by law to provide such supervision;
    - (C) complexity of the nursing task which is determined by depth of scientific body of knowledge upon which the action is based and by the task's potential threat to the client's well-being. When a task is complex, the licensed practical nurse participates in the performance of the task under close supervision of the registered nurse or other person(s) authorized by law to provide such supervision;
    - (D) the complexity and frequency of nursing care needed by a given client population;
    - (E) the proximity of clients to personnel;
    - (F) the qualifications and number of staff;
    - (G) the accessible resources; and
    - (H) established policies, procedures, practices and channels of communication which lend support to the types of nursing services offered.
  - (e) Evaluation, a component of implementing the health care plan, consists of participation in determining the extent to which desired outcomes of nursing care are met and in planning for subsequent care. Components of evaluation by the licensed practical nurse include:
    - (1) collecting evaluative data from relevant sources according to written guidelines, policies and forms;
    - (2) recognizing the effectiveness of nursing interventions; and
    - (3) proposing modifications to the plan of care for review by the registered nurse or other person(s) authorized by law to prescribe such a plan.
  - (f) Reporting and recording are those communications required in relation to the aspects of



nursing care for which the licensed practical nurse has been delegated responsibility.

- (1) reporting means the communication of significant information to other persons responsible for or involved in the care of the client. The licensed practical nurse is accountable for:
  - (A) directing the communication to the appropriate person(s) and consistent with established policies, procedures, practices and channels of communication which lend support to types of nursing services offered;
  - (B) communicating within a time period which is consistent with the client's need for care;
  - (C) evaluating the nature of responses to information reported; and
  - (D) determining whether further communication is indicated.
- (2) recording means the documentation of all significant information on the appropriate client record, nursing care plan or other documents. This documentation must:
  - (A) be pertinent to the client's health care including client's response to care provided;
  - (B) accurately describe all aspects of nursing care provided by the licensed practical nurse;
  - (C) be completed within a time period consistent with the client's need for care;
  - (D) reflect the communication of significant information to other persons; and
  - (E) verify the proper administration and disposal of controlled substances.
- (g) Collaborating involves communicating and working cooperatively in implementing the health care plan with individuals whose services may have a direct or indirect effect upon the client's health care. As delegated by the registered nurse or other person(s) authorized by law, the licensed practical nurse's role in collaborating in client care includes:
  - (1) participating in planning and implementing nursing or multidisciplinary approaches for the client's care;
  - (2) seeking and utilizing appropriate resources in the referral process; and
  - (3) safeguarding confidentiality.
- (h) Teaching and counseling involve reinforcing those activities for clients as planned and initiated by the registered nurse or other person(s) authorized by law. Participation includes:
  - (1) providing accurate and consistent information, demonstrations, and guidance to clients, their families or significant others regarding the client's health status and

health care according to structured written guidelines, policies and forms, and for the purpose of:

- (A) increasing knowledge;
  - (B) assisting the client to reach an optimum level of health functioning and participation in self care; and
  - (C) promoting the client's ability to make informed decisions.
- (2) collecting evaluative data consistent with Paragraph (e) of this Rule.

*Statutory Authority G.S. 90-171.20(7),(8); 90-171.23(b); 90-171.43(4).*

## TITLE 25 - OFFICE OF STATE PERSONNEL

*Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel State Personnel Commission intends to amend rule(s) cited as 25 NCAC 1C .0215; 1D .0504, .0509, .0517, .0610; 1E .0802, .0803, .1101, .1104; .1105; 1J .0610, .0901 and 1K .0502; repeal rule(s) cited as 25 NCAC 1I .1307 - .1314; and adopt rule(s) cited as 25 NCAC 1B .0107 - .0120; 1E .1111-.1112; 1I .1315; 1L .0201 - .0209.*

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

*The public hearing will be conducted at 9:00 a.m. on August 2, 1990 at Personnel Development Center, 101 W. Peace Street, Raleigh, North Carolina.*

*Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 W. Jones Street, Raleigh, North Carolina 27603.*

## CHAPTER 1 - OFFICE OF STATE PERSONNEL

### SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

#### SECTION .0100 - GENERAL PROVISIONS

#### .0107 PERSONNEL COMMISSION MEETINGS

(a) The North Carolina State Personnel Commission (Commission) meets at least once each quarter of the calendar year. The dates are set in advance of the coming calendar year. A copy of the Commission's scheduled meetings may be obtained by contacting the Director, Employee

Services Division, Office of State Personnel (OSP), 116 West Jones Street, Raleigh, N.C. 27611.

