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# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: SEPTEMBER 4, 1990**

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# 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



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

Julian Mann III,  
*Director*  
James R. Scarcella Sr.,  
*Deputy Director*  
Molly Masich,  
*Director APA Services*

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

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# NORTH CAROLINA REGISTER

## *Publication Schedule*

*(April 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
*****	*****	*****	*****	*****
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
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12/16/91	11/21/91	12/02/91	01/15/92	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 NUMBER 123  
UNIFORM FLOODPLAIN MANAGEMENT  
POLICY

WHEREAS, the National Flood Insurance Program incorporated at 42 U.S.C. 4001-4128 authorizes the establishment of floodplain management regulations applicable to state-owned properties; and

WHEREAS, Governor James B. Hunt, Jr., established a Uniform Floodplain Management Policy for State agencies by Executive Order Number 31 signed on February 1, 1979, to provide for sound management of state-owned properties as they relate to potential flood hazards; and

WHEREAS, the federal regulations for floodplain management, 44 C.F.R. Chapter 1, Parts 59 through 77 (1989), were revised making Executive Order Number 31 outdated; and

WHEREAS, there is a substantial need to update the Uniform Flood Management Policy in accordance with the revisions made in 44 C.F.R. Chapter 1, Parts 59 through 77 (1989);

NOW, THEREFORE, IT IS HEREBY ORDERED:

Section 1. The Uniform Floodplain Management Policy established by Executive Order Number 31, February 1, 1979, is hereby rescinded.

Section 2. I hereby establish a new Uniform Floodplain Management Policy which accurately reflects all authority, responsibilities and functions of State agencies.

Section 3. The Department of Administration shall administer a Uniform Floodplain Management Policy for State Agencies. By agreement between the Department of Transportation and the Department of Administration, the Department of Transportation shall work directly with the Federal Department of Transportation and the Federal Emergency Management Agency to apply appropriate standards and management to comply with the Floodplain Management Policy relevant to highway construction within floodplains. This order shall apply to those lands as defined in Chapters 143 and 146 of the North Carolina General Statutes and including but not limited to public waterways, marshes, Estuarine waters, and to privately-owned land and improvements which are leased to the State of North Carolina or any of its agencies. This order in no way affects municipal or county zoning authority pursuant to General Statutes Chapter 160A, Article 19, Part 3 and Chapter 153A, Ar-

ticle 18, Part 3; however, in cases of conflict between Municipal and County Floodway Regulations pursuant to Chapter 143, Article 2, Part 6 and the provisions set forth in this order, the Department of Administration shall investigate the area of conflict and make appropriate determinations to comply with the intent of this order.

Section 4. To encourage State agencies to work within the existing statutes of the State of North Carolina to establish a Uniform Floodplain Management Policy, the following statutes and codes, and revisions thereto, though not repeated herein, are hereby incorporated by reference:

- A. Chapter 58, Section 193, Commissioner of Insurance - Required to Inspect State Property
- B. Chapter 113, Article 1, Estuarine Waters and State Owned Lakes
- C. Chapter 113A, Article 1, Environmental Policy Act
- D. Chapter 113A, Article 4, Sedimentation Pollution Control Act of 1973
- E. Chapter 113A, Article 7, Coastal Area Management Act of 1974
- F. Chapter 113A, Article 7A, Coastal and Estuarine Water Beach Access Program
- G. Chapter 113A, Article 9, Land Policy Act
- H. Chapter 143, Article 1, Executive Budget Act
- I. Chapter 143, Article 8, Public Building Contract
- J. Chapter 143, Article 36, Department of Administration
- K. Chapter 143, Article 21, Section 214.1 Water Quality Standards
- L. Chapter 143, Article 21, Section 215, Effluent Standards and Limitations
- M. Chapter 143, Article 21, Part 6, Floodway Regulations
- N. Chapter 143B, Article 9, Part 3, N.C. Capital Planning Commission
- O. Chapter 146, Articles 5, 6 and 7 Acquisition and Disposition of State Lands
- P. Chapter 153A, Article 18, Part 3, County Zoning Authority
- Q. Chapter 160A, Article 19, Part 3, Local Zoning Authority
- R. North Carolina State Building Code 1978 Edition and amendments
- S. PL 92-500 Pollution Control Act of 1972
- T. 44 CFR Parts 59 - 76, NFIP and Related Regulations
- U. Title 16 USCS Chapter 33, Coastal Zone Management
- V. Title 33 USCS Chapter 15, Flood Control

W. Title 42 USCS Chapter 50, Flood Insurance

Section 5. Definitions. It is not the intent of this order to create any new terms or phrases. The terms and phrases used herein shall be interpreted to conform with existing common usage, statutes, or other applicable regulations as follows:

1. "Appeal" means a request from a review of the local administrator's interpretation of any provision of this order.
2. "Addition (to an existing building)" means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.
3. "Area of shallow flooding" means a designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
4. "Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of being equaled or exceeded in any given year.
5. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.
6. "Basement" means that lowest level or story which has its floor subgrade on all sides.
7. "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires a professional engineer or architect's certificate.
8. "Building" means any structure built for support, shelter, or enclosure for any occupancy or storage.
9. "Coastal High Hazard Area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.
10. "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
11. "Elevated Building" means a non-basement building (a) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, or X to have the top of the elevated floor, or in the case of a building in Zones V1-V30, VE, or V to have the bottom of the lowest horizontal structural member of the elevated floor above the ground by means of pilings, columns (posts and piers), shear walls parallel to the flow of water and, (b) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, and X, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the area below is enclosed by means of breakaway walls if the breakaway walls meet the standards of Section 8, Subsection E of this order.
12. "Existing manufactured home park or manufactured home subdivision" means a manufactured home part or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this order.
13. "Expansion to an existing manufactured home part or subdivision" means the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes

- are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).
14. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
  - (A) the overflow of inland or tidal waters; and
  - (B) the unusual and rapid accumulation of runoff of surface waters from any source.
15. "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.
16. "Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.
17. "Flood Insurance Study" is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.
18. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
19. "Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.
20. "Functionally dependant facility" means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water; such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.
21. "Highest Adjacent Grade" means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.
22. "Historic Structure" means any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a State inventory of historic places; (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (1) by an approved state program as determined by the Secretary of the Interior, or (2) directly by the Secretary of Interior in states without approved programs.
23. "Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.
24. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this order.
25. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".
26. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
27. "Mean Sea Level" means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this order, the term is



- synonymous with National Geodetic Vertical Datum (NGVD).
28. "National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference from establishing varying elevations within the floodplain.
  29. "New construction" means structures for which the "start of construction" commenced on or after the effective date of this order and includes any subsequent improvements to such structures.
  30. "New manufactured home part or subdivision" means a manufactured home part or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after the effective date of this order.
  31. "Nonconforming building or use" means any legally existing building or use which fails to comply with the provisions of the order.
  32. "Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and over-topping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.
  33. "Recreational Vehicle" means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and, (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping travel, or seasonal use.
  34. "Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal highwater line or the seaward line of permanent vegetation if highwater line cannot be identified.
  35. "Remedy a violation" means to bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the order or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.
  36. "60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.
  37. "Start of construction" [for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348)], includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the state of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.
  38. "Structure" means, for floodplain management purposes, a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other man-made facilities or infrastructures that are principally above ground.
  39. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market



value of the structure before the damage occurred. See definition of "substantial improvement".

40. Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either: (1) any project of improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or, (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
41. "Substantially improved existing manufactured home part or subdivision" means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.
42. "Variance" is a grant of relief to a person from the requirements of this order which permits construction in a manner otherwise prohibited by this order where specific enforcement would result in unnecessary hardship.
43. "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as the documentation is provided.
44. "Zone of imminent collapse" means an area subject to erosion adjacent to the shoreline of an ocean, bay or lake and within a distance equal to 10 feet plus 5 times the average annual long term erosion rate for the site, measured from the reference feature.

Section 6. Location of Regulatory Floodway and Floodplain Boundaries. Determination of boundaries for the regulatory floodway, the 100-year floodplain, and the coastal high hazard areas shall be established by using the latest hydrologic maps and engineering data obtainable.

When Federal Emergency Management Agency (FEMA) Flood Hazard Boundary (FHB), Floodway, Flood Insurance Rate Maps (FIRM) or Flood Insurance Study Data are available, they shall be the primary source of such hydrologic data.

Section 7. Floodplain Development Permit and Certification Requirements. Application for a Floodplain Development Permit shall be made to the Department of Administration on forms furnished by them prior to any development activities. The Floodplain Development permit shall include, but not be limited to plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; a copy of the Flood Hazard Boundary/Floodway or Flood Insurance Rate Map showing the site location and panel number, and the location of fill materials, storage areas and drainage facilities. Specifically, the following information is required:

- A. Where base flood elevation data is provided in accordance with Section 8, Subsection L, the application for a Floodplain Development Permit within the Zone A on the Flood Insurance Rate Map shall show:
  - (1) the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and
  - (2) if the structure has been floodproofed in accordance with Section 10 Subsection B, the elevation (in relation to mean sea level) to which the structure was floodproofed.
- B. Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two (2) feet above the highest adjacent grade.
- C. Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located on both

upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.

- D. When a structure is floodproofed the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the flood-proofing criteria in Section 10, Subsection B.
- E. A floor elevation or flood-proofing certification is required after the lowest floor is completed, or in instances where the structure is subject to the regulations applicable to Coastal High Hazard Areas, after placement of the horizontal structural members of the lowest floor. Within twenty-one (21) calendar days of the establishment of the lowest floor elevation, or flood-proofing by whatever constructions means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the Department of Administration a certification of the elevation of the lowest floor, or floodproofed elevation, or the elevation of the bottom of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar and prior to submission of the certification shall be at the permit holder's risk. The Department of Administration shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop work order for the project.
- F. Upon receipt of the permit applications, the Secretary of the Department of Administration or his/her designee will review the application with other departments, and will (1) deny the permit application; or (2) issue a temporary

permit for further development of the project. If a temporary permit is issued, the applicant may proceed with development of detailed planning and specifications, such as plans and specifications to be submitted to the Department of Administration for periodic review.

- G. Upon final approval of the detailed plans and specifications, the Department of Administration shall issue a permit for construction. In granting or denying permits, the Department shall be guided by the standards, limitation and requirements set forth in this order.
- H. Certificate of Compliance. Before the facility is occupied, the owning agency shall issue or cause to be issued a certificate of compliance stating that the subject project complied with all of the provisions of this order. The certificate shall be prepared by a professional engineer, architect or land surveyor, or a combination thereof, if so required by the aforementioned statutes.
- I. North Carolina Department of Insurance Approval. When the project is a structure normally covered by insurance, the development permit under Section 7, will not be issued until the project is approved by the Department of Insurance for full coverage.
- J. Appeals, Adjustments, Amendments and Violations. Appeals, Adjustments, Amendments and Violations shall be considered and determined as provided in the aforementioned statutes and in accordance with the rules and regulations governing the Department of Administration adopted pursuant to the Administrative Procedures Act.

Section 8. Duties and Responsibilities of the Department of Administration. Duties of the Department of Administration shall include, but not be limited to:

- A. Review all development permits to assure that the permit requirements of the order have been satisfied.
- B. Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
- C. Notify adjacent communities and the N.C. Department of Crime Control and Public Safety, Division of Emergency Management, and the State Coordinator's Office

for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit such notification to the Federal Emergency Management Agency.

- D. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- E. Prevent encroachments within floodways unless the certification and flood hazard reduction provision of Sections 7 thru 11, are met.
- F. Obtain the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Section 7, Subsection E.
- G. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with Section 7, Subsection E.
- H. In Coastal Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters and hurricane wave wash.
- I. In Coastal High Hazard Areas, review plan for adequacy of breakaway walls in accordance with Section 8, Subsection G, Paragraph 8.
- J. When flood-proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 10, Subsection B.
- K. Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Department of Administration shall make the necessary interpretation, upon recommendation by the Office of State Construction. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this order.
- L. When base flood elevation data has not been provided in accordance with Section 6, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, including data developed pursuant to Section 12, Sub-

section D, in order to administer the provisions of this order.

- M. Make on site inspections in accordance with the aforementioned statutes.
- N. Serve notices of violations, issue stop work orders, revoke permits and take corrective actions in accordance with the aforementioned statutes.
- O. Maintain all records pertaining to the administration of this order and make these records available for public inspection.

Section 9. Provisions for Flood Hazard Reduction - General Standards. In all areas of special flood hazard the following provisions are required:

- A. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- C. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages;
- D. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- F. New and replacement sanitary sewer systems shall be located and constructed to minimize infiltration of flood waters into the systems and discharges from the systems into flood waters;
- G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them, during flooding; and
- H. Any alteration, repair, reconstruction or improvement to a structure which is in compliance with the provisions of this order, shall meet the requirements of "new construction" as contained in this order.
- I. Non-conforming building or uses. Non-conforming buildings or uses may not be enlarged, replaced or rebuilt unless such enlargement, replacement or reconstruction is accomplished in conformance



with the provisions of this order. Provided, however, nothing in this order shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this order and located totally or partially within the Floodway Zone, provided that the bulk of the building or structure below base flood elevation in the Floodway Zone is not increased and provided that such repair, reconstruction or replacement meets all the other requirements of this order. A structure abandoned for twelve (12) months or more cannot be reoccupied until it is improved and brought into compliance with this order.

Section 10. Provisions for Flood Hazard Reduction - Specific Standards. In all areas of special flood hazard where base flood elevation data has been provided, as set forth in Section 6 or Section 8, Subsection L, the following provisions are required:

A. Residential Construction. New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than two (2) feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate the structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided.

B. Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than two (2) feet above the level of the base flood elevation.

Structures located in A-Zones may be floodproofed in lieu of elevation provided that for:

(1) Dry Floodproofing. All areas of the structure below the required elevation are water tight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this Section are satisfied. Such certification shall be provided to the official as set forth in Section 7, Subsection E; or,

(2) Wet Floodproofing. A professional engineer or architect shall certify in accordance with Section 7, Subsection E, that the portions of any structure below the regulatory base flood elevation comply with alternate wet floodproofing methods that are acceptable to FEMA as variances to the essentially dry floodproofing measures required in Section 10, Subsection B (1) above. Provided said alternate methods comply with the standards set forth in the FEMA Technical Standards Bulletin (No. 85-1), and that such measures are adequate to withstand the flood depth pressures, velocities, impact and uplift forces and other factors associated with the Base Flood occurrence at the location of the structures and that attendant utility and sanitary facilities are floodproofed and that the requirements for the issuance of the Variance comply with Section 14 of this order.

C. Manufactured Homes.

(1) Manufactured homes that are placed or substantially improved on sites (a) outside a manufactured home part or subdivision; (b) in a new manufactured home part or subdivision; (c) in an expansion to an existing manufactured home part or subdivision; or, (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than two (2) feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of Section 10, Subsection C (1) of this ordinance must be elevated so that the lowest floor of the manufactured home is elevated no lower than two (2) feet above the base flood elevation, and be securely anchored to an adequate anchored foundation to resist flotation, collapse, and lateral movement.

(3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or

lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to N.C.G.S. 143.143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the sight, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height and engineering certification is required.

- (4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This Plan shall be filed with and approved by the Department of Administration and the Department of Crime Control and Public Safety.
- D. Recreational Vehicles. A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:
  - (1) be on site for fewer than 180 consecutive days,
  - (2) be fully licensed and ready for highway use, or
  - (3) meet the requirements of Section 7, 9 and 10 (subsection C).
- E. Elevated Buildings. New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
  - (1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following criteria:
    - (a) provide a minimum of two (2) openings having a net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (b) the bottom of all openings shall be no higher than one foot above grade; and,
    - (c) openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
  - (2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairwell or elevator).
  - (3) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.
- F. Temporary Structures. Prior to the issuance of a development permit, for a temporary structure, the following requirements must be met:
  - (1) All applicants must submit to the local administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:
    - (a) the name, address and phone number of the individual responsible for the removal of the temporary structure;
    - (b) the time frame prior to the event at which a structure will be removed;
    - (c) a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
    - (d) designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.
  - (2) The above information shall be submitted in writing to the local administrator for review and written approval.
- G. Accessory Structure. When accessory structures (sheds, detached garages, etc.) with a value of \$3,000 or less, are to be placed in the floodplain the following criteria shall be met:
  - (1) Accessory structures shall not be used for human habitation;
  - (2) Accessory structures shall be designed to have low flood damage potential;
  - (3) Accessory structures shall be firmly anchored in accordance with Section 9, Subsection A; and

- (4) Service facilities such as electrical and heating equipment shall be elevated in accordance with Section 9, Subsection D.
- H. Floodways. Located within areas of special flood hazard established in Section 6, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:
- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
  - (2) If Section 10, Subsection F, Paragraph 1, is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 9 thru 13 of this order.
  - (3) No manufactured homes shall be permitted except in existing manufactured home parks or subdivisions. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided that the anchoring standards of Section 9, Subsection B and the elevation standards of Section 8 (C) are met.
- I. Coastal High Hazard Areas (V-Zones). Located within the areas of special flood hazard established in Section 6, are areas designated as coastal high hazard areas. These areas have special flood hazards associated with wave wash. The following provisions shall apply within such areas:
- (1) All buildings or structures shall be located landward of the first line of stable natural vegetation and comply with all applicable CAMA setback requirements.
  - (2) All buildings or structures shall be elevated so that the bottom of the lowest supporting horizontal member (excluding pilings or columns) is located no lower than two (2) feet above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Open lattice work or decorative screening may be permitted for aesthetic purposes only and must be designed to wash away in the event of abnormal wave action and in accordance with Section 10, Subsection G, Paragraph 8.
  - (3) All buildings or structures shall be securely anchored on pilings or columns.
  - (4) All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values which equal or exceed the 100 year mean recurrence interval (one percent annual chance flood).
  - (5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in Section 10, Subsection G, Paragraphs (2), (3) and (4) of this order.
  - (6) There shall be no fill used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction prior to generating excessive loading forces, ramping effects, or wave deflection. The Department of Administration shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist which demonstrates that the following factors have been fully considered:
    - (a) particle composition of fill material does not have a tendency for excessive natural compaction;
    - (b) volume and distribution of fill will not cause wave deflection to adjacent properties; and
    - (c) slope of fill will not not cause wave run-up or ramping.
  - (7) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.
  - (8) Lattice work or decorative screening shall be allowed below the base flood elevation provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action, without damage to the structural integrity of the building on which they are to be used and provided the following design specifications are met:
    - (a) no solid walls shall be allowed;



- (b) material shall consist of wood or mesh screening only;
- (c) design safe loading resistance of each wall shall be not less than 10 nor more than 20 pounds per square foot; or
- (d) if more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event. Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval).
- (9) If aesthetic lattice work or screening is utilized such enclosed space shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.
- (10) Prior to construction, plans for any structures that will have lattice work or decorative screening must be submitted to the Department of Administration for approval.
- (11) Any alteration, repair, reconstruction or improvement to a structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided for in Section 10, Subsection G, Paragraph (8) and (9).
- (12) No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section 9, Subsection (B) and the elevation standard of Section 10, Subsection C are met.