(b) Any person or organization wishing to be given advance notice of any Commission meeting may request such notification by writing to: Director, Employee Services Division, OSP, 116 W. Jones Street, Raleigh, N.C. 27611. The request must include the name, address and telephone number of a contact person.

(c) Meetings of the Commission are held at the OSP Employee and Management Development Center, 101 West Peace St., Raleigh, N.C., unless specified otherwise.

(d) Unless specified otherwise, a meeting of the Commission consists of public hearing, reading of minutes, business session, oral presentations by contested case parties and an executive session.

(e) Meetings begin at 9:00 a.m. unless otherwise indicated.

(f) Persons wishing to speak at the public hearing portion of the Commission meeting should sign up in advance by notifying the Employee Services Division, OSP, either in writing or by telephone at (919) 733-7112. Persons may also sign up on the day of the meeting. Presentations to the Commission shall be limited to no more than 15 minutes per speaker, unless extended by a vote of the Commission.

(g) Meetings of the Commission, except for the executive session, are open to the public. The executive session of the Commission meeting is closed to the public. Only staff of the OSP may take part in the business session portion of the meeting; other persons may participate if specifically invited to do so by the Chairman.

(h) Any person wishing to present written material to the Commission should prepare nine copies to be distributed: one copy to each Commissioner, one copy to Commission counsel and one copy to Commission staff.

(i) All members of the Commission will provide statements of economic interest to the N.C. Board of Ethics in the time and fashion required by that Board.

*Statutory Authority G.S. 126-4.*

#### **.0108 COMMISSION STAFF**

(a) The OSP is the administrative staff for the Commission. The Employee Services Division provides direct staff support to the Commission.

(b) Mail addressed to the Commission may be sent to the Director, Employee Services Division, 116 West Jones Street, Raleigh, N.C. 27611.

(c) The State Personnel Director is the registered agent for service of legal process on the Commission.

*Statutory Authority G.S. 126-4.*

#### **.0109 COMMISSION ACTIONS**

All decisions of the Personnel Commission, except those relating to employee grievances, are rendered in open session. Decisions of the Commission involving employee grievances are reached in executive session and communicated in writing from the State Personnel Director. Information relating to such decisions will not be released publicly until the OSP has received notice that each party has received a copy of the Commission's decision.

*Statutory Authority G.S. 126-4.*

#### **.0110 MOTIONS**

Motions may be made by any member of the Commission, including the Chairman. For further action to be taken, the motion made must be seconded by at least one other Commissioner other than the member who made the motion. A motion which is not seconded after two calls for seconds by the Chairman shall die and not be acted upon. A motion which was properly seconded shall be discussed to the extent the Commission desires before any vote is taken. A vote may be taken only after all discussion has been concluded. The Chairman may close discussion, at his discretion, and call for a vote. Minutes of the Commission will reflect the name of the Commissioner making the motion and the name(s) of the Commissioner(s) seconding the motion.

*Statutory Authority G.S. 126-4.*

#### **.0111 VOTING**

At the appropriate time, in accordance with Rule .0110 of this Section, a properly seconded motion shall be voted on by the members of the Commission present. All members present, including the Chairman, must either vote or abstain. All votes shall be voice votes, unless otherwise decided by the Commission, with AYE signifying agreement with the motion and NAY signifying disagreement with the motion. Any member, including the Chairman, may ask that a vote be taken by raising hands, so that a definite count of the vote may be taken. Motions which receive a majority favorable vote are adopted. Motions which receive a tie vote or a majority negative vote are not adopted. Minutes of the Commission will reflect the vote taken on

each motion and the outcome of the vote. The minutes will also reflect the names of each commissioner with his vote if voting is done by hand. Any Commissioner abstaining from a vote will be so indicated in the minutes.

*Statutory Authority G.S. 126-4.*

**.0112 ABSTENTION**

A commissioner who has any conflict of interest, either actual or potential as defined in Interpretive Memorandum #1, April 5, 1985 of the N. C. Board of Ethics, shall voluntarily abstain from taking any part in any action before the Commission. This abstention shall include, but is not limited to, refraining from discussion in the public or business session, making of or seconding of motions and voting. A commissioner who is abstaining from an action the Commission is considering should announce such abstention at the earliest possible time in the public or business session and prior to any discussion or vote on the action.