Section 11. Standard for Streams Without Established Base Flood Elevations and/or Floodways. Located within the areas of special flood hazard established in Section 6 are small streams where the Federal Emergency Management Agency has not provided base flood data

and where floodways have not been identified. The following provisions shall apply within such areas:

- A. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of thirty feet from the top of bank, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. If Section 11, Subsection A is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard provisions of Section 9 thru 13 and shall be elevated or floodproofed in accordance with elevations established in accordance with Section 8, Subsection L. When base flood elevation data is not available from a federal, state or other source, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.

Section 12. Standard for Subdivision Proposals.

- A. All subdivision proposals shall be consistent with the need to minimize flood damage;
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,
- D. Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of fifty lots or five acres.

Section 13. Standard for Areas of Shallow Flooding (AO Zones). Located within the areas of special flood hazard established in Section 6 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet (1 - 3 feet) where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:

- A. All new construction and substantial improvements of non-residential structures shall:

- (1) have a lowest floor, including basement, elevated in the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade; or,
- (2) be completely floodproofed together with attendant utility and sanitary facilities or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

#### Section 14. Variance Procedures.

- A. The Department of Administration, Office of State Construction, the Department of Insurance, the North Carolina Division of Emergency Management, NFIP State Coordinator, and the Secretary of the Department of Administration, hereafter referred to as the appeal board, shall hear and must concur on requests for variances from the requirements of this order.
- B. Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- C. Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- D. Variances may only be granted for Historic Structures and for wet Floodproofing of Non-Residential Structures. No variances may be granted for Residential construction.
- E. In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this order, and:
  - (1) the danger that materials may be swept onto other lands to the injury of others;
  - (2) the danger to life and property due to flooding or erosion damage;
  - (3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) the importance of the services provided by the proposed facility to the community;
  - (5) the necessity to the facility of a waterfront location, where applicable;
  - (6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (7) the compatibility of the proposed use with existing and anticipated development;
  - (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (10) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- F. Upon consideration of all the factors listed above and the purposes of this order, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this order.
- G. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- II. Conditions for Variances:
  - (1) Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (3) Variances shall only be issued upon (i) a showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship; and, (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or

victimization of the public, or conflict with existing local laws or ordinances.

- (4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

- (5) The local administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

Section 15. The Department of Insurance and the Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator's Office of the National Flood Insurance Program shall assist in jointly administering the provisions of this order under applicable statutory provisions.

Section 16. Abrogation and Greater Restrictions. This order is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this order and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 17. This order shall become effective immediately. Done in Raleigh, North Carolina this the 24th day of July, 1990.



**TITLE 2 - DEPARTMENT OF  
AGRICULTURE**

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Agriculture intends to amend rule(s) cited as 2 NCAC 20B .0413; 2 NCAC 43L .0304 - .0305; 2 NCAC 48A .0601, .0605, .0611, .1005, .1214, and .1602.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on October 5, 1990 at the Board Room, Agriculture Bldg., 1 W. Edenton Street, Raleigh, NC.*

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

**CHAPTER 20 - THE NORTH CAROLINA STATE  
FAIR**

**SUBCHAPTER 20B - REGULATIONS OF THE  
STATE FAIR**

**SECTION .0400 - OPERATION OF STATE FAIR  
FACILITIES**

**.0413 ALCOHOLIC BEVERAGES**

(a) A person shall not sell, offer for sale, or possess for the purpose of sale, any alcoholic beverage on State Fair property.

(b) A person shall not possess or consume any alcoholic beverage at ticketed, commercial events that are open to the public on State Fair property except as permitted under Paragraph (c) of this Rule.

(c) Except during the annual State Fair, beer and wine may be sold and consumed at the horse facility, subject to state alcoholic beverage control laws and regulations. ~~This Paragraph shall be repealed effective July 1, 1990.~~

*Statutory Authority G.S. 106-503.*

**CHAPTER 43 - MARKETS**

**SUBCHAPTER 43L - MARKETS**

**SECTION .0300 - FEES: WESTERN NORTH  
CAROLINA HORSE  
AND LIVESTOCK FACILITY FEE SCHEDULE**

**.0304 HORSE FACILITY**

(a) Fees for ~~non-agricultural~~ non-livestock events are as follows:

- (1) Fees for use of the show arena are ~~five~~ six hundred dollars (~~\$500.00~~) (\$600.00) per show day or ten percent of the gate, whichever is greater, provided that for the show arena to be opened before 6:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of ~~two~~ three hundred dollars (~~\$200.00~~) (\$300.00).
- (2) Fees for use of the covered practice ring shall be ~~two~~ three hundred dollars (~~\$200.00~~) (\$300.00) per day, provided that it is used in conjunction with the show arena. The covered practice ring may be rented separately for ~~three~~ four hundred dollars (~~\$300.00~~) (\$400.00) per show day if a show is held within 120 days of the booking date.
- (3) The open practice ring shall be rented at the ground rental rate as set forth in ~~Rule .0305(d)~~ .0305(e) of this Section.
- (4) A twenty-five dollar (\$25.00) fee shall be charged for any electrical connection to facility power outlets.
- (5) The fees set forth in Paragraph (b) of this Rule shall apply to any activity not specifically covered under this Paragraph.

(b) Fees for ~~agricultural~~ livestock events are as follows:

- (1) Fees for use of the show arena are ~~four~~ five hundred dollars (~~\$400.00~~) (\$500.00) per show day or ten percent of the gate, whichever is greater; provided that for the show arena to be opened before 6:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of ~~two~~ hundred and fifty dollars (~~\$200.00~~) (\$250.00). Rental of the show arena shall include the covered practice ring and the open practice ring.
- (2) The covered practice ring may be rented separately for ~~one~~ two hundred and fifty dollars (~~\$150.00~~) (\$250.00) per show day if a show is held within 120 days of the booking date. Rental of the covered practice ring shall include the open practice ring.
- (3) The covered practice ring may be rented separately for ~~one~~ two hundred and fifty dollars (~~\$150.00~~) (\$250.00) per show day if ~~the~~ a show is held more than 120 days from the booking date; provided that a minimum of one thousand five hundred dollars (~~\$1,000~~) (\$1,500) revenue from covered practice ring and stall rental is

## PROPOSED RULES

guaranteed to the Agricultural Center. Rental of the covered practice ring shall include the open practice ring.

- (4) Fees for stalls are ~~set according to the following schedule:~~ as follows:

Days	Fees
(A) <del>1-21</del>	<del>16.00</del> <u>\$12.00;</u>
(B) <del>32</del>	<del>24.00</del> <u>\$20.00;</u>
(C) <del>43</del>	<del>28.00</del> <u>and \$26.00;</u>
(D) <del>4</del>	<del>\$32.00;</del>
(E) <del>5</del>	<del>\$36.00;</del> and
(F) <del>\$2.00</del> <u>\$3.00</u>	per additional day thereafter.

- (5) Agricultural youth organizations may receive a 50 percent discount for stall rentals and a 25 percent discount on show arena rental when participation is restricted to youth. Educational clinics and seminars may receive a 50 percent discount on show arena and covered practice ring rates when left in clean condition. The Agricultural Center Manager will decide what qualifies as educational clinics and seminars.
- (6) A fee of ~~fifty seventy-five dollars (\$50.00) (\$75.00)~~ per day is required for use of the facility's jumps.
- (7) A fee of ~~ten twenty-five dollars (\$10.00) (\$25.00)~~ per hour is required for use of the facility's motorized grounds equipment. Fee shall include operator.
- (8) Fees for use of the facility's office equipment, if available, is charged on an expense incurred basis.
- (9) Fees for security and other support services at any event ~~is~~ are charged on a cost plus ten percent basis. The need for security is to be determined by facility management in consultation with show management.
- (10) A fee of ~~eight ten dollars (\$8.00) (\$10.00)~~ per night is required for any camper parking overnight on facility grounds. Any horse trailer connected to a power outlet at the facility will be charged the same fee as a camper.
- (11) Miscellaneous horse facility equipment is available according to the following fee schedule:
- (A) metal livestock panels - ~~two three~~ dollars (\$2.00) (\$3.00) each per show;
- (B) small livestock panels - one dollar (\$1.00) per panel or if installed, four dollars (\$4.00) per pen;
- (C) center ring set-up - thirty-five dollars (\$35.00);

- (D) removal of end gates - fifty dollars (\$50.00);
- (E) farm wagon for staging - twenty-five dollars (\$25.00) each;
- (F) chairs - ~~thirty forty~~ cents (\$0.30) (\$0.40) each per day;
- (G) tables - ~~one dollar and fifty cents (\$1.50)~~ two dollars (\$2.00) each per day; and
- (H) paper table coverings - thirty-five cents (\$0.35) each;
- (I) portable PA System - twenty-five dollars (\$25.00) per event;
- (J) wireless mike system - twenty-five dollars (\$25.00) (batteries not included);
- (K) 9 volt batteries - one dollar (\$1.00) each;
- (L) podium - ten dollars (\$10.00) per day;
- (M) projection screen - ten dollars (\$10.00) per day;
- (N) slide projector - thirty dollars (\$30.00) per day;
- (O) two-way radio - twenty-five dollars (\$25.00).
- (12) A fee of twenty-five dollars (\$25.00) per concessionaire is required.
- (13) A lessee must have prior approval of the Agricultural Center Manager before catering services will be allowed on the grounds. A fifty dollar (\$50.00) fee is charged for catering services that serve no more than 200 plates. For each plate served in excess of 200 plates, a fee of thirty-five cents (\$0.35) per plate shall be charged.
- (14) Auditing of ticketed events: seven dollars (\$7.00) per hour for ticket sellers, six dollars (\$6.00) per hour for ticket takers and securing doors and ten percent administrative charge.
- (15) There will be a charge of ten dollars (\$10.00) per hour for the facility to be opened with minimum lighting after 5:00 p.m. the day prior to a show event.
- (16) To obtain regional and national livestock shows, when large numbers of livestock (more than 600 animals) are anticipated, the manager shall have the authority to negotiate a flat rate for the total use of the facility.
- (17) The Agricultural Center Manager shall ~~have the right to set a fair rental rate for any establish reasonable fees for any services or activities not mentioned herein.~~

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

### .0305 LIVESTOCK FACILITY

(a) Fees for ~~rental use~~ of the livestock facility are ~~set according to the following schedule:~~ as follows:

- (1) Non-agricultural groups shall be charged two hundred dollars (\$200.00) per day for use of the sales arena only or three hundred dollars (\$300.00) per day for the sales arena and barn;
- (2) Agricultural youth groups ~~shall be~~ are charged fifty dollars (\$50.00) per day for use of the sales arena only or one hundred dollars (\$100.00) per day for the sales arena and barn;
- (3) Agricultural groups shall be charged one hundred dollars (\$100.00) per day for use of the sales arena only or two hundred dollars (\$200.00) per day for ~~the~~ sales arena and barn;
- (4) Use of the facility's kitchen is set at thirty dollars (\$30.00) per day for agricultural groups;
- (5) Use of the facility's kitchen is set at thirty dollars (\$30.00) per day or 30.5 percent of gross receipts after taxes, whichever is the greater, for non-agricultural groups;
- (6) Any group renting the sales arena only shall pay an additional fee of twenty-five dollars (\$25.00) for any time after 12:15 a.m. but before 2:00 a.m. The fee shall be twenty-five dollars (\$25.00) per hour after 2:00 a.m.
- (b) Fees for ~~the~~ use of folding chairs, tables, livestock panels and paper table coverings shall be based on the fee schedule set forth in .0304(b)(11) of this Section.
- (c) A fifty dollar (\$50.00) charge for ~~removing the removal of bedding or straw~~ from the barn is required.
- (d) Fees for use of the Youth Building are set at ~~twenty-five thirty~~ dollars ~~(\$25.00) (\$30.00)~~ per day.
- (e) Ground rental shall be at the rate of ~~five ten~~ cents ~~(\$0.05) (\$0.10)~~ per square yard or one hundred ~~and fifty~~ dollars ~~(\$100.00) (\$150.00)~~ per day whichever is greater.
- (f) Ticketed event charges shall be at the daily rate of the facility or ten percent of gate receipts, whichever is greater.
- (g) Food catering fees shall be provided at the rate set forth in .0304(b)(13) of this Section.

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

## CHAPTER 48 - PLANT INDUSTRY

### SUBCHAPTER 48A - PLANT PROTECTION

#### SECTION .0600 - BOLL WEEVIL

#### .0601 DEFINITIONS

For the purposes of this Section, in addition to definitions contained in G.S. 106-65.69, the following shall apply:

- (1) Compliance Agreement. A written agreement between a person engaged in growing, dealing in or moving regulated articles and the North Carolina Department of Agriculture, Plant Industry Division, wherein the former agrees to comply with conditions specified in the agreement to prevent the dissemination of the boll weevil;
- (2) Exemptions. Provisions contained in these Regulations which provide for modifications in conditions of movement ~~if~~ of regulated articles from regulated areas under specified conditions;
- (3) Elimination Zone. That portion of this state where eradication of the boll weevil is undertaken as an objective;
- (4) Inspector. Any authorized employee of the North Carolina Department of Agriculture, Plant Industry Division, or any other person authorized by the Commissioner of Agriculture to enforce the provisions of this Section;
- (5) Regulated Area. Any state other than North Carolina or any portion of such state that is infested with the boll weevil;
- (6) Noninfested Area. That portion of this state not included in an elimination zone;
- (7) Seed Cotton. Cotton as it comes from the field prior to ginning;
- (8) Gin Trash. All of the material produced during the cleaning and ginning of seed cotton, bollies or snapped cotton except the lint, cottonseed, gin waste;
- (9) Noncommercial Cotton. Cotton intended for purposes other than processing;
- (10) ASCS. United States Department of Agriculture, Agricultural Stabilization and Conservation Service;
- (11) Farm Operator. Person responsible for production and sale of a cotton crop on any individual farm;
- (12) Used Cotton Harvesting Equipment. Previously utilized cotton equipment used to harvest, strip, transport, or destroy cotton;
- (13) Waiver. A written authorization which exempts an individual from compliance with one or more specific requirements;
- (14) Cotton Crop Residue Destruction. Mowing of cotton plant stalks left in field after harvesting of crop is completed.

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



**.0605 MOVEMENT FOR SCIENTIFIC PURPOSES**

(a) Regulated articles may be moved for experimental or scientific purposes in accordance with specified conditions provided a scientific permit is obtained from the Plant Pest Administrator and securely attached to the container of such articles or to the article itself.

(b) Procedure for applying for permission for moving regulated articles for scientific purposes ~~are~~ is the same as set out in these rules.

(c) The procedure for processing an application to move regulated articles is the same as that set out in these rules.

(d) Decisions on acceptance or rejection of applications for movement of the regulated articles for scientific purposes are based on the same criteria as set out in these rules.

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

**.0611 REQUIREMENTS FOR PROGRAM PARTICIPATION**

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

- (1) Filling out a Cotton Acreage Reporting Form at the ASCS office by July 1 of the current growing season for which participation is desired. At this time the farm operator shall pay a nonrefundable fee in an amount sufficient to cover estimated program costs as determined by the Commissioner, but not to exceed nine dollars (\$9.00) per acre. Those farm operators not reporting their acreage by July 1 will not be considered as program participants. All acreage reported by such nonparticipants after July 1 will be considered in excess and subject to penalty.

- (2) All fees shall be paid by the farm operator. Fees shall be made payable to NCDA and collected by ASCS.

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

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

Failure to pay all fees or file a completed waiver request for delayed payment on or before July 15 of the current growing season will result in a penalty fee of five dollars (\$5.00) per acre. If a waiver is granted, payment shall be due at the time the cotton is sold, or by November 15, whichever is sooner.

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

**SECTION .1000 - VEGETABLE PLANT CERTIFICATION**

**.1005 STANDARDS**

(c) With respect to the indicated plants, the following shall apply:

Plant	Tolerances
Tomato	
Insects	no apparent injury <del>to</del> <u>or</u> infestation

*Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.*

**SECTION .1200 - NURSERY CERTIFICATION**

**.1214 RECIPROCITY AGREEMENT**

All ~~out-of-state~~ out-of-state nurseries and dealers located in states which require a registration fee of North Carolina nurseries and dealers will be charged the same fee for shipping nursery stock into North Carolina as that required of North Carolina nurseries and dealers for shipping into such states. Those states which require no registration fee of North Carolina nurseries and dealers shall not be required to pay a fee for registration and movement of nursery stock into North Carolina. As of this time, no other states require fees of North Carolina nurserymen.

Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

## SECTION .1600 - PHYTOPHAGOUS SNAILS

### .1602 REGULATED AREAS

Movement of nursery stock, other plant material and articles capable of transporting phytophagous snails into North Carolina from the following areas is regulated:

- (1) All infested areas in the states of Arizona, California, ~~Florida~~, Hawaii, ~~Minnesota~~, New Mexico, Oregon, Texas, and Washington.
- (2) Any other areas hereafter found to be infested with phytophagous snails.