*Statutory Authority G.S. 126-4.*

**.0113 DUTIES OF THE CHAIRMAN**

The Chairman shall be authorized to perform at least the following duties and responsibilities at each meeting of the Commission:

- (1) The Chairman shall call the meeting to order.
- (2) The Chairman may make opening remarks as he deems necessary.
- (3) The Chairman shall introduce each portion of the meeting and make whatever remarks he deems necessary as part of the introduction.
- (4) The Chairman may extend or limit, on his own or upon the vote of the Commission, the time allotted for a speaker making a presentation to the Commission.
- (5) The Chairman shall call for motions, seconds, discussion and votes as appropriate.
- (6) The Chairman may call for a recess or meal period as appropriate.
- (7) The Chairman shall adjourn the open portion of the meeting and begin the executive portion of the meeting.
- (8) The Chairman shall call for the adjournment of each meeting.
- (9) The Chairman may direct the removal of individuals from Commission meetings for disruptive conduct or failure to comply with Commission rules.

The Chairman shall have the authority to exercise such other responsibilities not enumerated in

this Rule which are necessary to the performance of the business of the Commission.

*Statutory Authority G.S. 126-4.*

**.0114 ORDER OF BUSINESS**

Unless changed by a vote of the Commission, the order of business at each meeting of the N.C. State Personnel Commission will be as follows:

- (1) Call to order by the Chairman.
- (2) Call for reading/approval of minutes of the last meeting.
- (3) Public hearing session.
- (4) Business session.
- (5) Oral presentations by contested case hearing parties.
- (6) Executive session.
- (7) Adjournment of meeting.

Additional portions may be added by vote of the Commission.

*Statutory Authority G.S. 126-4.*

**.0115 SPECIAL MEETINGS**

Other than the regularly scheduled meetings (see Rule .0107 of this Section), a meeting may be called at any time by a majority of the Commission. Such a meeting must be announced in accordance with G.S. 143-318.10 and conducted in accordance with this Section. Special meetings may be full meetings with a regular order of business as set out in this Rule or they may be limited to one or more special matters.

*Statutory Authority G.S. 126-4; 143-318.10.*

**.0116 DUTIES OF CHAIRMAN BETWEEN MEETINGS OF THE COMMISSION**

The Chairman of the Commission shall have such duties and responsibilities between each meeting of the Commission as the Chairman and/or the Commission determine to be necessary, including but not limited to:

- (1) Receipt and response to correspondence addressed to the Commission;
- (2) Review of proposed agenda of meetings;
- (3) Administration of matters regarding attendance and credentials of members of the Commission.

*Statutory Authority G.S. 126-4.*

**.0117 STANDING/SPECIAL COMMITTEES**

The Chairman of the Commission shall appoint such standing or special committees as the Chairman or the Commission shall deem necessary. The Chairman shall designate the Chairman of each committee from among its members



and shall be an ex officio member of all committees. A majority of the duly appointed members of a committee shall constitute a quorum.

*Statutory Authority G.S. 126-4.*

#### .0118 MINUTES

Minutes and other records of all Commission meetings shall be kept under the direction of the Director of the Employee Services Division of the Office of State Personnel, such record to be supplemented, as necessary, by electronic recording. Minutes shall be maintained in the Employee Services Division of the Office of State Personnel permanently.

*Statutory Authority G.S. 126-4.*

#### .0119 NOTICE OF COMMISSION ACTION

In accordance with N.C.G.S. Chapter 150B, the State Personnel Director or an appropriate designee shall be responsible for the timely issuance of any applicable notices to those parties who, pursuant to the statute in this Rule, must be given legal notice of Commission meetings, hearings, decisions and official actions.

*Statutory Authority G.S. 126-4; 150B.*

#### .0120 APPOINTMENT OF VICE-CHAIRMAN

The Chairman shall appoint a vice-chairman, who shall serve at the pleasure of the Chairman, to preside over meetings of the Commission if the Chairman is unable to attend a meeting. The authority of the Vice-Chairman shall be limited to presiding over the meeting in the absence of the Chairman. The Vice-Chairman shall exercise only those powers necessary to carry out the responsibilities of the Chairman at the meeting in the absence of the Chairman.