Statutory Authority G.S. 106-65.45; 106-65.46; 106-284.18; 106-420.

## TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Milk Commission intends to amend and repeal rule(s) cited as 4 NCAC 7 .0504, and .0506 - .0516.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on October 10, 1990 at the Dobbs Building, Room 3137, 430 N. Salisbury Street, Raleigh, N. C. 27611.*

*Comment Procedures: At this hearing, information will also be received as to whether it is in the public interest that the Commission withdraw the exercise of its powers from all markets, revise or amend its rules or adopt new rules to conform to current market conditions and the need for assessment. Written comments, data, opinions and arguments concerning the proposed repeals and amendment must be submitted by October 10, 1990, to the North Carolina Milk Commission, 430 N. Salisbury Street, Raleigh, N. C. 27611, Attention: Gary H. Strickland, Executive Secretary.*

## CHAPTER 7 - MILK COMMISSION

### SECTION .0500 - MARKETING REGULATIONS

#### .0504 CLASSIFICATION OF MILK (REPEALED)

#### .0506 DETERMINATION OF EQUALIZATION PAYMENTS (REPEALED)

#### .0507 MINIMUM CLASS PRICES AND BUTTERFAT DIFFERENTIALS (REPEALED)

#### .0508 PLANT SHRINKAGE (REPEALED)

#### .0509 PRODUCER SETTLEMENT FUND (REPEALED)

Statutory Authority G.S. 106-266.8(3), (7), (10).

#### .0510 HANDLER AND PRODUCER PAYROLL REPORTS

(a) On or before the sixth day of the following month, each handler shall report to the Milk Commission on forms furnished by the Milk Commission as follows:

- (1) The base of each qualified baseholder in accordance with Rule .0516(e)(2) and the receipts of all North Carolina baseholding milk and receipts of milk from other sources including milk diverted from other pool plants to such handler.
- (2) Receipts of packaged milk from other handlers, receipts from reconstitution, and any or all other fluid milk products and bulk milk and cream products.
- (3) The utilization and disposition of all milk, filled milk, reconstituted milk, and milk products reported pursuant to (a)(1) and (a)(2) of this Rule.
- (4) The transfer and diversion of all bulk milk and milk products not reported in Paragraph (a)(3) including such diverted milk designated by the handler under the provisions of Rule .0501(23)(b) and the value received for this volume.
- (5) The handling and hauling charges incurred in the movement of bulk milk from one pool plant to another pool plant subject to the provisions of Rule .0513(f).
- (6) Inventories at the beginning and end of the month of all fluid milk products and other products specified in this Rule, when so requested.

(b) On or before the sixth day of the following month, each producer association shall report to the commission on the forms furnished by the commission, the following information:

- (1) The base for each qualified baseholder in accordance with Rule .0516(e)(2) and the receipts of all North Carolina baseholding milk and receipts of milk from other sources including milk diverted from other pool plants to such handler.
- (2) Transfer and disposition or diversion of all milk received from producer sources and other sources to any Grade A or manufacturing outlet wherever located including such diverted milk designated by

the handler under the provisions of Rule .0501(23)(b) and the value received for such milk.

(3) ~~The handling and hauling charges incurred from one pool producer association to another pool plant or pool producer association subject to the provisions of Rule .0512(f).~~

(c) ~~On or before the fifth day of the following month, the purchaser of bulk milk shall furnish the seller a record by classes as to the use of all milk received. Payment shall be made by the ninth day of the following month.~~

(d) On or before the eighteenth day of the following month each handler and cooperative shall file with the commission on forms furnished by the commission, a complete report of all receipts, sales, and utilization and a producer payroll showing the allocation and gross payment to each producer.

Statutory Authority G.S. 106-266.8(3), (5), (7), (12), (14).

.0511 UNIFORM CLASS I AND CLASS II PRICES, POOL OBLIGATION, BLEND PRICE (REPEALED)

.0512 COMPUTATION OF SETTLEMENT FUND AMOUNTS (REPEALED)

.0513 METHOD OF SETTLEMENT (REPEALED)

.0514 COMPUTATION OF MILK IN EACH CLASS (REPEALED)

.0515 FINANCIAL RESPONSIBILITY FOR MILK RECEIVED BY BULK TANKER (REPEALED)

.0516 USE AND ESTABLISHMENT OF CLASS I BASES (REPEALED)

Statutory Authority G.S. 106-266.8(3), (7), (10); 106-266.12.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-12 that the Hazardous Waste Management Commission intends to amend rule(s) cited as 4 NCAC 18 .0304 and .0306.

The proposed effective date of this action is January 1, 1991.

The public hearing will be conducted at 7:00 p.m. on October 8, 1990 at the Utilities Commission Hearing Room, Dobbs Building, Second Floor, 430 North Salisbury Street, Raleigh, North Carolina.

**Comment Procedures:** Any interested person may present written comments for consideration by the Commission. The hearing record will remain open for receipt of written comments from August 3, 1990 through October 9, 1990. Written comments should be received by the Commission by 5:00 p.m. on October 9, 1990, to be considered as part of the hearing record. Comments should be addressed to:

Ms. Cindy Trinks  
N.C. Hazardous Waste Management Commission  
Post Office Box 25249  
Raleigh, NC 27611

Any person may present oral comments at the hearing. Requests to speak should be presented in writing to Ms. Cindy Trinks at the above address no later than five days before the date of the hearing. Additional comments may be allowed by the Commission by sign up at the public hearing as time allows. All presentations will be limited to 5 minutes. According to the procedures set out at G.S. 150B-13, these rules were adopted as temporary rules, effective August 3, 1990, with a proposed effective date as permanent rules on January 1, 1991.

## CHAPTER 18 - N.C. HAZARDOUS WASTE MANAGEMENT COMMISSION

### SECTION .0300 - SITE SELECTION PROCEDURE

#### .0304 SELECTION OF SUITABLE SITES

(e) Notwithstanding Paragraph (c) of this Rule, when proper notice has been provided in accordance with Paragraph (c) of this Rule and if the Commission has been prevented from conducting a public meeting because of circumstances beyond the control of the Commission, such as the issuance of a court order, the Commission may either:

(1) cancel the meeting without rescheduling a subsequent meeting and accept written comments within a time established by the Commission; or

(2) reschedule the meeting by giving notice of such rescheduling to each newspaper, wire service, radio station and television station which has filed a written request for notice with the Commission. This notice shall be mailed or delivered at least 14 calendar days before the time of the meeting. The meeting may be held in a county other than where a suitable site has been designated.



Statutory Authority G.S. 130B-7(a)(24); 130B-11(a); 130B-11(b); 150B-13.

**.0306 PREFERRED SITE**

(a) The Commission shall select a preferred site in accordance with G.S. 130B-11(d) and the procedures contained in this Rule.

(b) The site shall be selected in accordance with the criteria set out in G.S. 130B-11 and 4 NCAC 18 .0200.

(c) Prior to the selection of a preferred site, the Commission shall comply with the provisions of 4 NCAC 18 .0304 with regard to public meetings. Notice of the meeting shall be published at least 30 days in advance of the meeting. Notice of the meeting shall be published in a newspaper of general circulation in the county and shall be sent to the chairman of the county commissioners, the county manager and the county health director of any county in which a suitable site has been identified; the mayor, the manager and the chairman of the council of any municipality in which a suitable site has been identified; and any person who has requested a copy of the notice in accordance with the procedure set out in 4 NCAC 18 .0103. The notice shall include the date, time and place of the meeting; topics to be addressed at the meeting; the manner in which public comment will be accepted; and the name, phone number, mailing address and location of the individual to contact for further information.

(d) Information considered during the selection process shall include information provided by the site designation review committees and information obtained at the public meetings, and may include additional information which the Commission deems appropriate. If the Commission, its agents, or employees, obtains access to enter upon the lands of a designated suitable site, the Commission may consider results of on-site testing, if available, during the selection process.

(e) After selection of the preferred site, the Commission will determine the boundaries of the final site based upon the amount of land necessary for the facility and any technical considerations.

(f) Selection of the preferred site is not a final site selection decision for the facility. The preferred site will become the final site when all permits or licenses necessary for the construction or operation of the facility are obtained.

Statutory Authority G.S. 130B-7(a)(24); 130B-11; 130B-20; 150B-13.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Hazardous Waste Management Commission intends to amend rule(s) cited as 4 NCAC 18 .0304.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 7:00 p.m. on October 9, 1990 at the Utilities Commission Hearing Room, Dobbs Building, Second Floor, 430 North Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any interested person may present written comments for consideration by the Commission. The hearing record will remain open for receipt of written comments from August 8, 1990 through October 9, 1990. Written comments must be received by the Commission on or before October 9, 1990, to be considered as part of the hearing record. Comments should be addressed to:*

*Ms. Cindy Trinks  
N.C. Hazardous Waste Management Commission  
Post Office Box 25249  
Raleigh, NC 27611*

*Any person may present oral comments at the hearing. Requests to speak should be presented in writing to Ms. Cindy Trinks at the above address no later than five days before the date of the hearing. Additional comments may be allowed by the Commission by sign up at the public hearing as time allows. All presentations will be limited to 5 minutes. According to the procedures set out at G.S. 150B-13, this rule was adopted as a temporary rule on August 7, 1990, effective August 8, 1990, with a proposed effective date as a permanent rule on January 1, 1991.*

**CHAPTER 18 - N.C. HAZARDOUS WASTE MANAGEMENT COMMISSION**

**SECTION .0300 - SITE SELECTION PROCEDURE**

**.0304 SELECTION OF SUITABLE SITES**

(e) Notwithstanding Paragraph (c) of this Rule, when proper notice has been provided in accordance with Paragraph (c) of this Rule and if the Commission has been prevented from conducting a public meeting because of circumstances beyond the control of the Commission, such as the issuance of a court order, the Commission may reschedule the meeting by giving

notice of such rescheduling to each newspaper, wire service, radio station and television station which has filed a written request for notice with the Commission. This notice shall be mailed or delivered at least 14 calendar days before the time of the meeting.

Statutory Authority G.S. 130B-7(a)(24); 130B-11(a); 130B-11(b); 150B-13.

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

*Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule(s) cited as 15A NCAC 2B .0313.*

*The proposed effective date of this action is May 1, 1991.*

*The public hearing will be conducted at 7:00 p.m. on October 25, 1990 at the Council Chamber, City Hall, 105 S. Lamar Street, Roxboro, NC.*

*Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information contact Suzanne H. Keen, Division of Environmental Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-5083.*

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

#### SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

##### .0313 ROANOKE RIVER BASIN

(c) The Roanoke River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) May 18, 1977;
- (2) July 9, 1978;
- (3) July 18, 1979;
- (4) July 13, 1980;
- (5) March 1, 1983;
- (6) August 1, 1985;

(7) February 1, 1986;

(8) May 1, 1991.

(d) The Schedule of Classifications and Water Quality Standards for the Roanoke River Basin was amended effective May 1, 1991 with the reclassification of Hyco Lake (Index No. 22-58) from Class C to Class B.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the EHNHR - Land Resources intends to amend rule(s) cited as 15A NCAC 2K .0104; and adopt rule(s) cited as 15A NCAC 2K .0222 - .0223.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 1:00 p.m. on October 5, 1990 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within four days after the hearing or may be presented at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact James D. Simons, Division of Land Resources, P.O. Box 27687, Raleigh, N.C. 27611 (919) 733-4574.*

## SUBCHAPTER 2K - DAM SAFETY

### SECTION .0100 - GENERAL PROVISIONS

#### .0104 DEFINITIONS

As used in this Subchapter, the following terms have their stated meaning:

(24) "Construction" means any action, other than by natural causes, that creates a structure capable of impounding water or other liquids, or which increases the impoundment capacity of an existing structure. For the purposes of 15A NCAC 2K .0222, it shall also mean the reduction of the height or impoundment capacity of a dam when the effect of such reduction will be to exempt the dam from the North Carolina Dam Safety Law of 1967.

*Statutory Authority G.S. 143-215.25; 143-215.31.*

**SECTION .0200 - OBTAINING APPROVAL FOR  
DAM CONSTRUCTION; REPAIR; OR  
REMOVAL**

**.0222 APPLICATION PROCESSING FEES**

(a) A nonrefundable minimum application processing fee, in the amount stated in Paragraph (d)(1) of this Rule, shall be paid when an application for construction or removal of a dam is filed in accordance with 15A NCAC 2K .0201. Each application for construction or removal of a dam shall be deemed incomplete and shall not be reviewed until the minimum application processing fee is paid.

(b) A nonrefundable additional application processing fee, in the amount stated in Paragraph (d)(2) of this Rule, shall be paid when the as-built plans are submitted to the Director in accordance with 15A NCAC 2K .0215. Final approval to impound, pursuant to 15A NCAC 2K .0220, shall not be granted until the owner's certification and the accompanying documentation are filed in accordance with Paragraph (e) of this Rule, and the additional processing fee is paid.

(c) The application processing fee for the construction or removal of a dam shall be based on the actual cost of construction or removal of the applicable dam.

(1) The actual cost of construction or removal of a dam shall include all labor and materials costs associated with the construction or removal of the dam and appurtenances.

(2) The actual cost of construction or removal of a dam shall not include the costs associated with acquisition of land or right of way, design, quality control, electrical generating machinery, or constructing a roadway across the dam.

(d) Schedule of Fees:

(1) The minimum application processing fee shall be two hundred dollars (\$200.00).

(2) The additional application processing fee shall be the following percentages of the cost of construction or removal:

(A) 2 percent of the actual costs between ten thousand and one dollars (\$10,001) and one hundred thousand dollars (\$100,000);

(B) 1.5 percent of the actual costs between one hundred thousand and one dollars (\$100,001) and five hundred thousand dollars (\$500,000);

(C) 1.0 percent of the actual costs between five hundred thousand and one dollars

(\$500,001) and one million dollars (\$1,000,000);

(D) 0.5 percent of the actual costs over one million dollars (\$1,000,000).

In no case, however, shall the additional application fee be more than fifty thousand dollars (\$50,000).

(e) Immediately upon completion of construction or removal of a dam, the owner shall file with the Director a certification, on a form prescribed by the Department, and accompanying documentation, which shows the actual cost incurred by the owner for construction or removal of the applicable dam.

(1) The owner's certification and accompanying documentation shall be filed with the as-built plans and the engineer's certification in accordance with 15A NCAC 2K .0215 and 15A NCAC 2K .0216, respectively.

(2) If the Director finds that the owner's certification and accompanying documentation contain inaccurate cost information, the Director shall either withhold final impoundment approval, or revoke final impoundment approval, until the owner provides the accurate documentation and that documentation has been verified by the Department.

(f) Payment of the dam application processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The payment should refer to the applicable dam.

(g) In order to comply with the limit on fees set forth in G.S. 143-215.28(a), the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.

*Statutory Authority G.S. 143-215.28A.*

**.0223 DAM HEIGHT AND STORAGE  
DETERMINATION**

(a) For the purpose of determining size classification, the height of a dam shall be measured from the highest point on the crest of the dam to the lowest point on the downstream toe.

(b) The total storage capacity of a dam shall be that volume which would be impounded at the elevation of the highest point on the crest of the dam.



## PROPOSED RULES

Statutory Authority G.S. 143-215.31.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-12 that the EHNR - Land Resources intends to amend rule(s) cited as 15A NCAC 4A .0005; and adopt rule(s) cited as 15A NCAC 4B .0027 - .0028.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 3:00 p.m. on October 5, 1990 at the Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, N.C. 27611.*

*Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within four days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact Mell Nevils, Division of Land Resources, P.O. Box 27687, Raleigh, N.C. 27611 (919) 733-4574.*

### CHAPTER 4 - SEDIMENTATION CONTROL

#### SUBCHAPTER 4A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

##### .0005 DEFINITIONS

As used in this Chapter, the following terms shall have these meanings:

(27) "Coastal counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

Statutory Authority G.S. 113A-52; 113A-54.

#### SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

##### .0027 PLAN APPROVAL FEES

(a) A nonrefundable plan review processing fee, in the amount stated in Paragraph (b) of this Rule, shall be paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 4B .0018.

- (1) Each plan shall be deemed incomplete until the plan review processing fee is paid.
  - (2) The plan review processing fee shall be based on the first acre and each additional acre, or any part thereof, of disturbed land shown on the plan.
  - (3) No plan review processing fee will be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount stated in Paragraph (b) of this Rule for each additional acre (or any part thereof) disturbed.
- (b) Schedule of Fees:

First Acre Disturbed	Each Additional Acre (or any part thereof) Disturbed
\$30.00	\$20.00

(c) Payment of the plan review processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The payment should refer to the erosion and sedimentation control plan.

(d) In order to comply with the limit on fees set forth in G.S. 113A-54.(a), the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.

Statutory Authority G.S. 113A-54; 113A-54.2.

##### .0028 PLAN APPROVAL CERTIFICATE

(a) Approval of a sedimentation and erosion control plan will be contained in a document called "Certificate of Plan Approval" to be issued by the Commission.

(b) The Certificate of Plan Approval must be posted at the primary entrance of the job site before construction begins.

Statutory Authority G.S. 113A-54(b).

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*Notice is hereby given in accordance with G.S. 150B-12 that the EHNR - Land Resources intends to adopt rule(s) cited as 15A NCAC 5B .0012.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on October 5, 1990 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, N.C. 27611.*

*Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within seven days after the hearing or may be presented at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact Tracy E. Davis, Division of Land Resources, P.O. Box 27687, Raleigh, N.C. 27611 (919) 733-4574.*

## CHAPTER 5 - MINING: MINERAL RESOURCES

### SUBCHAPTER 5B - PERMITTING AND REPORTING

#### .0012 PERMIT APPLICATION PROCESSING FEES

(a) A non-refundable permit application processing fee, in the amount stated in Paragraph (c) of this Rule, shall be paid when an application for a new mining permit, a major permit modification or a renewal permit, is filed in accordance with G.S. 74-51 or G.S. 74-52 and 15A NCAC 5B .0003, .0004, and .0005.

(b) A non-refundable fifty dollar (\$50.00) permit application processing fee for a minor permit modification is required for administrative changes such as ownership transfers, name changes, and bond substitutions. All other changes to the permit are major modifications. No fee is required for administrative changes initiated by the Director to correct processing errors, to change permit conditions or to implement new standards.

(c) For the purposes of this Rule, acres for new permits and renewal permits means the total acreage at the site; and acres for modification of permits means that area of land affected by the modification within the permitted mine area, or any additional land to be added to an existing permitted area, or both. Each permit application shall be deemed incomplete until the permit application processing fee is paid. Schedule of Fees:

TYPE	ACRES	NEW PERMIT
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CLAY	1 but less than 25	\$ 500
	25 but less than 50	1000
	50 or more	1500
SAND & GRAVEL AND BORROW PITS	1 but less than 25	250
	25 but less than 50	500
	50 or more	1000
QUARRY, INDUSTRIAL MINERALS, DIMENSION STONE	1 but less than 10	250
	10 but less than 25	1000
	25 but less than 50	1500
	50 or more	2500
PEAT & PHOSPHATE	1 or more	2500
GOLD (HEAP LEACH), TITANIUM & OTHERS	1 or more	2500

MAJOR MODIFICATION	RENEWAL
\$250	\$250
500	500
500	500
100	100
250	500
500	500
100	100
250	500
500	500
500	500
500	500

(d) Payment of the permit application processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The payment should refer to the new permit, permit modification or permit renewal.

(e) In order to comply with the limit on fees set forth in G.S. 143B-290(4)b, the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.

Statutory Authority G.S. 143B-290.

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*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10F .0340.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on October 4, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from September 20, 1990 to October 19, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

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

##### .0340 CURRITUCK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portion of waters described as follows:

- (1) Bell's Island. The waters contained in all the canals on Bell's Island.
- (2) Intracoastal Waterway. The portion of the Intracoastal Waterway within the "slow speed" zone established by the United States Army Corps of Engineers on both sides of the U.S. Highway 158 bridge at Coinjock.

(3) Walnut Island Subdivision. The waters in all the canals in the Walnut Island subdivision in the Village of Grandy.

(4) Neal's Creek Landing. Those waters of Currituck Sound within 50 yards of Neal's Creek Landing as delineated by appropriate markers.

(5) Tull's Bay. Those waters which constitute the canals of the Tull's Bay Colony subdivision and 50 yards north along the Mississippi Canal from its intersection with Elizabeth Canal.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Currituck County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Corps of Engineers.

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

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*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10H .0301.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on October 8, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from September 24, 1990 to October 24, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

### SUBCHAPTER 10H - REGULATED ACTIVITIES

#### SECTION .0300 - HOLDING WILDLIFE IN CAPTIVITY

##### .0301 GENERAL REQUIREMENTS

- (a) Captivity Permit



- (1) Requirement. The possession of any species of wild animal which is or once was native to this State or any species of wild bird which naturally occurs or historically occurred in this State, being native or migratory, is unlawful unless the institution or individual in possession thereof has first obtained from the Wildlife Resources Commission a captivity permit or a captivity license as required by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. Notwithstanding the preceding Subparagraph (1), a crippled, injured or orphaned wild animal or wild bird, except deer or black bear may be taken and kept in possession for no longer than five days, provided that during such five-day period the individual in possession thereof shall apply to the Wildlife Resources Commission, or a wildlife enforcement officer of the Commission, for a captivity permit. Deer and Black Bear. Captivity permits will not be issued for crippled, injured or orphaned deer or black bear. ~~except to certain rehabilitators predesignated by the Commission to provide temporary care for deer and black bear.~~ No person ~~except for a rehabilitator predesignated by the Commission,~~ shall keep a crippled, injured or orphaned deer or black bear in possession for longer than 24 hour period.

Statutory Authority G.S. 113-134; 113-272.5; 113-274; 113-292.

## TITLE 21 - OCCUPATIONAL LICENSING BOARDS

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Mortuary Science intends to amend rule(s) cited as 21 NCAC 34 .0123.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:00 a.m. on October 15, 1990 at the North Carolina Board of Mortuary Science, 412 North Wilmington Street, Raleigh, NC 27601.*

*Comment Procedures: Interested persons may present statements either orally or in writing at the public hearing, or in writing prior to the hearing by personal delivery or by mail addressed to Ms. Corrine J. Culbreth, Executive Secretary, North*

*Carolina Board of Mortuary Science, 412 North Wilmington Street, Raleigh, NC 27601.*

## CHAPTER 34 - BOARD OF MORTUARY SCIENCE

### SECTION .0100 - GENERAL PROVISIONS

#### .0123 FEES

Fees shall be as follows:

Establishment permit		
Application	<del>\$150.00</del>	\$250.00
Annual renewal	<del>\$100.00</del>	\$150.00
Late renewal penalty	\$ 75.00	\$100.00
Establishment reinspection fee		\$100.00
Courtesy card		
Application	\$ 25.00	\$ 75.00
Annual renewal		\$ 50.00
Embalmer	\$ 15.00	
Funeral director	\$ 15.00	
Funeral service	\$ 30.00	
Out-of-state licensee		
Application	\$150.00	\$200.00
Embalmer, funeral director, funeral service		
Application, North Carolina resident	<del>\$100.00</del>	\$150.00
Application, non-resident	<del>\$100.00</del>	\$200.00
Annual renewal		
Embalmer	\$ 25.00	\$ 40.00
Funeral director	\$ 25.00	\$ 40.00
Funeral service	\$ 50.00	\$ 60.00
Reinstatement fee		\$ 50.00
Embalmer	\$ 25.00	
Funeral director	\$ 25.00	
Funeral service	\$ 50.00	
Resident trainee permit		
Application		\$ 50.00
Annual renewal	\$ 10.00	\$ 35.00
Late renewal penalty	\$ 5.00	\$ 25.00
Duplicate license certificate	\$ 15.00	\$ 25.00
Chapel registration		
Application		\$150.00
Annual renewal	\$ 75.00	\$100.00

Statutory Authority G.S. 90-210.23(a); 90-210.28; 150B-11.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina State Board of Examiners for Nursing Home Administrators intends to amend rule(s) cited as 21 NCAC 37 .0208, .0211, .0301 - .0304, .0402, .0404 - .0405,*

.0502, .0505, .0507 - .0509, .0512, .0517, .0519, .0904, .0906, .0912; and intends to repeal rule(s) cited as 21 NCAC 37 .0513, .0518, .1004.

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 10:30 a.m. on October 4, 1990 at 3700 National Drive, Suite 104, Raleigh, N.C.*

**Comment Procedures:** Written comments may be sent to NC State Board of Examiners for Nursing Home Administrators, 3701 National Drive, Suite 123, Raleigh, NC 27612. Request for an opportunity to present oral testimony and a summary of the testimony must be received at this address no later than September 25, 1990.

## CHAPTER 37 - BOARD OF NURSING HOME ADMINISTRATORS

### SECTION .0200 - PREREQUISITES TO LICENSURE

#### .0208 EXAMINATIONS

The applicant must successfully complete ~~two~~ such examinations ~~given~~ as required by the Board.

*Statutory Authority G.S. 90-280.*

#### .0211 ORAL INTERVIEW

The applicant must appear before the Board for a personal interview before the Board issues approval of AIT program.

*Statutory Authority G.S. 90-278; 90-285.*

### SECTION .0300 - APPLICATION FOR LICENSE

#### .0301 APPLICATION

(a) An applicant for examination and qualification for a license shall make application on a form obtained by writing: N.C. State Board of Examiners for Nursing Home Administrators, ~~4509 Creedmoor Road, Suite 280, 3701 National Drive, Suite 123, Raleigh, North Carolina, 27612.~~

(b) The form shall include the applicant's name, employment experience, educational qualifications, questions pertaining to moral character, and any other information that the Board requires to be in the application.

*Statutory Authority G.S. 90-278; 90-285.*

#### .0302 INITIAL LICENSURE FEE

The applicant will send to the Board, prior to licensure, an initial licensure fee of two hundred

twenty-five dollars (\$200.00) (\$225.00) when applicant has successfully passed both the National and State exams.

*Statutory Authority G.S. 90-280.*

#### .0303 REFERENCES

A candidate for licensure shall submit with his application ~~two~~ three current, original letters (one of which must be from a previous employer) from individuals who shall certify to the good moral character of the applicant.

*Statutory Authority G.S. 90-278; 90-285.*

#### .0304 FELONIES AND/OR MISDEMEANORS

(a) Felony. An applicant for licensure who has been convicted of a felony showing professional unfitness by any jurisdiction shall not be permitted to ~~take the examination for licensure enter the AIT program or otherwise be licensed~~ unless his rights of citizenship have been restored.

(b) Misdemeanor. An applicant for licensure who has been convicted of a misdemeanor showing professional unfitness by any jurisdiction shall not be permitted to ~~take the examination for licensure enter the AIT program or otherwise be licensed~~ unless he has served the sentence imposed for the misdemeanor.

*Statutory Authority G.S. 90-278; 90-285.*

### SECTION .0400 - COURSES OF STUDY

#### .0402 APPROVAL OF PROGRAMS OF STUDY IN ACCREDITED INSTITUTIONS

An AIT must obtain prior approval from the Board before taking a program of study designed to train and qualify applicants for licensure as nursing home administrators offered by any an accredited university, college, or community college: correspondence program or other board approved courses which contains instruction on the services provided by nursing homes, laws governing nursing homes, protection of patient interests and nursing home administration. shall be deemed acceptable and approved if it includes the following general subject areas or their equivalents:

- (1) applicable standards of environmental health and safety;
- (2) local health and safety regulations;
- (3) general administration;
- (4) psychology of patient care;
- (5) principles of medical care;
- (6) personal and social care;
- (7) therapeutic and supportive care and services in long-term care;

- (8) departmental organization and management; and
- (9) community interrelationships.

Statutory Authority G.S. 90-278; 90-285.

#### .0404 CONTINUING EDUCATION PROGRAMS OF STUDY

(a) The Board shall certify and administer courses in continuing education for the professional development of nursing home administrators and to enable persons to meet the requirements of these Rules. It is the responsibility of the licensee to keep a record of his continuing education hours. Certified courses, including those sponsored by the Board, an accredited university, college or community college, associations, professional societies, or organizations shall:

- (1) contain a minimum of two classroom hours of academic work and not more than eight classroom hours within a 24-hour period; and
- (2) include instruction in the following general subject areas or their equivalents:
  - (A) applicable standards of environmental health and safety;
  - (B) local health and safety regulations;
  - (C) general administration;
  - (D) psychology of patient care;
  - (E) principles of medical care;
  - (F) personal and social care;
  - (G) therapeutic and supportive care and services in long-term care;
  - (H) departmental organization and management;
  - (I) community interrelationships.
- (b) Certified courses not administered by the Board shall:
  - (1) be submitted to the Board for approval at least 30 days prior to the presentation of the program;
  - (2) be accompanied with a fee of twenty-five dollars (\$25.00) to cover the cost of reviewing and maintaining records associated with the continuing education program; and
  - (3) be approved for a period of one year from the date of initial presentation.

~~(c) Certified courses shall be eligible for use by an AIF for the bonus education option as provided for in Rule .0515 of this Chapter.~~

~~(c) (d) The Board shall charge a fee for courses sponsored by it in an amount sufficient to cover the Board's costs.~~

Statutory Authority G.S. 90-278; 90-280; 90-285; 90-286.

#### .0405 VERIFICATION OF ATTENDANCE

Upon completion of a certified continuing education course, the sponsor of the course shall issue certificates of attendance to those who attend. The sponsor must also submit a roster of those who attend to the Board within ten days. It is the participants responsibility as a licensed Nursing Home Administrator to maintain course certificates and submit copies with the biennial renewal fee.

Statutory Authority G.S. 90-278; 90-285; 90-286.

#### SECTION .0500 - ADMINISTRATOR-IN-TRAINING

##### .0502 APPLICATION TO BECOME ADMINISTRATOR-IN-TRAINING

(a) The applicant will submit to the Board an application, which shall contain such information as name, education, employment history, questions pertaining to moral character, any other information the Board may feel it needs to be in the application, and an affidavit stating that the applicant, if granted a license, will obey the laws of the state and the rules of the Board, and will maintain the honor and dignity of the profession.

(b) The applicant will submit a background resume indicating the areas in which he is competent or lacking.

(c) The applicant will submit three current original letters of reference which shall certify his or her moral character.

~~(d) (e)~~ The applicant will supply a certified copy of each college transcript indicating the courses completed and hours earned, specifying whether semester or quarter hours. Instead of a transcript the applicant will supply documentation of his supervisory experience in a nursing home if he is utilizing the experience substitute for the secondary education requirement.

(e) (d) A fee of ~~seventy-five dollars (\$75.00)~~ one hundred dollars (\$100.00) shall be submitted with the application.

Statutory Authority G.S. 90-278; 90-280; 90-285.

##### .0505 ADMINISTRATOR-IN-TRAINING SELECTION

(a) From an approved list of preceptors, the trainee will select a preceptor of his choice prior to submitting application to the Board.

(b) It shall be the responsibility of the trainee to contact a preceptor to determine if the preceptor will accept the AIT.

(c) Once a preceptor accepts an AIF, ~~changes must be approved by the Board.~~ the preceptor



must submit to the Board a written statement that he or she is willing to serve as a preceptor.

(d) The preceptor shall notify the Board of the date of acceptance and the date of any discontinuance of traineeship.

(e) Any change in preceptor must be approved by the Board.

*Statutory Authority G.S. 90-278; 90-285.*

#### .0507 APPLICATION FOR PRECEPTOR CERTIFICATION

(a) ~~Anyone~~ A licensed Nursing Home Administrator wishing to be certified as a preceptor for the AIT program may apply to the Board on an application obtained by writing: N.C. State Board of Examiners for Nursing Home Administrators, ~~4500 Creedmoor Road, Suite 280,~~ 3701 National Drive, Suite 123, Raleigh, North Carolina 27612.

(b) The application form shall require such information as the applicant's name, address, licensing history, education, experience, and other information which the Board deems necessary.

*Statutory Authority G.S. 90-278; 90-285.*

#### .0508 PRECEPTOR QUALIFICATIONS

(a) To be certified as a preceptor the nursing home administrator must:

- (1) exemplify the highest ethical and professional standards;
- (2) have practiced in the field of nursing home administration a minimum of ~~three~~ two years, or have a masters degree in health care administration and have practiced in the field a minimum of one year;
- (3) express himself well and be at ease in a teaching situation;
- (4) be the full time administrator of a facility which is licensed by the Division of Facility Services as a nursing home and be physically present in the facility a minimum of ~~two~~ three days per week;
- (5) successfully complete a preceptor training ~~seminar under the direction of~~ course approved by the Board; and
- (6) complete ~~30~~ 40 hours of continuing education during the 24 months preceding application for certification.

(b) A preceptor must be recertified each two years by the Board in accordance with the qualifications as set out in (a) of this Rule.

(c) The preceptor and the AIT shall spend a minimum of four hours per week in orientation, direct instruction, planning and evaluation.

(d) Preceptor must certify that he has served as an administrator for at least two years, or has

a master's degree and has served as an administrator for one year, and that his facility(ies) did not have any serious federal or state survey deficiencies that affect the health and safety of the residents.

*Statutory Authority G.S. 90-278; 90-285.*

#### .0509 PROGRAM AND CURRICULUM

(a) The length of AIT program and the curriculum for the internship will be presented to the Board by the preceptor during the personal interview as required.

(b) ~~(a)~~ The preceptor will submit to the Board prior to or within the first week of internship an individualized curriculum for the AIT which will provide the trainee with on the job experience in the nine subject areas outlined in ~~Rule .0402~~ Rule .0403 of this Chapter.

(b) ~~The preceptor will evaluate the background and experience of the AIT to determine specific areas of concentration.~~

*Statutory Authority G.S. 90-278; 90-285.*

#### .0512 PRECEPTOR'S REPORTS

(a) The preceptor shall submit to the Board a training progress report for the AIT at the end of each month.

(b) ~~(a)~~ At the end of the approved AIT program, the preceptor will submit a final report and an evaluation of the AIT on forms provided by the Board. These forms are to be submitted to the Board within ten days of completion of the AIT program. The forms will require the name of the AIT, the place of training, an evaluation of the AIT's abilities, and other information that the Board requests. The preceptor will sign the forms.

(c) ~~(b)~~ The reports will be filed in the AIT's file in the Board's office and will become a permanent record in the individual's file.

*Statutory Authority G.S. 90-278; 90-285.*

#### .0513 PRECEPTOR'S CHECKLIST (REPEALED)

*Statutory Authority G.S. 90-278; 90-285.*

#### .0517 AIT TIME ON THE JOB

(a) The AIT shall serve a 50 week an internship recommended by the preceptor and approved by the Board with of a minimum of 40 hours per week. unless, in the opinion of the Board or preceptor, the AIT needs additional training or unless the internship period is reduced under Rule .0518 or .0519(b) of this Section. The

minimum AIT program is 12 weeks, which may not be reduced except as stated in Rule .0520 of this Section.

(b) An internship which has been discontinued by a period of military service shall be allowed to be completed within a year after that service.

(c) An internship which has been discontinued for any purpose other than military service cannot be completed if the absence exceeds one year from the date of discontinuance.

(d) Only one discontinuance is allowed.

*Statutory Authority G.S. 90-278; 90-285.*

**.0518 BONUS EDUCATION OPTION DURING TRAINING (REPEALED)**

*Statutory Authority G.S. 90-278; 90-285.*

**.0519 ADMINISTRATOR-IN-TRAINING PROGRAM**

(a) The requirement for serving as an AIT does not apply to an applicant who:

- (1) has a baccalaureate or masters degree in nursing home administration or a related health administration field from an accredited institution; and
- (2) as part of his educational experience he completed at least a 12 week approved AIT internship in a North Carolina nursing home under the supervision of a preceptor.