*Statutory Authority G.S. 126-4.*

### SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

#### SECTION .0200 - GENERAL EMPLOYMENT POLICIES

#### .0215 EMPLOYMENT CONTRACTS

(a) No person shall be required, as a condition of employment subject to N.C.G.S. Chapter 126 to enter into a contractual arrangement with any state agency or university for employment with that agency or university. However, this shall not prohibit apprenticeship agreements for training purposes when executed according to the provisions of N.C.G.S. Chapter 94.

(b) No state agency or university may require, as a condition of employment, that a person agree, in writing or otherwise, to a minimum specified length of employment, except for the minimum training period specified in an apprenticeship agreement duly executed under G.S. Chapter 94.

*Statutory Authority G.S. 94; 126-4.*

### SUBCHAPTER 1D - COMPENSATION

#### SECTION .0500 - SEPARATION

#### .0504 REDUCTION IN FORCE

(c) ~~Leave and Salary Increases~~

(3) ~~Leave Without Pay. To enable additional benefits, employees scheduled for reduction in force shall, upon their request, be placed in leave without pay status.~~

*Statutory Authority G.S. 126-4(2).*

#### .0509 SEVERANCE SALARY CONTINUATION

(1) Eligible Employees:

(a) A permanent full-time or part-time (20 hours or over) employee who does not obtain another permanent job in state government by the effective date of the reduction-in-force shall be eligible for severance salary continuation ~~whether when separated. or placed in leave without pay status.~~ This shall not apply to employees whose reduction-in-force is not considered permanent; that is, employees who are reduced-in-force on a temporary or seasonal basis with the expectation that they will return to work within twelve months.

*Statutory Authority G.S. 126-4(10); 143-27.2.*

#### .0517 LEAVE

(b) Sick Leave. Accumulated sick leave at the time of separation shall be reinstated if reemployment occurs within three years.

(c) ~~Leave Without Pay Option. To enable additional benefits, employees scheduled to be separated shall, upon their request, be placed in a leave without pay status.~~

(d) ~~Salary Increases. If reemployed during the twelve month period, time earned toward a salary increase shall be considered in determining eligibility for the next increase.~~

*Statutory Authority G.S. 126-4(6), (10).*

#### SECTION .0600 - REALLOCATION

**.0610 REALLOCATION TO A LOWER GRADE**

(a) When an employee's position is assigned to a lower grade, ~~the employee's salary may remain the same if it is within the lower range; or it may be reduced to any salary in the lower range to equitably relate to other employees' salaries in the same or related classifications.~~

(b) ~~If the employee's salary is above the maximum of the grade to which the position is assigned, one of the following options will apply:~~

- (1) ~~When reduction in level of the position results from management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, the salary of the employee may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum. If, however, a position is available, the level of which would not be as detrimental to the affected employee, and if the employee is qualified but not placed into the position, then the option in Paragraph (2) of this Rule shall apply. the position must be reallocated to the approved classification and grade in accordance with the provisions of 25 NCAC 1D .0609(b), RE-ALLOCATION TO A HIGHER GRADE.~~

(b) ~~(c)~~ It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration alternatives is most appropriate, based on the circumstances as documented by the employing agency.

*Statutory Authority G.S. 126-4(2).*

**SUBCHAPTER 1E - EMPLOYEE BENEFITS**

**SECTION .0800 - MILITARY LEAVE**

**.0802 MILITARY LEAVE WITH PAY**

Leave with pay shall be granted to members of Reserve Components of the U.S. Armed Forces for certain periods of active duty training and to members of the State Militia (National Guard, including the State Defense Militia) for State military duty.

*Statutory Authority G. S. 126-4; 127A-116.*

**.0803 DEFINITIONS**

Reserve Components of the U.S. Armed Forces are the National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve and the Coast Guard Reserve. The Civil Air Patrol is not a Reserve Component; it is an Air Force Auxiliary and its members are not subject to obligatory service. The National Guard is unique among the Reserve Components in that it has a dual role, serving both as a Federal Reserve Component and as the State Militia. In its role as State Militia the North Carolina Army National Guard and the North Carolina Air National Guard respond to the Governor who is their Commander-in-Chief and serves as the military arm of the State government. The State Defense Militia, which is a component of the National Guard, is also a part of the State Militia. Therefore, the National Guard is subject to active State duty upon order of the Governor.