(b) An applicant who has a baccalaureate or masters degree from an accredited institution or who has supervisory work experience may reduce the length of his AIT program in accordance with the schedule set out in this Rule. An applicant who has more than one degree listed in this Rule may receive a reduction for only one of the degrees. Reductions for experience are stated in terms of service for each full year worked.

(1) Education:

- (A) 25 weeks—doctorate in medicine;
- (B) 25 weeks—doctorate in health field;
- (C) 25 weeks—doctorate in social science field;
- (D) 20 weeks—doctorate in any other field;
- (E) 38 weeks—masters in nursing home administration or related health administration field without an internship in a nursing home as specified in Rule .0510(a);
- (F) 20 weeks—masters in business or public administration;
- (G) 20 weeks—masters in health related field (nursing, physical therapy);
- (H) 20 weeks—masters in social science field;

(I) 15 weeks—masters in any other field (law, physical sciences);

(J) 20 weeks—baccalaureate degree in nursing home administration or related health administration field without an internship in a nursing home as specified in Rule .0510(a);

(K) 10 weeks—baccalaureate degree in business or public administration;

(L) 10 weeks—baccalaureate degree in nursing or other health related field;

(M) 10 weeks—baccalaureate degree in social science field;

(N) 5 weeks—any other baccalaureate degree.

(2) Experience:

(A) 7 weeks—nursing home administration;

(B) 6 weeks—hospital administration;

(C) 5 weeks—operator or administrator of other health facility such as a home for the aged;

(D) 4 weeks—director of nursing in a hospital or nursing home;

(E) 3 weeks—state or federal program where candidate applies nursing home standards;

(F) 2 weeks—supervisor of a health or social services department in a hospital or nursing home;

(G) 1 week—supervisory position in health or social services program;

(H) 1 week—non-health related supervisory experience.

(d) The minimum of 12 weeks of service as an administrator-in-training may be reduced at the discretion of the Board upon the submission of evidence satisfactory to the Board that the applicant:

- (1) has had a management position for four years within the previous five years in a hospital which has beds licensed for nursing home level of care, in which position the level of responsibility and complexity for the management of human, financial, and material resources for the provision of care was of a magnitude at least equal to that of a licensed nursing home administrator, and in which there was exposure to and familiarity with the subject areas outlined in Rule .0701; or
- (2) has served as the assistant administrator or director of nursing of a facility licensed as a nursing home for four years within the previous five years.

(b) The preceptor will evaluate and determine the length of the internship required to teach the core of knowledge as outlined in Section .0700 of these Rules before accepting the AIT to train in a facility approved by the Board.



- (1) the program of internship will be presented to the Board of Examiners by the preceptor and AIT during the oral interview as required; and
  - (2) all AIT's shall serve a minimum of 12 weeks internship, plus any additional weeks as determined by the preceptor and approved by the Board.
  - (3) in determining the AIT program, the preceptor should consider the strengths and weaknesses of the AIT applicant as it relates to his education and past supervisory experience. (An inventory sheet will be provided to help the preceptor determine the length of the AIT program.)
- (c) At the completion of the approved internship and successfully passing the required National and State Exams, the AIT will be issued a conditional license upon the recommendation of the preceptor.
- (d) The conditional license will be valid for up to one year, during which time the AIT will serve a facility as administrator or assistant administrator in a nursing facility having a minimum of 120 nursing beds with comparable responsibilities.
- (e) The preceptor or a qualified licensed nursing home administrator, will continue to serve as preceptor during the conditional license period and will monitor the AIT's monthly reports to the Board of Examiners.
- (f) After the conditional license period is completed and all requirements have been satisfied:
- (1) the preceptor or qualified administrator must file a final report recommending and certifying to the Board that the AIT is a qualified candidate for full licensure;
  - (2) the owner(s) of the facility or facilities in which the AIT served his/her one year conditional period as an administrator or an assistant administrator must file a report certifying that the facility or facilities operated by the AIT during the conditional period were operated in a professional and efficient manner without significant violations of local, state and federal rules and regulations;
  - (3) records of the Division of Facility Services must show that during the conditional period the facility or facilities served by the AIT had no significant major violations of local, state and federal rules and regulations;
  - (4) the Board will issue a full nursing home administrator's license to the AIT.

Statutory Authority G.S. 90-278; 90-285.

## SECTION .0900 - LICENSES

### .0904 BIENNIAL REGISTRATION REQUIREMENTS

- (a) Upon making application for a new certificate of registration a licensee shall pay a biennial licensure fee of ~~two hundred dollars (\$200.00)~~ two hundred twenty-five dollars (\$225.00).
- (b) Such licensee shall provide documentation of the completion of 30 hours of continuing education approved by the Board during each biennial period.

Statutory Authority G.S. 90-280; 90-285; 90-286.

### .0906 EXPIRATION OF LICENSE AND INACTIVE ADMINISTRATORS

- (a) A license shall expire on the 30th day of September of the second year following its issuance.
- (b) An inactive list of administrators who are not practicing in this state shall be maintained by the Board. An administrator who desires to be placed on the inactive status list must make a written request and submit a twenty-five dollar (\$25.00) fee to the Board. Inactive status will only be granted on a prospective basis.
- (c) If licensee fails to place his license in inactive status within 30 days after expiration date, license automatically expires.
- (d) ~~(e)~~ An administrator may remain on the inactive list for a period not to exceed five years.

Statutory Authority G.S. 90-280; 90-285.

### .0912 RECIPROCITY/ENDORSEMENT

- (a) The Board may issue a conditional license, for one year, without the national examination, to a nursing home administrator who holds a nursing home administrator license issued by the proper authorities of any other state, upon payment of a fee of ~~two hundred dollars (\$200.00)~~, the current licensing fee, successful completion of the state examination, and submission of evidence satisfactory to the Board:
  - (1) that such other state maintains a system and standards of qualification and examination for a nursing home administrator license which are substantially equivalent to those required in this state;
  - (2) that such other state gives similar recognition and endorsement to nursing home administrator licenses of this state;
  - (3) that the applicant's license is current and valid; and
  - (4) that no state from which the applicant has received a license or reciprocal endorsement has revoked or suspended such license or reciprocal endorsement.



- (1) such applicant for licensure must have personal qualifications and education at least substantially equivalent to those required in this state;
- (2) such applicant must be licensed in another state that gives similar recognition and endorsement to nursing home administrator licenses of this state;
- (3) such applicant for license by endorsement holds a valid license as a nursing home administrator in the state from which he is transferring and has never had an administrator's license revoked for cause; and can certify that he has worked full-time as a licensed nursing home administrator for at least one year within the two year period immediately preceding the application by endorsement.

(b) Applicant for endorsement should submit a completed application, background resume certified college transcript(s), three letters of reference and seventy-five dollars (\$75.00) application fee and appear before the Board for an oral interview.

(c) Once a conditional license has been issued, licensee is to submit quarterly reports on a form to be obtained from the Board until a full license is issued.

(d) After the conditional license period is completed and all requirements have been satisfied:

- (1) the owner(s) of the facility or facilities in which the reciprocity candidate has served his/her one year conditional period as an administrator or assistant administrator must file a report certifying that the facility or facilities operated by the candidate during the conditional period were operated in a professional and efficient manner without significant major violations of local, state and federal rules and regulations;
- (2) records of the Division of Facility Services must show that during the conditional period the facility or facilities served by the candidate had no significant major violations of local, state and federal rules and regulations;
- (3) the Board will issue a full nursing home administrator's license to the reciprocity candidate.

(e) ~~(b)~~ The Board shall have the power, after due notice and an opportunity to be heard at a hearing, to revoke or suspend the nursing home administrator license issued to any person under this Rule upon evidence satisfactory to the Board that the duly constituted authorities of any other state have lawfully revoked or suspended the

nursing home administrator license issued to such person by such state.

Statutory Authority G.S. 90-280; 90-285; 90-287.

## SECTION .1000 - TEMPORARY LICENSE

### .1004 RELATION TO AIT EXPERIENCE (REPEALED)

Statutory Authority G.S. 90-278; 90-285.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Examiners of Practicing Psychologists intends to amend rule(s) cited as 21 NCAC 54 .1605.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 9:00 a.m. on October 18, 1990 at the Broyhill Inn & Conference Center, Appalachian State University, Boone, NC 28607.*

*Comment Procedures: Requests to present written or oral comments at the public hearing or other comments not presented at the hearing should be submitted in writing by 10/12/90 to the Board at the following address: N.C. State Board of Examiners of Practicing Psychologists, University Hall, Appalachian State University, Boone, NC 28608.*

## CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

### SECTION .1600 - GENERAL PROVISIONS

#### .1605 FEES

In addition to fees specified in Article 18A, Chapter 90 of the North Carolina General Statutes, the following charges will be assessed for the indicated services:

- (3) ~~thirty five dollars (\$35.00)~~ fifty dollars (\$50.00) - renewal of license;

Statutory Authority G.S. 12-3.1 (c); 90-270.9; 90-270.11 (a) (1); 90-270.11 (b) (1); 90-270.14 (1); 90-270.20.

## 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 1D .0211, .0701, .0706, .0708 - .0709, .1123 - .1125, .1128, .1401; 10 .0304; repeal rule(s) cited as 25 NCAC 1D .0609 - .0610; adopt rule(s) cited as 25 NCAC 1D .0111, .0611, .2301 - .2305.*

*The proposed effective date of this action is January 1, 1991.*

*The public hearing will be conducted at 9:00 a.m. on October 4, 1990 at the Personnel Development Center, 101 West Peace Street, Raleigh, N.C.*

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

## **CHAPTER 1 - OFFICE OF STATE PERSONNEL**

### **SUBCHAPTER 1D - COMPENSATION**

#### **SECTION .0100 - ADMINISTRATION OF THE PAY PLAN**

##### **.0111 TECHNICAL ADJUSTMENTS TO THE PAY PLAN**

Technical adjustments to the pay plan are refinements to the pay system approved by the State Personnel Commission that include, but are not limited to, such actions as establishing special pay plans, renumbering salary ranges, changing the length of salary ranges, and adding or deleting salary ranges.

This type of change is not directly related to current labor market fluctuations, and therefore is not defined as a Salary Range Revision. Neither are technical changes related to position classification changes, and therefore are not Reallocations.

Technical adjustments to the pay plan do not create entitlement or authorization to change individual employee salaries.

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

#### **SECTION .0200 - NEW APPOINTMENTS**

##### **.0211 SALARY RATE**

(b) It is intended that agencies make as few appointments above the hiring rate (or applicable

special entry rate) as possible. Rates above this may be requested when:

- (2) the applicant possesses exceptional qualifications above the hiring requirements of the class specification, and operational needs exist which justify filling the position at the salary above the minimum of the range. The additional experience and training must be in the same or closely related area to that stated as acceptable in the class specification. Generally, up to five percent above the minimum rate may be considered for each qualifying year of experience and/or education above the minimum requirements.

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

### **SECTION .0600 - REALLOCATION**

#### **.0609 REALLOCATION TO A HIGHER GRADE (REPEALED)**

#### **.0610 REALLOCATION TO A LOWER GRADE (REPEALED)**

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

#### **.0611 REALLOCATION/SALARY RATE**

(a) When an employee's position is assigned to a higher grade as a result of reallocation, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries at the hiring rate shall be increased to the new hiring rate.
- (2) Salaries at the minimum rate shall be increased to the minimum rate of the new range, and may be increased further in accordance with Paragraph (3) of this Rule.
- (3) Salaries within the range may remain the same; or if funds are available and where appropriate, individual salary increases may be considered, based on the employee's related training and experience which exceeds the minimum qualifications for the position, but not to exceed five percent for each salary grade provided by the reallocation. Salary equity within the work unit and other management needs must be given consideration when making such requests.

(b) However, if an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and the employee's position is later assigned to a higher grade as a result of reallocation, the num-

ber of grades in the original reduction shall be considered to have been compensated and shall not be considered in Paragraph (a) of this Rule salary setting procedure. (Example: If an employee is demoted with no change in salary and reallocated back to the same level, the salary shall remain unchanged and treated as if the demotion had not occurred; or if reallocated back to a level higher than before the demotion, the difference in the grade before the demotion and the new higher grade will be the basis for determining the reallocation increase.)

(c) If the reduction in grade occurred as much as 24 months previously, the agency may give consideration to granting a salary increase within the provisions of this policy. Factors to be considered are the nature of the change in duties and responsibilities and the need to maintain equity of salaries within the work unit.

(d) Only with the prior approval of the State Personnel Director and in extreme circumstances relating to critical positions and well-documented labor market conditions will salary increases be considered which equate to more than five percent for each grade provided by the reallocation. Personnel forms must include the justification.

(e) If the employee is to receive a performance salary increase on the same day as the reallocation, the performance increase shall be given before a reallocation increase is considered.

(f) When an employee's position is assigned to a lower grade, one of the following options will be implemented:

- (1) When reduction in level of the position results from management's removal of duties and responsibilities from the employee because of change in demonstrated motivation, capability, acceptance of responsibility, or lack of performance, the effect is the same as a demotion and the salary must be reduced at least to the maximum as required by the policy on demotion.
- (2) When reduction in level of the position results from position redesign because of 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.

- (3) When reduction in level of the position results from a change in the labor market or some other reason not related to change in the duties and responsibilities of the position, though the position must be reallocated to the approved classification and grade, management may elect to maintain the employee's current classification and grade by working the employee against the lower level position, so long as the employee continues to occupy the same position or is in the same classification.

- (4) Once the position is vacated, it shall be filled at the lower level.

(g) 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 to the Office of State Personnel, on appropriate forms, by the employing agency.

(h) When an employee's position is assigned to the same grade level, the employee's salary shall remain unchanged.

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

## SECTION .0700 - SALARY RANGE REVISION

### .0701 DEFINITION

Salary range revision is any change in a salary range approved by the State Personnel Commission and resulting from changes in the labor market.

The primary purpose of a range revision is to provide current and competitive salary rates for the use of managers with recruitment responsibilities. Revisions resulting from upward changes in the labor market serve another purpose in helping reduce the vulnerability of employees to external job offers when their salaries are below the market average as reflected by the mid-point of the salary range.

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

### .0706 ASSIGNMENT TO A HIGHER GRADE

(a) When ~~an employee's position~~ a classification is assigned to a higher grade as a result of salary range revision, changes in the labor market, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries at the minimum rate ~~shall~~ may be increased to the new hiring rate.



- (2) Salaries at the minimum rate ~~shall~~ may be increased to the minimum rate of the new range, and may be increased further in accordance with Subparagraph (3) of this Rule.
- (3) Salaries within the range ~~may remain the same; or do not have to be increased,~~ but if funds are available and where appropriate, individual salary increases may be considered, the total not to exceed a five percent increase for each salary grade provided by the salary range revision. Salary equity within the work unit must be maintained and other management needs must be given consideration when making such requests. However, if an employee has been reduced to a lower salary grade through demotion, reassignment, reallocation or salary range revision, but without a corresponding reduction in salary, and the employee's position is later assigned to a higher grade as a result of salary range revision, the number of grades in the original reduction shall be considered to have been compensated and shall not be considered in the salary setting procedure in Subparagraph (3) of this Rule. If the reduction in grade occurred as much as 24 months previously, the agency may give consideration to granting a salary increase within the provisions of this policy. The need to maintain equity of salaries within the work unit must be a major consideration.
- (4) If the employee is to receive a performance salary increase on the same day as the salary range revision, the increase shall be given before a range revision increase is considered.
- (5) When a range revision occurs but the entry rate remains the same because of a previously existing special entry rate, no additional salary increases are allowed if the employee received the increase authorized by the special entry rate.

(b) When a classification is assigned to a lower grade, the employee's grade may be allowed to remain at the current level so long as the employee continues to occupy the same position or is in the same classification; however, the grade of the position must be reduced and the employee will function in a "work against" mode. Once the position is vacated, it must be filled at the lower grade level.

Statutory Authority G.S. 126-4.

.0708 SPECIAL ENTRY RATES

When critical recruitment or employee retention problems are officially recognized by the State Personnel Director, but salary range revisions are not necessary, feasible or practical (i.e., when range minimums are not competitive, but maximums are adequate), the Director may authorize a higher special entry rate. Special entry rates will be announced as a ~~percent~~ dollar amount above the hiring rate and as a rate of pay. Agencies experiencing recruitment and retention difficulties may elect to use the special entry rates. Priority for salary increases shall be given to employees whose salaries are at or below special entry rates. Salary increases shall not be given to employees whose performance is not at a satisfactory level. Salary increases are not entitlements and all are subject to the availability of funds in the agency budget. When the agency decides to use the new rates, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (1) Salaries ~~below the special entry rate at the hiring rate~~ may be increased to the special entry rate and salaries at the minimum may be increased to the special minimum rate on the date the agency decides to use the new rate. If funds are not available, but become available at a later time, increases may be retroactive.
- (2) Salaries at or above the special ~~entry~~ minimum rate may be increased by the ~~percent~~ dollar amount authorized above the hiring rate. If funds are not available, but become available at a later time, increases may be made on a current basis. Total increases are limited to three occurrences and must be awarded within 24 months of the original effective date of the action. If a subsequent reallocation up or down, promotion, demotion or reassignment occurs, this cancels the authorization to grant additional increases as a result of the previous special entry rate authorization.
- (3) If a higher special entry rate is authorized for a class that already has a special entry rate, the employee may receive an increase up to the ~~percent~~ dollar amount authorized between the two special entry rates.
- (4) When a special entry rate authorization does not include all classes within a class series, consideration for adjustments for employees in the class(es) without a special entry rate will be on an individual basis. Written justification must be submitted with such requests.

Statutory Authority G.S. 126-4.

**.0709 GEOGRAPHIC DIFFERENTIAL**

(b) Geographic differentials will be announced as a salary grade above the established salary ~~range, grade.~~ Agencies experiencing recruitment and retention difficulties may elect to use the geographic differential. When geographic differentials are in effect, salary increases may be granted in accordance with the salary range revision policies and all salary administration policies are applied as if the classification were at the higher grade.

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

**SECTION .1100 - PERFORMANCE SALARY INCREASES**

**.1123 ELIGIBLE EMPLOYEES**

(a) Employees having permanent full-time or part-time (half-time or more) appointments whose salaries ~~are below~~ do not exceed the maximum of the range and whose performance exceeds requirements are eligible for performance increases.

(b) Employees having probationary or trainee appointments are not eligible for performance increases. These employees become eligible for performance increases after they have:

- (1) achieved permanent status;
- (2) have completed a work cycle; and
- (3) have a performance appraisal with a rating that exceeds requirements.

(c) Employees who are on leave without pay on the date performance increases are granted may receive the performance increase on the date of reinstatement if the work cycle has been completed and a performance appraisal completed. If the work cycle and or appraisal is completed after an employee returns from leave without pay, the performance increase cannot become effective until the quarterly payment date following the completion of the performance appraisal.

(d) Employees whose salaries are ~~at or~~ above the maximum of their salary range are not eligible for performance increases or performance bonuses.

(e) Employees who separate from state service prior to the effective date increases are awarded in an agency are not eligible for performance increases.

*Statutory Authority G.S. 126-7.*

**.1124 BASIS FOR AWARDING INCREASES**

(a) Each department, agency, or institution must have an operative performance management system which has been approved by the Office of State Personnel and which includes a summary performance appraisal using the North

Carolina Performance Rating Scale. The complete requirements for an operative performance management and appraisal system are defined in Subchapter 10, Sections .0100, .0200 and .0300.

(b) Each employee shall be informed of the agency's rating scale and the percent ranges set by the Office of State Personnel for awarding performance increases. Supervisors shall inform each employee of the amount of the performance increase he will receive. Any employee with a performance rating that exceeds requirements but who does not receive a performance increase ~~or who receives an increase less than the mid-range value assigned to the level of exceeds which corresponds to his overall rating~~ shall be informed in writing of the reasons. Any employee who receives an increase other than the mid-range value assigned to the level of exceeds which corresponds to their overall rating shall be provided written justification if it is requested by the employee. The supervisor must inform the employee in writing of the availability of the agency's procedure in which the employee can seek resolution of any dispute with the overall summary rating, the failure to receive an increase and or the amount of the increase. (See also 25 NCAC 1J .0901 - .0903.)

(c) Agency heads may establish agency-wide limits on the total number of employees who may receive increases. However, any overall limits may not extend to individual work units so as to preclude consideration of an employee whose performance exceeds expectations.

*Statutory Authority G.S. 126-7.*

**.1125 AMOUNT OF INCREASE**

(b) An employee shall receive a performance appraisal review at least once during every 12 month work period. Performance increases shall be distributed fairly within work units and across agencies and shall be rewarded only for performance that exceeds performance requirements. ~~Absent the supervisor's written justification.~~ An employee whose performance exceeds expectations shall receive a percent increase equal to the ~~midpoint of the percent range of exceeding performance until the employee's salary is at the maximum of the range.~~ mid-range value of the rating level, unless the supervisor can justify the decision not to award a performance increase or can justify an increase above or below the mid-range value of the applicable range. An employee whose performance does not exceed performance requirements shall not receive a performance increase. A supervisor's performance rating of individual employees and recommended performance increase amounts, with



justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

(e) Employees whose salaries are below the maximum of the salary range may receive performance increases within the limits described in this Rule, but not to exceed the maximum of the salary range. These employees who have salaries that are near the maximum may receive only that portion of the increase that takes them to the maximum. (They are not eligible to receive a performance bonus until the following year.) Such awards become a part of base pay of the employee.

(f) Employees whose salaries are at the maximum may receive performance increases in the form of a performance bonus within the limits described in this Rule. This performance bonus shall be a one-time, lump-sum award. Such awards do not increase the base pay of the employee and do not continue the following year.

*Statutory Authority G.S. 126-7.*

#### **.1128 SALARY INCREASE FUNDS BECOME PART OF BASE SALARY**

When salary performance increase funds are granted to an eligible employee whose salary is below the maximum of the range, such funds immediately become a part of the employee's base salary. When performance increase funds are granted to an eligible employee whose salary is at the maximum, it is a one-time payment. Therefore, when an increase is granted, it loses its identity. No performance increase reserve can be established by turnover once the increase has been granted.

*Statutory Authority G.S. 126-7.*

#### **SECTION .1400 - SHIFT PREMIUM PAY**

##### **.1401 POLICY**

It is a policy of the state to provide additional compensation for non-medically related employees through salary grade 69, for all employees in the position of Ferry Captain III in the salary grade 70, and for medically related employees through salary grade 75 who are regularly scheduled to work on either an evening or night shift:

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

(Exception: Employees in medically-related occupations who have a regularly recurring

work schedule in excess of 8 hours each day shall be paid shift premium pay for the hours actually worked between 4:00 p.m. and 8:00 a.m., but only when determined necessary for classes to be competitive with relevant labor markets.)

Interpretation: "Regularly recurring" shall be interpreted to mean a position that requires a daily schedule that is repeated at specified intervals for an indefinite period of time. In addition, an employee required to substitute in a position because of vacancy or the incumbent's absence that is eligible for shift premium shall receive such payment for time worked in that position. Shift premium pay shall not be paid to employees temporarily placed on a shift or to employees temporarily employed to work on a shift that normally receives such pay.

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

#### **SECTION .2300 - ACCELERATED PAY PLAN**

##### **.2301 POLICY**

It is the policy of the State to maintain an Accelerated Pay Plan for employees at the lowest pay rates in order to provide consideration of the labor market and economic indicators to assure advancement and retention of a fully competent work force. The State Personnel Commission shall identify which pay rates are to be subject to the Accelerated Pay Plan and amend the Plan as necessary, based on the labor market and economic indicators. Upward movement within the Accelerated Pay Plan shall require that the job performance of an employee meets or exceeds performance expectations as indicated on the Accelerated Pay Plan Schedule. Employees participating in the Plan may not receive an additional performance pay increase.

Implementation of this Plan is subject to the availability of funds in an appropriate salary reserve fund.

*Statutory Authority G.S. 1990 Legislative Session, Session Laws, Chapter 1066, Section 37.*

##### **.2302 ELIGIBILITY FOR THE PLAN**

- (a) Employees assigned to a classification in pay grades 50, 51, 52, or 53 whose salaries fall at a rate within the Accelerated Pay Plan are eligible.

- (b) The employing agency must have a Performance Management System for these employees. To the extent practical, this system



must contain all the elements of the agency's general Performance Management System.

*Statutory Authority G.S. Session Laws, Chapter 1066, Section 37.*

### **.2303 ELIGIBILITY FOR ACCELERATED PAY INCREASES**

(a) Employees having probationary or permanent full-time or part-time (half-time or more) appointments whose performance meets or exceeds requirements are eligible for accelerated pay increases. (The Accelerated Pay Plan Schedule indicates whether the performance must meet or exceed requirements.)

(b) To move through the plan, employees must complete the prescribed months of service and attain the corresponding performance rating set for each rate of pay.

(c) If an employee completes the required months of service but does not have the required performance rating, the employee's salary cannot be increased. Once the employee has completed the required length of service again (three or six months, whichever is applicable), the employee may be evaluated again and granted the increase if the required rating is received.

*Statutory Authority G.S. 1990 Legislative Session, Session Laws, Chapter 1066, Section 37.*

### **.2304 ADMINISTRATION**

(a) New hires normally shall be employed at the hiring rate of the applicable grade or at the Special Entry Rate if there is one. New employees with more experience than the required minimum may start at a higher rate in the Plan.

(b) Supervisors must review each employee's performance at each period designated by the Plan to determine if the employee meets or exceeds expectations. The Supervisor must record the rating on the agency's Accelerated Pay Plan Performance Review Form. The employee and the supervisors must sign and date the form.

(c) Following the prescribed timeframes of the Plan, employees may progress to the highest pay rate for the appropriate grade in the Plan.

(d) Once the highest rate provided by the Accelerated Pay Plan in their grade is reached, the employee moves into the state-wide Performance Management System for consideration of addi-

tional salary increases. The employee must be in the Performance Management System at least six months before receiving an additional increase.

(e) If an employee is demoted or reallocated down to a grade and salary rate within the Accelerated Pay Plan, the employee becomes eligible to participate in accelerated pay increases on the same basis as other employees in the Plan.

(f) If an employee is promoted or reallocated up to a grade above those included in the Accelerated Pay Plan, the employee becomes eligible to participate in the Performance Management System. The employee must have a total of at least six months after receiving an accelerated pay increase before receiving an additional increase.

*Statutory Authority G.S. 1990 Legislative Session, Session Laws, Chapter 1066, Section 37.*

### **.2305 DOCUMENTATION**

(a) Forms PD-105 must be submitted for employees receiving accelerated pay increases. The type of action will be "Accelerated Pay Increase" or "Acc Pay Inc."

(b) The agency head's (or designee's) signature on the PD-105 will serve as certification that the employee is eligible and has met performance expectations.

(c) Increases may be effective the first of the pay period following completion of the minimum time required for the increase.

*Statutory Authority G.S. 1990 Legislative Session, Session Laws, Chapter 1066, Section 37.*

## **SUBCHAPTER 10 - PERFORMANCE MANAGEMENT SYSTEM**

### **SECTION .0300 - PERFORMANCE MANAGEMENT SYSTEM: GUIDELINES**

#### **.0304 COMPONENTS OF AN OPERATIVE SYSTEM**

(h) Each agency and university shall establish and continue in operation a performance management and pay advisory committee as required by G.S. 126-7(c)(7a).

*Statutory Authority G.S. 126-7; 126-7(c)(7a).*

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

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

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

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

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

## TITLE 5 - DEPARTMENT OF CORRECTION

### CHAPTER 2 - DIVISION OF PRISONS

#### SUBCHAPTER 2D - PUBLIC COMMUNICATIONS

#### SECTION .0500 - PUBLIC RELATIONS

##### **.0502 ACCESS PROCEDURE**

###### **(a) To Information.**

- (1) The administrative head of each program of the state prison system is responsible for developing devices and producing materials to help inform the people of North Carolina about each command and each program. Administrators shall respond to requests for information about prison conditions and operations so far as possible with available resources and without violating law or policy.
- (2) Matters of public record shall be made available for examination upon request. Copies may be provided at the expense of the requestor. An inmate's or ex-inmate's name, age, race, sex, offense for which convicted, court where sentenced, length of sentence, date of sentencing, date of arrival at or transfer from a prison, program placement and progress, conduct grade, custody classification, disciplinary offenses and dispositions, escapes and recaptures, dates regarding release, and the presence or absence of detainers shall be considered matters of public record. Other contents of inmate files shall not be disclosed to unofficial agencies or persons without the specific authorization of the Director of Prisons, who will secure the advice of the Attorney General when the legality of release or withholding is at issue.
- (3) Unusual incidents occurring at any prison unit shall be reported to local news media by the administrative head of the unit or by a member of his staff in accordance with his instructions. The report to news media should be made after the Director of Prisons or his representative has been notified unless meeting this requirement would prevent reasonably prompt disclosure of newsworthy developments. The Director or his representative will report the incident to the wire services. Unusual incidents would include: death of personnel or inmates; serious injuries to personnel or inmates from any cause; serious destruction of property from any cause; serious disruptions of prison routine from unauthorized actions of personnel or inmates; any use of firearms in the handling of prison matters; escapes that would pose a substantial threat to the free community.

(b) **To Personnel.** All members of the state correction service should recognize that it is their duty and privilege to inform the people of North Carolina about their prison system. In discharging this duty and exercising this privilege, honesty and accuracy are essential. While members of the state correction service should not be reluctant to state their views about prison conditions and events, they

should stay within the limits of their knowledge and authority when purporting to speak for that service. Members are encouraged to accept speaking engagements and public appearances that will help to inform the people of North Carolina about the state prison system. Compensation for participation in public information programs related to the state prison system shall not be accepted by members of the state correction service, but they may accept donations to the inmate welfare fund.

(c) To Prisons. Visits to our prisons by interested individuals, groups, and media representatives should be permitted and encouraged to the maximum extent possible without jeopardizing security, disrupting routine, and unduly burdening personnel. Arrangements should be made in advance, but the officer in charge may allow visits without prior arrangements if there are sufficient personnel present and conditions are otherwise appropriate for the requested visit. All visitors are to be treated courteously, but they shall be required to agree to abide by unit rules and staff instructions as a condition for entry. Visits are to be conducted in such manner as to assure protection and control of the visitor. Each visitor shall be properly identified and registered before admission. A person seeking admittance as a media representative must be able to show identification as a representative of one or more of the following: a national or international news service; a newspaper, magazine, or periodical with a general circulation to actual paid subscribers and with second class mailing privileges; a radio or television network or station licensed by the Federal Communications Commission.

(d) To Prisoners.

- (1) Visitors may be permitted to talk to inmates of the state prison system who are willing to talk to them. The time, place, and manner of such conversations shall be subject to restrictions appropriate to the parties and circumstances. No greater restrictions shall be imposed than are required by applicable security and correctional considerations.
- (2) Media representatives may be permitted to interview inmates of the state prison system who consent in writing to be interviewed for a stated purpose and without compensation. When an inmate is known to be represented by a particular attorney in pending litigation, that attorney should be notified of a media representative's request for an interview with his client and afforded an opportunity to react to this request before it is granted. If the attorney objects to the interview, the Attorney General shall be consulted and the interview shall not be granted against his advice.
- (3) Photographers on prison property shall not photograph inmates within the confines of the state prison property in a manner which will permit identification, except for official departmental purposes, unless the inmate to be photographed signs a consent form before such photographs are taken. Photographers have the right to photograph inmates working in the public domain; however, correctional staff can request the photographers to remain a safe distance from inmate workers. This request is to be made in furtherance of sound security practices, to preclude disruption of the work project, and to ensure public safety in the work area. Correctional staff may remove inmates from the work area if media presence is disruptive to the inmates in work area.

(e) During Disturbances. Admittance of media representatives to a prison may be denied or limited during a disturbance, but such restrictions shall be lifted as soon as this may be done without jeopardizing security or the safety of any person. The news media shall be kept advised of developments by frequent news briefings in news centers designated by the senior member of the state correction service present at the place where the disturbance occurs. From the group of media representatives assembled at this center, a pool (consisting of one still photographer, one motion picture photographer, and one writer carrying sound equipment for the radio representative) chosen by those media representatives present, may be allowed to go as close to the scene of the disturbance as they can be taken without unduly aggravating the problems of providing special protection for them. As soon as is practicable in light of security and correctional consideration, the remaining media representatives will be allowed access to the prison in small groups. When operations have returned to normal, the standard policies regarding access will apply.

*History Note: Statutory Authority G.S. 148-11;  
Eff. February 1, 1976;  
Amended Eff. September 1, 1990.*

## SUBCHAPTER 2F - CUSTODY AND SECURITY

### SECTION .0600 - CUSTODIAL CLASSIFICATIONS



**.0605 COMMUNITY RESOURCE COUNCILS**

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

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

(c) Appointment.

(1) The superintendent of each prison facility and the respective area administrator, if appropriate, will recommend persons to serve as council members. Each superintendent and area administrator will confer with local community leaders during the selection process. The list of nominees will be submitted directly to the Department of Correction for consideration by the Secretary.

(2) The Secretary shall appoint council members to two-year terms. Council appointments will be made annually, with appointments effective January 1 of each year. When unscheduled vacancies occur, new appointees will serve the unexpired term of the council member being replaced, and may be eligible for reappointment to a full term.

(3) During the initial organization of each council, members will be appointed to serve staggered terms. Each year members will be reappointed; however, no council shall make By-laws or other policies which call for the election of more than one half its members during any one year.

(4) The Secretary may remove any member of the council for misfeasance, malfeasance, or nonfeasance.

(d) Statement of Purpose.

(1) Councils shall be governed in general principle by an established statement of purpose approved by the Secretary of Correction. Copies of this purpose statement will be maintained in the Office of the Secretary.

(2) Unit superintendents and council chairpersons shall clarify the specific mission and purpose of each Community Resource Council. Other goals and short-term planning strategies should be developed to provide positive leadership and recognition of members for the achievement of correctional goals established by the local facility, the administration, and the Community Resource Council.

(e) By-Laws. Each council shall adopt standard by-laws. Issues not addressed by the standard by-laws are reserved to the discretion of individual councils but must comply with state law and with departmental policies and procedures.

(f) Community Resource Council Activities.

(1) Volunteers. The council should be involved in recruitment of volunteers to assist in providing volunteer services or fund-raising activities at the facility.

(2) Fund-Raising. Special, local council fund-raising guidelines must be designed to assure that gifts and donations are appropriately receipted. If a major [anything greater than one thousand dollars (\$1,000)] fund-raising project is contemplated, such as for the construction of a chapel, a separate fund-raising body must be established and incorporated as a nonprofit organization. All proposed major fund-raising projects must be approved by the secretary prior to commencement of the project.

(3) Program Activity. Acceptable program activities for council volunteers may include assisting inmate families in understanding prison policies and procedures, providing workshops for staff on relevant issues, or generating in-kind contributions of equipment and supplies. Provided, any in-kind contribution in an amount greater than one thousand dollars (\$1,000) shall be subject to the approval of the secretary.

(g) Training.

(1) A training program approved by the Office of Volunteer Services will be conducted by each unit superintendent or a designee for each council member.

(2) Training should be offered to councils on a continuing basis to assure efficiency of operations and the achievement of Department of Correction goals.

(h) Reporting. The chairperson of each council shall submit a copy of the minutes of each council meeting to the Volunteer Services Program Consultant and to the secretary on a regular basis. These reports should reflect council activities, achievements and any problems. A periodic summary report shall be compiled from all minutes submitted to the Office of the Volunteer Services Program Consultant and distributed to council chairpersons, area administrators, institution heads and unit superintendents.