*Statutory Authority G. S. 127A-116.*

**SECTION .1100 - OTHER LEAVES WITHOUT PAY**

**.1101 POLICY**

Leave without pay may be granted to a full-time or part-time permanent, trainee or probationary employee for ~~parental leave~~ educational purposes, vacation, or for any other reasons deemed justified by the agency head and the State Personnel Director.

*Statutory Authority G.S. 126-4.*

**.1104 AGENCY RESPONSIBILITY**

The decision to grant leave without pay is an administrative one for which the agency head must assume full responsibility. Factors to consider are needs of the employee requesting leave, operational needs, workload, need for filing employee's job, chances of employee returning to duty, and the obligation of the agency to reinstate employee to a position of like status and pay. It is the responsibility of the agency to administer leave without pay in a manner that is equitable to all of its employees. Reinstatement to the same position or one of like seniority, status and pay must be made upon the employee's return to work unless other arrangements are agreed to in writing. ~~or unless the employee is on leave without pay as a result of a reduction in force.~~ If it is necessary to fill a position which is vacant by leave without pay, the position may be filled by a temporary or time-limited permanent appointment, whichever is appropriate.

*Statutory Authority G.S. 126-4.*

**.1105 RETENTION OF BENEFITS**

(b) Accumulated vacation leave may be exhausted before going on leave without pay, or the employee may choose to retain part or all of accumulated leave until return to state service. Exceptions:

- (2) if an employee requests leave for personal reasons for a period not to exceed 10 work days, vacation leave must be used if available; however, if the leave is for a period longer than 10 work days, the employee may choose to use vacation leave or retain it for future use. If leave without pay extends through December 31, any vacation leave accumulation above 240 hours shall be cancelled.

When exhausting leave the employee continues to earn leave, is eligible to take sick leave, is entitled to holidays, and is eligible for salary increases during that period. ~~General provisions are included under the heading "Vacation Leave".~~ If the employee does not return to work following leave without pay, the employee shall be paid for any accumulated vacation leave at time of separation. (Reference: 25 NCAC 1E .0200, Vacation Leave).

*Statutory Authority G.S. 126-4.*

**.1111 EXTENDED LEAVE WITHOUT PAY**

Extended leave without pay must be administered in accordance with the provisions outlined in this Rule. Extended leave without pay is defined as leave in excess of one-half the workdays in the month or in the pay period (whichever is applicable), in which case a personnel action must be submitted to place the employee in leave without pay status.

*Statutory Authority G. S. 126-4.*

**.1112 SHORT LEAVE WITHOUT PAY**

(a) Short leave without pay is defined as leave for less than one-half the workdays in the month or in the pay period (whichever is applicable). This is used to account for time that an employee is absent and has no accumulated or advanced leave credits. The employee must have approval from the supervisor. These short periods may be docketed from the employee's pay check without submitting a personnel action form. The employee earns all benefits for which eligible.

(b) Short leave without pay may also be used to account for time that an employee is absent without approved leave, i.e., to cover the status

of an employee who has failed to come to work but has not requested and received approval to take sick or vacation leave. Agency management is responsible for determining whether leave without pay is appropriate or whether the time may be charged to the appropriate leave account.

*Statutory Authority G. S. 126-4.*

**SUBCHAPTER II - SERVICE TO LOCAL GOVERNMENT**

**SECTION .1300 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL**

- .1307 APPEALS (REPEALED)
- .1308 CAUSES (REPEALED)
- .1309 DISMISSAL: CAUSES RELATING TO PERFORMANCE OF DUTIES (REPEALED)
- .1310 DISMISSAL (REPEALED)
- .1311 DISMISSAL: CAUSES RELATED TO PERSONAL CONDUCT (REPEALED)
- .1312 SUSPENSION (REPEALED)
- .1313 DEMOTION (REPEALED)
- .1314 SPECIAL PROVISIONS: CREDENTIALS (REPEALED)

*Statutory Authority G. S. 126-4; 126-35; 126-37; 126-38; Chapter 150B, Article 3.*

**.1315 LOCAL AGENCIES SUBJECT TO SAME RULES AS STATE AGENCIES**

Local government agencies subject to Chapter 126 are required to conform their disciplinary practices to the rules governing disciplinary action, suspension and dismissal of state employees. See 25 NCAC 1J SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL, Rules 1J .0603 - .0612. For the purpose of utilizing those rules, the word "permanent" shall mean a person who has completed a probationary period of not less than three months nor more than nine months. See 25 NCAC 1J SECTION .0700 - APPOINTMENT AND SEPARATION, Rule .0702.