(i) Evaluation. Each council shall complete an annual evaluation to determine its progress and effectiveness in meeting community needs, staff needs, inmate needs, and in the accomplishment of other specific objectives set forth by policy or those goals established by the council members.

(j) Recognition Program. Recognition activities should be held annually to recognize community volunteers and other persons instrumental in the attainment of goals and objectives and other special achievements which merit recognition.

*History Note: Statutory Authority G.S. 148-4; 148-11; 143B-10;  
Eff. July 1, 1987;  
Amended Eff. September 1, 1990; December 1, 1989.*

## TITLE 19A - DEPARTMENT OF TRANSPORTATION

### CHAPTER 2 - DIVISION OF HIGHWAYS

#### SUBCHAPTER 2D - HIGHWAY OPERATIONS

##### SECTION .0600 - TECHNICAL SERVICES

###### **.0605 PERMITS**

Permits are issued on authorized forms and designated for certain moves as described in Subparagraphs (1), (2), (3) of this Rule. Permits may be declared invalid by Law Enforcement personnel if the vehicle/vehicle combination is: operating off the permitted route; operating beyond the time specified on the permit; not properly licensed; operating with fewer axles than specified on the permit or any other violation of requirements or special conditions of the permit. Permits may also be denied or revoked as stated in Rule .0633.

- (1) Special Permit for Oversize/Overweight Movement on the State Highway System. This permit gives a description of the vehicle or load being moved, date limitations and route to be used. This permit must be signed by the permittee to be valid. An attachment with special conditions will be attached to and become a part of this permit for overweight or overdimension movements.
- (2) Special Permit for Movement of Oversize Mobile Homes in North Carolina. This permit must be signed by the permittee to be valid. An attachment with special conditions for mobile home movements will be attached to and become a part of this permit.
- (3) Special Permit for Building Move. This permit gives dimension limitations, origin-destination, route to be followed, time and date limitations and registration information for the towing unit. A certification statement on the permit must be signed by the permittee for this permit to be valid.

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Eff. July 1, 1978;  
Amended Eff. September 1, 1990; April 11, 1980.*

###### **.0607 WIDTH LIMITED**

(a) Width is limited to 14' for all movements except certain construction machinery, buildings, manufacturing machinery for short moves to or from projects or from nearest railhead to destination. If blades of bulldozers, graders or front end loader buckets cannot be angled to extend no more than 12' across the roadway, they must be removed. A blade or bucket or other attachment which has been removed for safety reasons, or if in the best interests to the Department has been removed, may be moved with the equipment without being considered a divisible load. Moves exceeding 12' for a commodity essential to national health, safety or defense may be permitted upon receipt of proof of necessity submitted by the agency directly concerned, however, if considered to be detrimental or unsafe to the other traveling public or if the highway cannot accommodate the move due to width or weight, such move will be denied. Loads must be so placed on vehicle so as to present least dimension to meeting or passing traffic.

(b) Permits for mobile homes and modular homes will not be issued over 14'-0". Moves in excess of 10' width are restricted on routes listed below. When the final destination is on a restricted route, consideration may be given to allow entrance on the restricted route at nearest practical point to final destination. The restricted routes are the following:

# FINAL RULES

Highway No.	Restricted From	To	County(s) Involved
19	Upper Crossing of Solo Creek	Maggie	Jackson, Haywood
19A	Jct. 441	Ela	Jackson, Swain
19E	Ingalls	Cranberry	Avery
19W	Jct. 19	Tenn. Line	Yancey
23	U.S. 19	Tenn. Line	Madison
25-70	Jct. 19-23	Tenn. Line	Buncombe, Madison
28	Fontana Village	Tenn. Line	Graham, Swain
28	Lauada	West's Mill	Macon, Swain
28	Gneiss	Ga. Line	Macon
63	Canto	N.C. 209	Buncombe, Madison
64	Highlands	Rosman	Macon, Jackson, Transylvania
74	Lake Lure	Asheville	Rutherford, Buncombe
80	Jct. 19E	Jct. 226	Mitchell, Yancey
80	U.S. 70	Blue Ridge Pkwy.	McDowell
88	Warrensville	Tenn. Line	Ashe, Watauga
90	Valmead	Globe	Caldwell
106	Ga. Line	Highlands	Macon
129	Robbinsville	Tenn. Line	Graham
151	Jct. B.R. Parkway	Jct. 19-23	Buncombe, Henderson
176	Tryon	Saluda	Polk
178	S.C. Line	Rosman	Transylvania
194	Jct. 19E	Vilas	Avery, Watauga
194	Jct. 421	Baldwin	Ashe, Watauga
194	Warrensville	Va. Line	Ashe
197	Jct. 19E	Jct. 226	Yancey, Mitchell
197	End of Pavement (Barnardsville)	U.S. 19E Burnsville	Buncombe, Yancey
208	Jct. 25-70	Tenn. Line	Madison
209	Lake Junaluska	Jct. 25-70	Haywood, Madison
212	Jct. 208	Tenn. Line	Madison
221	Linville	Blowing Rock	Avery, Watauga
221	Jct. 88	Twin Oaks	Ashe, Alleghany
226	Bakersville	Tenn. Line	Mitchell
226A	N.C. 226	N.C. 226	McDowell
261	Bakersville	Tenn. Line	Mitchell
268	Elkin	Jct. 601	Surry
276	Jct. 280 and 64	Cruso	Haywood, Transylvania



(c) Extended period permits for times up to 12 months may be granted for 12' width mobile homes by the central permit office on a statewide basis on NC and US routes. Extended period permits for widths in excess of 10' are granted only for specified county road routes.

(d) Annual permits may be granted to manufacturers, retailers licensed by Division of Motor Vehicles, and to contract carriers licensed by the Public Utilities Commission for the movement of mobile and modular home units having a width in excess of 12' but not greater than 14' by the Central Permit Office on designated NC and US routes. All others will be issued single trip permits good for ten days from date of issue over approved routing.

*History Note: Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. September 1, 1990; January 1, 1985; April 1, 1984; April 11, 1980.*

#### **.0608 LENGTH**

(a) Lengths are generally limited to 85'-0" including towing vehicle. If the route to be traveled does not include corners, consideration may be given to longer loads. When length, including towing vehicle exceeds 85', and route to be traveled requires negotiating corners, a steering trailer and escort vehicle may be required. Certain loads such as poles, girders, trusses over 60' in overall length which do not exceed legal weight or width may be moved without permit during the daytime if they are one integral unit.

(b) Extended period permits for lengths exceeding 65' will not be issued except for mobile home delivery units. These may be issued to 91'-0" when a 15' towing unit is employed. Extended period permits are issued by the central permit office only. "Single trip permits may be issued for the movement of mobile homes on designated routes with a 15' towing unit not to exceed 95'0" combination length."

(c) Front overhang shall not exceed the statutory limit of 3' beyond front bumper unless shown to be impractical to load otherwise and not create a safety hazard.

*History Note: Statutory Authority G.S. 20-116; 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978; Eff. July 1, 1978; Amended Eff. September 1, 1990; October 1, 1987; April 1, 1984; February 1, 1983.*

#### **.0624 TIME OF MOVE**

Specially permitted moves may be made between sunrise and sunset Monday through Saturday. No moves may be made on Sunday or approved State holidays, unless otherwise stated on the permit. If the holiday falls on Saturday or Sunday, the following Monday will be considered a holiday. Time limits may be included in any permit when the issuing authority deems it desirable for safety or to expedite traffic. Modular or mobile homes greater than 12' but not more than 14'-0" wide are permitted to move during these allotted times:

(1) August 19-June 11

Fully Controlled Access Highways -

Sunrise to Sunset (Monday-Friday)

Sunrise to 12:00 Noon (Saturday)

Non-Controlled Access Rural Highways -

8:30 a.m.-2:30 p.m. and 4:30 p.m. to

Sunset (Monday-Friday), Sunrise to 12:00 Noon (Sat.)

Non-Controlled Access Urban (Pop. greater than 10,000)

Four-Lane Highways - 8:30 a.m.-2:30 p.m. and

6:00 p.m. to Sunset (Monday-Friday)

Sunrise to 12:00 Noon (Saturday)

Non-Controlled Access Urban (Pop. greater than 10,000)

Two-Lane Highways - 8:30 a.m.-2:30 p.m. (Monday-Friday)  
Sunrise to 12:00 Noon (Saturday)

(2) June 12-August 18

Rural Highways -

Sunrise to Sunset (Monday-Friday)

Sunrise to 12:00 Noon (Saturday)

Urban Highways (Population greater than 10,000) -

8:30 a.m. to 4:30 p.m. and 6:00 p.m. to

Sunset (Monday-Friday)

Sunrise to 12:00 Noon (Saturday)

*History Note: Authority G.S. 20-119; 136-18(5); Board of  
Transportation Minutes for February 16, 1977  
and November 10, 1978;  
Eff. July 1, 1978;  
Amended Eff. September 1, 1990; January 1, 1985;  
July 1, 1981; April 11, 1980.*

**.0625 SPEED LIMITS**

(a) The speed of specially permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit, unless otherwise stated on the permit.

(b) The driver will maintain a speed consistent with safety of the traveling public. He will avoid creating traffic congestion by maintaining proper interval and temporarily relinquishing the traffic way to allow the passage of following vehicles when a buildup of traffic occurs.

*History Note: Authority G.S. 20-119; 136-18(5); Board of  
Transportation Minutes for February 16, 1977  
and November 10, 1978;  
Eff. July 1, 1978;  
Amended Eff. September 1, 1990; April 11, 1980;  
January 1, 1979.*

**.0628 SAFETY DEVICES**

*History Note: Statutory Authority G.S. 20-119; 136-18(5);  
Eff. July 1, 1978;  
Repealed Eff. September 1, 1990.*

**SUBCHAPTER 2E - MISCELLANEOUS OPERATIONS**

**SECTION .0200 - OUTDOOR ADVERTISING**

**.0219 ELIGIBILITY FOR PROGRAM**

Business signs may be permitted, provided said businesses comply with the following criteria and have a public telephone:

- (1) The individual business installation whose name, symbol or trademark appears on a business sign shall give written assurance of the business's conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, sex, or national origin. An individual business may apply for additional sign positions on a sign panel provided no qualified applicant is denied space on the sign panel. An individual business, under construction, may participate in the program by giving written assurance of the business's conformity with all applicable laws and requirements for that type of service, by a specified date of opening to be within one year of the date of application.
- (2) The maximum distance that a "GAS" "FOOD", or "LODGING" service can be located from the Interstate, or other fully controlled access highway shall not exceed three miles, with the maximum distance being five miles for a "CAMPING" service, in either direction via an all-weather road. Said distances shall be measured from the point on the interchange crossroad, co-incident with the centerline of the Interstate or other fully controlled access highway route median,

along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than .2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

- (3) "GAS" and associated services. Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law;
  - (b) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
  - (c) restroom facilities and drinking water suitable for public use;
  - (d) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs;
  - (e) year-round operation at least 16 continuous hours per day, seven days a week.
- (4) "FOOD". Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law, and a permit to operate by the health department;
  - (b) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), seven days a week;
  - (c) indoor seating for at least 20 persons;
  - (d) public restroom facilities.
- (5) "LODGING". Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law, and a permit to operate by the health department;
  - (b) adequate sleeping accommodations consisting of a minimum of 10 units each, including bathroom and sleeping room;
  - (c) off-street vehicle parking for each lodging room for rent;
  - (d) year-round operation.
- (6) "CAMPING". Criteria for erection of a business sign on a panel shall include:
  - (a) appropriate licensing as required by law, including meeting all state and county health and sanitation codes and having adequate water and sewer systems which have been duly inspected and approved by the local health authority (the operator shall present evidence of such inspection and approval);
  - (b) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
  - (c) adequate parking accommodations;
  - (d) continuous operation, seven days a week during business season;
  - (e) removal or masking of said business sign by the department during off seasons, if operated on a seasonal basis.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139;  
 143B-346; 143B-348; 143B-350(f);  
 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);  
 Eff. April 1, 1982;  
 Amended Eff. September 1, 1990; November 1, 1987;  
 April 1, 1986; March 1, 1986.*

#### **.0221 FEES**

(a) The fee for an initial installation is two hundred fifty dollars (\$250.00) per business sign. Contracts are renewed annually every November 1. The annual fee is two hundred fifty dollars (\$250.00) per business sign. The initial fee shall cover a one-year period beginning with placement and acceptance of the "business sign" or "logo sign" by the department. The fee for that period of time between the first anniversary of placement and acceptance and the first annual renewal date shall be the prorated portion of the annual fee. Any business which meets the criteria to participate in the program may pay the cost of initial installation of a complete logo sign panel subject to a credit to be determined by the department at the time it receives any fee from a business which later qualifies and elects to participate in the program on the subject panel. The aforesaid payment of the cost of initial installation of a complete logo sign panel in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.



(b) Fees are payable by check or money order and due in advance of the period or service covered by said fee. Failure to pay a charge when due is ground for removal of the sign and termination of the contract.

(c) When requested by a business, the department may perform additional requested services in connection with changes of the business sign, upon payment of a twenty-five dollar (\$25.00) service charge per business sign, and any new or renovated business sign required for such purpose shall be provided by the applicant. If the department removes or masks a business sign because of seasonal operation, there will be no additional charge to the business.

(d) The department shall not be responsible for damages to business signs caused by acts of vandalism, accidents, natural causes (including natural deterioration), etc., requiring repair or replacement of business sign(s). Applicants in such event shall provide a new or renovated business sign together with payment of a twenty-five dollar (\$25.00) service charge per business sign to the department to replace such damaged business sign(s).

(e) Any participating business which did not previously participate in the initial cost of the installation of logo sign panels, may by making application to the department and paying the balance of construction costs not previously paid, avoid being removed from this program by applications of other businesses deemed closer to the interchange. Any participating applicant may pay the balance of construction costs for only one logo sign on any sign panel. This payment of the balance of construction costs in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

(f) Any business which meets the criteria to participate in the program, by making application to the department and prepaying all construction cost fees for addition to existing logo signs, may avoid being removed from this program by applications of other businesses deemed to be closer to the interchange. Any business applicant may prepay the balance of construction costs for only one logo sign on any sign panel. This prepayment of all construction cost fees in no way relieves the participating business from the obligation of its payment of the annual maintenance fee per business sign.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139;  
143B-346; 143B-348; 143B-350(f);  
23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f);  
Eff. April 1, 1982;  
Amended Eff. September 1, 1990; April 1, 1986;  
November 1, 1985; October 1, 1985.*

## **.0222 CONTRACTS WITH THE DEPARTMENT**

(a) The department shall perform all required installation, maintenance, removal and/or replacement of all business signs upon panels.

(b) Individual businesses requesting placement of business signs on panels shall apply by submitting to the Department of Transportation a completed Agreement form. As a condition of said Agreement, the applicant must agree to submit the required initial fee within 30 days after the business is approved by the department. The department shall provide a statement(s) to the applicant at the time agreements are provided that itemize the number of business signs required, their fee(s) and remittance requirements. Failure to submit the required fee and forms will result in removal by the department of the business's signs from the construction project plans.

(c) Businesses must submit a layout of their proposed business sign for approval by the department before the business sign is fabricated.

(d) No business sign shall be displayed which, in the opinion of the department, is unsightly, badly faded, or in a substantial state of dilapidation. The department shall remove, replace, or mask any such business signs as appropriate. Ordinary initial installation and maintenance services shall be performed by the department at such necessary times upon payment of the annual renewal fee, and removal shall be performed upon failure to pay any fee or for violation of any provision of these Rules and the business sign shall be removed. The business shall furnish all business signs.

(e) When a business sign is removed, it will be taken to the division traffic services shop of the division in which the business is located. The business will be notified of such removal and given 30 days in which to retrieve their business sign(s). After 30 days, the business sign will become the property of the department and will be disposed of as the department shall see fit.

(f) Should the department determine that trailblazing to a business that is signed for at the interchange is desirable, it shall be done with an assembly (or series of assemblies) consisting of a ramp size business sign and an appropriate white on blue arrow. The business shall furnish all business sign(s) required

and deemed necessary by the department. Fees shall be same as for other business sign(s). If several different services are located on the same business site, duplicate type logo signs shall not be erected in a single logo trailblazer installation. In such trailblazer installations, only one logo sign and one directional arrow sign will be used. The business may submit, subject to approval by the department, different logo signs to identify different services which may be located on the same business site.

(g) Should a business qualify for business signs at two interchanges, the business sign(s) will be erected at the nearest interchange. If the business desires signing at the other interchange also, it may be so signed provided it does not prevent another business from being signed.

(h) Where there are more businesses which meet the criteria to participate in the program than space is available on the panel(s), then those businesses closer to the interchange, measured as described in Rule .0219(b), shall be permitted to participate, except as provided for in Rule .0221 (a), (e), and (f).

A business, under construction, shall not be allowed to apply for participation in the program if it's participation would prevent an existing open business applicant from participating, unless the open business has turned down a previous opportunity offered by the Department to participate in the program as provided in Subsection .0222 (i). After approval of an application to participate a business, under construction, shall be allowed priority participation over another business, which qualifies and becomes open for business prior to the time specified for opening in the application by the business under construction.

(i) Should the number of businesses of a particular service at an interchange increase to more than the maximum number of business signs allowed on a panel, and a closer business qualifies and requests installation of its business signs, the business sign(s) of the farthest business shall be removed at the renewal date, provided that any business which has previously paid the full cost of erecting a panel shall not be removed under this Rule. A business with more than one sign displayed on any panel shall have the additional sign(s) removed at the end of a contract period when other qualifying business(es) applies for space on the panels. A business which has turned down a previous opportunity offered by the department to participate in the program may not qualify as a closer business under this Rule, except as provided in Rule .0221 (a), (e), and (f).

A business closed for reconstruction or renovation, or for restoration of damages caused by fire or storm shall notify the division engineer's office immediately upon closing. At the time specified for reopening, if the business under construction, reconstruction, renovation, or restoration is found not to be in compliance, or not open for business, the Division Engineer, or his employee shall promptly verify the information.