*Statutory Authority G. S. 126-4; 126-35; 126-37.*

**SUBCHAPTER 1J - EMPLOYEE RELATIONS**

**SECTION .0600 - DISCIPLINARY ACTION: SUSPENSION AND DISMISSAL**

**.0610 SUSPENSION**

Investigatory or disciplinary suspension may be used by management in appropriate circumstances. However, the following provisions shall control its use:

- (2) Investigatory suspension without pay may be used to provide time to investigate, es-



establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision. Investigatory suspension without pay may be appropriately used to provide time to schedule and hold a pre-dismissal conference. Also, management may elect to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property. An investigatory suspension without pay shall not exceed 45 calendar days. However, a department or university may, in the exercise of its discretion, extend the period of investigatory suspension without pay beyond the 45-day limit. The employee must be informed in writing of the extension, the length of the extension, the specific reasons for the extension and his right of appeal. ~~A copy of the above communication shall be sent to the State Personnel Director.~~ If no action has been taken by management by the end of 45 calendar days, and no extension has been made, one of the following must occur: Reinstatement of the employee with full backpay; appropriate disciplinary action based on the results of the investigation; reinstatement of the employee with up to three days pay deducted from the backpay.

*Statutory Authority G. S. 126-4.*

#### SECTION .0900 - INTERNAL PERFORMANCE PAY DISPUTE RESOLUTION PROCEDURES

##### .0901 A PROCEDURE SPECIFICALLY DESIGNED ONLY PERFORMANCE PAY DISPUTES

The following are requirements and guidelines for an approved internal performance pay review process which is specifically designed to handle only performance pay disputes:

(2) The Review Mechanism:

(a) The first step in reviewing a performance management decision complaint shall be for the employee to review his complaint with his immediate supervisor or the appropriate management person. If the employee is not satisfied with the first step response, the next level of review will be by either the agency grievance committee or a separately constituted dispute resolution review board.

(b) The review will be conducted by a board consisting of at least three persons who will take information from the employee and from management's represen-

tative and will make a written recommendation, consistent with the information received, to the agency head. The agency head shall have the authority to accept or modify the board's recommendation or to adopt a different decision.

(c) Neither side will be permitted to be represented by an attorney. The proceeding shall not be tape recorded except as an administrative convenience to the review board. No person shall be required to testify under oath.

(d) The employee must be allowed to appear in person before the review board before a final agency decision is rendered.

(e) The review should be held within reasonable geographic proximity to the employee's worksite. Witnesses, other than the employee and management's representative, should be strictly limited. All members of the board should be allowed to ask questions of the employee and management's representative. A majority vote, rather than a unanimous vote, of the board should decide the recommendation to the agency head. Any travel required of the employee in order to get to the location of the review board hearing shall be done on state time; any mileage incurred as a result of this travel shall be reimbursed under existing budget guidelines.

*Statutory Authority G. S. 126-4.*

#### SUBCHAPTER 1K - PERSONNEL TRAINING

##### SECTION .0500 - APPRENTICESHIP TRAINING

##### .0502 APPOINTMENT PROVISIONS

All applicants and employees entering apprenticeship programs shall be subject to the trainee appointment provisions of the State Personnel Commission. (See 25 NCAC 4D, Section .0200, Rules .0208 - .0209.) All persons entering an apprenticeship program supported by funding from positions subject to the State Personnel Act shall receive a regular trainee appointment, and shall receive the same employment benefits as other SPA employees with trainee appointments. Upon successful completion of an apprenticeship program, an apprentice who enters regular state employment shall receive a permanent appointment.

*Statutory Authority G.S. 126-4.*

#### SUBCHAPTER 1L - AFFIRMATIVE ACTION

**SECTION .0200 - ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) IN THE WORKPLACE**

**.0201 PURPOSE**

North Carolina state government acknowledges its obligation as an employer to provide a safe and healthful work environment for all of its employees. Furthermore, the State recognizes the employment-related rights and concerns of employees who may be exposed as a part of their job duties to HIV infection or who may have HIV infection. In light of the concerns and the increasing incidence of AIDS, an infectious disease not transmitted by casual contact, state government has developed this policy to provide implementation guidance for all managers and employees on how to deal with AIDS in the workplace. Further, this policy has been developed to address morale, productivity, safety, anti-discrimination, confidentiality and other areas that are impacted by this policy.

*Statutory Authority G.S. 126-4.*

**.0202 POLICY**

It is the policy of state government to provide a work environment to protect the health and well being of all of its employees. To this end, the state will provide education and training, work practices, procedures, and ensure that employees who are exposed to or have HIV infection are provided with confidential, fair and equal treatment. Additionally, this policy outlines the rights and responsibilities of supervisors and employees regarding HIV infection in a work environment.

*Statutory Authority G.S. 126-4.*

**.0203 EDUCATION AND TRAINING**

All agencies and institutions of State government will undertake an education and training program. This program will have two components: a basic education and training component for all employees and an advanced education and training component for employees who perform tasks that have a greater potential for exposure to the HIV virus.

*Statutory Authority G.S. 126-4.*

**.0204 BASIC EDUCATION AND TRAINING COMPONENT**

(a) To insure consistency the Office of State Personnel, with guidance from the State Public Health Director, will identify or develop basic

education and training programs which agencies are required to provide for all their employees.

(b) Through the WISE program coordinators in each agency or other appropriate resources designated by the agency head, and with the assistance of professional health educators, all employees will be offered training within two years from the adoption of this policy, and thereafter for new employees within six months of initial employment. A Certificate of Completion will become a part of the employee's personnel record.

*Statutory Authority G.S. 126-4.*

**.0205 ADVANCED EDUCATION AND TRAINING COMPONENT**

(a) The Office of State Personnel will identify training modules and resources as approved by the State Public Health Director which will address the special education and training needs of employees who perform work related tasks that have a potential for exposure to the HIV virus. Each agency shall adopt these resources to their own work force needs.

(b) Each agency with employees requiring advanced training will provide such training within six months from the adoption of this policy. Agencies must provide training for new employees during their work orientation period. The Agency shall appropriately document the employees' compliance with this policy.

(c) All employees shall periodically be provided updated general public health information issued by the State Public Health Director or the U.S. Centers for Disease Control. Such educational literature shall be distributed as appropriate after further approval by the State Personnel Director in consultation with the State WISE Advisory Board. Appropriate records are to be maintained by the agency as proof of completion of any periodic update of employee education.

*Statutory Authority G.S. 126-4.*

**.0206 ANTI-DISCRIMINATION**

It is the State's policy not to discriminate against any applicant or employee who has or is suspected of having AIDS or HIV infection. The State recognizes that an employee with AIDS or HIV infection may wish to continue working. As long as an employee is able to satisfactorily perform the duties of the job [G. S. 168A-3(9), 130A-148(i)] and there is no medical evidence indicating that the employee's condition is a health threat to the employee, co-workers or the public, an employee shall not be denied continued employment nor shall any applicant be de-

nied employment solely because of a medical condition.

*Statutory Authority G.S. 126-4; 130A-148C(i); 168A-3(9).*

**.0207 TESTING AND EXAMINATION**

Medical tests and examinations to determine the presence of HIV or HIV associated conditions are prohibited except as authorized by state and federal law or required by the rules of the Commission for Health Services. An employee who suspects that, having had a nonsexual blood or body fluid exposure to the HIV virus while on the job, may voluntarily elect to be tested for the HIV infection, provided that the suspected exposure poses a significant risk of transmission of HIV as defined in the rules of the Commission for Health Services. The cost of tests for the exposed employee shall be borne by the employer, if requested by the employee. Some employees may prefer to pay for their own test through a personal or family physician, or use the free testing services of a Public Health Department.

*Statutory Authority G.S. 126-4.*

**.0208 CONFIDENTIALITY**

Confidentiality shall be strictly maintained by the agency for any employee with HIV or HIV associated conditions as required by existing

confidentiality rules and laws. Any current confidentiality policies that are in force shall be updated by the agency to include the HIV policy.

*Statutory Authority G.S. 126-4.*

**.0209 COMPLAINTS AND DISCIPLINE**

The State acknowledges that employees with HIV infection as well as their co-workers may have concerns for their own health and safety. Managers are to pursue all appropriate actions to respond to the concerns of all employees. The state recognizes the rights of employees to grievance procedures. The employer has an equal right to maintain a harmonious and productive work environment that is free from disruptive or inconsiderate behavior, or from the refusal of any employee to perform work at assigned times and locations. If insubordinate or disruptive actions occur, managers are to follow the normal disciplinary procedures described in 25 NCAC 1J .0600, DISCIPLINARY ACTION, SUSPENSION AND DISMISSAL. Before any disciplinary action can be taken, an agency or institution shall first provide counseling by a qualified health care professional to an employee who fears that a serious health risk is created by the presence of a co-worker who has AIDS or HIV infection.

*Statutory Authority G.S. 126-4.*



*The Administrative Rules Review Commission (ARRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to ARRC as provided in G.S. 143B-30.2(d).*

## ECONOMIC AND COMMUNITY DEVELOPMENT

### Savings Institutions Division

- 4 NCAC 16A .0302 - *Response of Administrator to Petition* ARRC Objection 5/17/90  
4 NCAC 16A .0402 - *Informal Settlement* ARRC Objection 5/17/90

## ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

### Environmental Health

- 15A NCAC 18A .1814 - *Disposal of Garbage and Trash: Premises* ARRC Objection 6/21/90  
15A NCAC 18C .1528 - *Point-of-Entry and Other Treatment Devices* ARRC Objection 6/21/90

### Environmental Management

- 15A NCAC 2F .0102 - *General Criteria* ARRC Objection 5/17/90  
15A NCAC 2F .0105 - *Effective Contingent Upon Federal Funds Allocated* ARRC Objection 5/17/90

### Health: Epidemiology

- 15A NCAC 19B .0202 - *Granting Permits* ARRC Objection 6/21/90  
15A NCAC 19D .0407 - *Medical Eligibility* ARRC Objection 6/21/90  
15A NCAC 19D .0408 - *Medical Eligibility Licensed Nursing Home Services* ARRC Objection 6/21/90

### Laboratory Services

- 15A NCAC 20A .0002 - *Definitions* ARRC Objection 6/21/90

### Wildlife Resources Commission

- 15A NCAC 10C .0501 - *Scope and Purpose* ARRC Objection 6/21/90

## HUMAN RESOURCES

### Medical Assistance

- 10 NCAC 50B .0311 - *Reserve* ARRC Objection 6/21/90

### Youth Services

- 10 NCAC 44F .1305 - *Corporal Punishment and Child Abuse* ARRC Objection 5/17/90

## LICENSING BOARDS AND COMMISSIONS

### Certification Board for Social Work

- 21 NCAC 63 .0104 - *Organization of the Board* ARRC Objection 5/17/90  
21 NCAC 63 .0301 - *Written Examinations* ARRC Objection 5/17/90  
21 NCAC 63 .0403 - *Renewal Fees* ARRC Objection 5/17/90

**PUBLIC EDUCATION**

Elementary and Secondary Education

*16 NCAC 6D .0105 - Use of School Day*

*ARRC Objection 6/21/90*

**SECRETARY OF STATE**

Corporations Division

*18 NCAC 4 .0101 - Location and Hours*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0102 - Administration and Functions*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0205 - Overpayment*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0206 - Documents Not Specifically Provided For*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0302 - Execution*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0303 - Rejection*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0305 - Corrective Filings-Nonprofit Corp/Limited Partnerships*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0306 - Articles of Incorporation - Nonprofit Corporations*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0307 - Application For Reservation of Corporate Name*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0308 - Registered Office and Registered Agent*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0311 - Art of Merger/Share Exch G.S. 55-11-07/55A-42.1*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0312 - Appl For Cert of Authority Foreign Prof Corporation*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0313 - Filing Merger Involving Foreign Corporation*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0314 - Filing Evidence of Dissolution Foreign Nonprofit Corp*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0316 - Form for Annual Report*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0401 - Documents*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0402 - Cert of Facts Certificate of Exit, Authorization*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0501 - General*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0502 - Words Prohibited in Addition to Statutory Prohibitions*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0503 - Deceptively Similar and Distinguishable Names*

*ARRC Objection 6/21/90*

*18 NCAC 4 .0504 - Filing Fictitious/Assumed Name Foreign Corporation*

*ARRC Objection 6/21/90*

Securities Division

*18 NCAC 6 .1210 - Securities Exchgs Auto Quotation Sys Approve Admin*

*ARRC Objection 6/21/90*

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
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2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Foresters	20
11	Insurance	Geologists	21
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**Note:** Title 21 contains the chapters of the various occupational licensing boards.



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