(j) When it comes to the attention of the department that a participating business is not in compliance with the minimum state criteria, the division engineer's office shall promptly verify the information and if a breach of agreement is ascertained, inform the business that it will be given a maximum of 30 days to correct any deficiencies or its business signs will be removed. If the business is removed and later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant.

At the time specified for opening, if the business under construction is found to not be in compliance, or not open for business, the Division Engineer shall promptly verify the information. If a breach of agreement is ascertained, the Division Engineer shall inform the business that it will be given a maximum of 30 days to correct any deficiencies or its business signs will not be erected. If the business later applies for reinstatement, this request will be handled in the same manner as a request from a new applicant.

(k) The department reserves the right to cover or remove any or all business signs in the conduct of maintenance or construction operations, or for research studies, or whenever deemed by the department to be in the best interest of the department or the traveling public, without advance notice thereof. The department reserves the right to terminate this program or any portion thereof by furnishing the business written notice of such intent not less than 30 calendar days prior thereto.

(l) The transfer of ownership of a business for which an agreement has been lawfully executed with the original owner shall not in any way affect the validity of the agreement for the business sign(s) of the business, provided that the appropriate division engineer is given notice in writing of the transfer of ownership within 30 days of the actual transfer.

*History Note: Authority G.S. 136-89.56; 136-137; 136-139;  
143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750,  
Subpart A; 23 U.S.C. 131(f);  
Eff. April 1, 1982;  
Amended Eff. September 1, 1990; November 1, 1987;*

*April 1, 1986; November 1, 1985.*

SECTION .0400 - GENERAL ORDINANCES

**.0424 TWIN TRAILERS ACCESS ROUTES**

(a) Definitions - The following terms when used in this Section shall mean:

- (1) "Twin Trailers" - The vehicle combination consisting of a truck-tractor and two trailing units as authorized by G.S. 20-115.1.
- (2) "Terminal" -
  - (A) a transportation facility at which freight in route to other destinations is transferred, warehoused, or temporarily stored;
  - (B) a commercial or industrial facility at which twin trailers are normally completely loaded or unloaded; or
  - (C) a commercial or industrial facility where twin trailers are manufactured or regularly stored or maintained;
  - (D) the term "terminal" shall not include retail facilities or "pick-up or drop addresses" for shipments or deliveries.
- (3) "Appropriate Law Enforcement Official" - The head of any law enforcement agency, or agency head designee(s), having jurisdiction of the street or highway used or proposed for use as a "reasonable access" route.

(b) "Twin Trailers" are allowed "reasonable access" between terminals and the National Truck Network only in accordance with this Section. "Reasonable access" for terminals located within three miles of the National Truck Network and the terminal. No filing or authorization from the Department of Transportation is required for any access route which is three miles or less between the terminal and the National Truck Network. No access route longer than three miles to and from such terminals may be used unless authorized by the Department of Transportation.

- (1) The following procedure for applying for "reasonable access" routes to and from "terminals" and the National Truck Network shall be followed. The appropriate terminal official shall submit an application, which includes a map or photocopy of a portion of a map showing the proposed "reasonable access" route(s) or changes to existing authorized "reasonable access" route(s) and the terminal location, to the State Traffic Engineer of the Department of Transportation for approval. The application shall be on a form provided by the State Traffic Engineer. When appropriate, the State Traffic Engineer will seek advice from the State Highway Patrol and the Division of Motor Vehicles, or other appropriate law enforcement officials, concerning the application.
- (2) Public notice of all applications for "reasonable access" pursuant to this Paragraph (b) shall be published by the Department of Transportation in a newspaper regularly circulated in the affected area of the State. The notice shall be published at least once a week on the same day of the week for two consecutive weeks. In addition, appropriate local governing bodies will be notified by the Department of Transportation of all applications within their jurisdictions.
- (3) "Reasonable access" shall be limited to qualified routes with traffic lanes designed to be a width of 12 feet or more, except as otherwise authorized by the Department of Transportation pursuant to an application and Subparagraph (b)(6) of these Regulations.
- (4) Since traffic safety is the overriding concern, the following safety factors shall be taken into consideration in determining "reasonable access": Traffic congestion, traffic volumes, route length, vehicle mix, geometric design of the highway, intersection geometrics, width of the shoulders, width of pavement, superelevation of the pavement, pavement condition, at-grade railroad crossings, stopping sight distance, percentage passing sight distance, speed limits, vertical and horizontal alignment, ability of other vehicles to pass trucks, widths of bridges, previous accident experience, and schools. This does not preclude consideration of other relevant safety factors, not included in this Rule, nor does reasonable access determination necessarily depend on any single factor.
- (5) No portion of a route that extends across a route on the National Truck Network is eligible for a "reasonable access" route.
- (6) The appropriate terminal official may apply for an exception to the State Traffic Engineer for "reasonable access" routes with lanes designed to be less than 12 feet wide, but not lanes designed to be less than ten feet wide in addition to or in lieu of route(s) qualified as a "reasonable access" route(s). This application may be filed at any time on a form provided by the State



Traffic Engineer. The application shall document specific reasons why the Department of Transportation should grant the exception.

- (7) The State Traffic Engineer shall have a period of 60 days from receipt of any fully completed application pursuant to this Paragraph (b) to approve or reject the applied for route(s) based on safety considerations. The appropriate terminal official and appropriate law enforcement officials will be notified of any rejection and the reasons.
  - (8) The Department of Transportation may, at any time subsequent to approval, revoke any route as a "reasonable access" route based on safety considerations. The appropriate terminal official and appropriate law enforcement officials will be notified in writing 30 days prior to any revocation.
  - (9) The appropriate terminal official shall notify all twin trailer operators using the terminal of the routes authorized as "reasonable access" route between that terminal and the Network. The Department of Transportation shall notify State and local law enforcement officers of "reasonable access" routes that serve each terminal within the jurisdiction of the enforcement agency. The State Traffic engineer shall make available the commercial motor vehicle operators information regarding reasonable access to and from the National Truck Network.
- (c) Temporary Regulations for Initial Application Period:
- (1) On or before February 1, 1989, the appropriate terminal official shall file an initial application for "reasonable access" route(s) between the terminal and the National Truck Network currently and routinely used prior the adoption of these Regulations. Except as provided by Paragraph (b), no route is authorized as a "reasonable access" route between a terminal and the Network unless applied for as herein provided. Subsequent additions of "reasonable access" route(s) may be applied for after the initial application period in accordance with Paragraph (b) but will not be effective until approved by the Department of Transportation. Twin trailers may operate only on currently and routinely used routes submitted in the application in accordance with Paragraph (c), contingent on formal approval or rejection of these routes by the Department of Transportation based on Paragraph (b). The 60 day period to approve or reject the application under Subparagraph (b)(6) shall not be applicable to applications filed in the initial application period.
  - (2) The initial application shall be on a form provided by the State Traffic Engineer and shall include a map or photocopy of a portion of a map showing currently and routinely used "reasonable access" route(s) and the terminal location. This application shall be forwarded to the State Traffic Engineer for review and consideration. When appropriated the State Traffic Engineer will seek advice from the State Highway Patrol and the Division of Motor Vehicles, or other appropriate law enforcement officials, concerning the initial application.
- (d) Nothing in this Section shall be construed to preclude designation of routes by the Department of Transportation in addition to those designated by the U.S. Secretary of Transportation as provided by G.S. 20-115.1(g).
- (e) Appeal - An appropriate terminal official or appropriate law enforcement official may appeal the rulings concerning access routes made by the State Traffic Engineer to the Secretary of Transportation. In giving notice of appeal the documentation to support reasons for believing that the determination of the State Traffic Engineer was erroneous. The decision of the Secretary of Transportation shall be final agency decision.

*History Note: Authority G.S. 20-115.1;*

*Board of Transportation minutes on November 18, 1989;*

*Eff. September 1, 1990.*

## CHAPTER 3 - DIVISION OF MOTOR VEHICLES

### SUBCHAPTER 3B - DRIVER SERVICES SECTION

#### SECTION .0700 - COMMERCIAL DRIVERS' LICENSE

##### **.0701 GENERAL INFORMATION**

- (a) Under G.S. 20-37.22 the North Carolina Division of Motor Vehicles may adopt any rules necessary to carry out the provisions of Article 2C.

(b) The purpose of these requirements is to establish policies and procedures to permit persons other than employees of the North Carolina Division of Motor Vehicles to conduct the skills test required of commercial driver license applicants.

(c) Authority to administer skills tests will be granted only to Third Party Testers under agreement with the North Carolina Division of Motor Vehicles and utilizing Third Party Examiners recognized and deemed qualified by the North Carolina Division of Motor Vehicles.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0702 DEFINITIONS**

The following words and terms, when used in these requirements, shall have the following meaning:

- (1) "Division" - The North Carolina Division of Motor Vehicles.
- (2) "Commissioner" - The North Carolina Commissioner of Motor Vehicles.
- (3) "CDL" - Commercial Drivers License.
- (4) "FHWA" - Federal Highway Administration.
- (5) "FMCSR" - The Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation.
- (6) "Approved Testing Program" - The skills tests required by the Division which shall be administered by a Third Party Tester.
- (7) "Tester Certificate" - The document issued to a Third Party Tester authorizing them to administer the approved testing program on behalf of the Division.
- (8) "Third Party Tester" - A government entity, association, educational institution or business entity engaged in the use of commercial motor vehicles, licensed by the Division to administer the approved testing program for CDL applicants in accordance with these requirements.
- (9) "Third Party Examiner" - An individual who is a payroll employee of a Third Party Tester and who has been issued an examiner certificate to conduct the skills tests required for a CDL.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0703 REQUIREMENTS FOR THIRD PARTY TESTERS**

(a) To be certified, a Third Party Tester must:

- (1) Make application to and enter into an agreement with the Division as provided in Rule .0706 of these Regulations.
- (2) Maintain a place of business with at least one permanent regularly occupied structure within the state of North Carolina.
- (3) Ensure its place of business is safe and meets all requirements of state law and local ordinances.
- (4) Have at least one qualified and approved Third Party Examiner in their employ.
- (5) Allow, FHWA, its representative(s), and the Division to conduct random examinations, inspections and audits without prior notice.
- (6) Allow the Division to conduct periodic, but at least annual on-site inspections.
- (7) Maintain at each appropriate third party testing location, for a minimum of two years, a record of each driver for whom the Third Party Tester conducts a skills test, whether or not the driver passes or fails the test. Each such record shall include:
  - (A) The complete name and address of the driver;
  - (B) The driver's social security number, driver's license number and the name of the state or jurisdiction that issued the license held by the driver at the time of the test;
  - (C) The date the driver took the skills test;
  - (D) The test score sheet(s) showing the results of the test;
  - (E) The name and identification number of the Third Party Examiner conducting the skills test;
  - (F) The record of all receipts and disbursements;
  - (G) The make, model and registration number of the commercial motor vehicle(s) used to conduct the testing; and
  - (H) The written contract (copy), if applicable, with any person or group of persons being tested.
- (8) Maintain at each approved testing location, a record of each Third Party Examiner in the employ of the Third Party Tester at that location. Each record shall include:
  - (A) A valid Examiner Certificate indicating the Examiner at that location;

- (B) A copy of the Third Party Examiner's current driving record, which must be updated annually; and
- (C) Evidence that the Third Party Examiner is a payroll employee of the Third Party Tester.
- (9) Retain all Third Party Examiner records for at least two years after the Third Party Examiner leaves the employ of the Third Party Tester.
- (10) Ensure that the skills tests are conducted in accordance with the requirements of this Section and the instructions provided by the Division.
- (11) Provide documented proof (using a form provided by the Division) to each driver applicant who takes and passes the required skills tests. The driver applicant in turn will present the form to the Division as evidence that they successfully passed the driving tests administered by the Third Party.
- (b) In addition to the requirements listed in Paragraph (a) of this Rule, all Third Party Testers who are not governmental entities or associations must:
  - (1) Truck and or Bus Companies:
    - (A) Employ at least 25 North Carolina licensed drivers (full-time, part-time, or seasonal) of commercial motor vehicles.
    - (B) Employ an individual who would be responsible for the organization's third party testing operation.
    - (C) Have been in operation in North Carolina a minimum of two years. (If in operation less than two years under current company name, identify previous company name(s) to cover the two year period.)
  - (2) Educational Institutions:
    - (A) Have an established commercial motor vehicle training program.
    - (B) Have been in operation in North Carolina a minimum of two years.

*History Note: Statutory Authority G.S. 20-37.33;  
Eff. September 1, 1990.*

#### **.0704 REQUIREMENTS FOR THIRD PARTY EXAMINERS**

- (a) Third Party Examiners may conduct skills tests on behalf of only one Third Party Tester at any given time. If a Third Party Examiner leaves the employ of a Third Party Tester he, she must reapply in order to conduct tests on behalf of a new Third Party Tester.
- (b) To qualify as a Third Party Examiner, an individual must:
  - (1) Make application on a form provided by the Division;
  - (2) Be a payroll employee of the Third Party Tester;
  - (3) Possess a valid North Carolina Driver's License with classification and endorsements required for operation of the class and type of commercial motor vehicle used in the skills tests conducted by the Examiner; and
  - (4) Have successfully completed a Division sanctioned CDL Examiner Training Course. At a minimum upon completion of the training the Third Party Examiner should have acquired and demonstrated the following knowledge and skills:
    - (A) A comprehensive understanding of all information in the CDL Manual;
    - (B) A working knowledge of the CDL Administering and Scoring Guide;
    - (C) Ability to administer and score correctly each of the CDL skills test; and
    - (D) Knowledge of testing site and route requirements.
  - (5) Take part in all Division required advanced training courses, workshops, seminars, etc.;
  - (6) Within ten years prior to application have had no convictions for Driving While Impaired (DWI);
  - (7) Within five years prior to application have had no driver's license suspensions, revocations, cancellations or disqualifications;
  - (8) Must be at least 21 years of age and possess a high school diploma or equivalent;
  - (9) Conduct skills tests on behalf of the Third Party Tester, in accordance with these requirements and in accordance with current instructions provided by the Division.
- (c) The requirements of the skills tests are impracticable to print here. The requirements are contained in the CDL Administering and Scoring Guide which is available from the Driver License Section at 1100 New Bern Avenue, Raleigh, North Carolina 27697.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*



**.0705 CERTIFICATES**

- (a) A certificate will be issued allowing the Third Party Tester to operate an approved testing program to give skills tests to applicants for a CDL.
- (b) An examiner certificate will be issued to qualified employees of the Third Party Tester.
- (c) A copy of the Examiner's Certificate must be displayed in the office of the Third Party Tester.
- (d) The certificate issued by the Division to operate a Third Party Testing Program will be effective on the date of issuance and shall be prominently displayed in the place of business of the Third Party Tester until cancelled or revoked.
- (e) The Examiner's certificate will be effective on the date of issuance and remain in effect unless the Examiner must surrender the certificate to the Division when that Examiner becomes inactive or, until the certificate has been revoked or cancelled by the Division.
- (f) A certificate to operate a Third Party Testing program shall be non-transferable.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

**.0706 APPLICATION FOR THIRD PARTY TESTER CERTIFICATION**

- (a) Before any certificate is issued, an application shall be made in writing to the Division on a form prepared and furnished by the Division. The application shall include the following:
  - (1) The official name, address, and telephone number of the principal office or headquarters.
  - (2) Name, title, address and telephone number of the individual who has been designated the applicant's contact person.
  - (3) Description of the type of organization that is applying (governmental entity, association, motor carrier, educational institution), as well as the length of time they have been in business in North Carolina, if applicable.
  - (4) A description of the vehicle fleet owned or leased by the applicant, including a complete equipment roster as listed for insurance purposes.
  - (5) The class of testing for which the applicant is applying for.
  - (6) The total number of North Carolina licensed drivers employed to operate commercial motor vehicles, and the number of such drivers who are full-time, part-time, and seasonal.
  - (7) Name, driver's license number, social security number and home address of those payroll employee(s) who wish to be approved as a Third Party Examiners.
  - (8) Proof the Third Party Tester meets the insurance requirements as stated in Rule .0714 (a) - (d).
  - (9) The address of each North Carolina location where the applicant intends to conduct the skills tests as well as a description of the off-road facilities including a map, drawing or written description of the road test route that will be used for the on-road portion of the skills test.
- (b) Educational Institutions must submit with their application a description of their facilities, equipment and training curriculum. The number of applications for the previous year and the percent graduated must also be included.
- (c) An applicant for a certificate shall also execute an agreement form provided by the Division in which the applicant agrees, at a minimum, to comply with the requirements and instructions of the Division for Third Party Tester, including audit procedures, and agrees to hold the Division harmless from liability resulting from the Third Party Tester's administration of its CDL Skills Test Program.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

**.0707 APPLICATION FOR THIRD PARTY EXAMINER CERTIFICATION**

- Application for an Examiner Certificate shall be made on a form supplied by the Division. The form shall require at least the following information:
- (1) Full name, home and business addresses and telephone numbers;
  - (2) Driving history, including class of current license and any endorsements, and restrictions;
  - (3) Name, address and telephone number of the applicant's employer who has applied for or received a certificate as a Third Party Tester; and
  - (4) Employer's recommendation of the applicant for and examiner certificate, as well as proof that the applicant is a payroll employee.

*History Note: Statutory Authority G.S. 20-37.22;*

*Eff. September 1, 1990.*

**.0708 ADVERTISING**

- (a) No advertising shall indicate in any way that a program can issue or guarantee the issuance of a commercial driver's license, or imply that the program can in any way influence the Division in the issuance of a commercial driver's license or imply that preferential or advantageous treatment from the Division can be obtained.
- (b) No advertising shall show a telephone number unless it also shows a valid address for the principal place of business for the Third Party Tester.
- (c) Third Party Tester may state in advertising that it has been approved and certified by the Division.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

**.0709 ON-SITE INSPECTIONS AND AUDITS**

- (a) All applicants for a Third Party Tester Certificate shall permit the FHWA or the Division to inspect and audit its operations, facilities and records as they relate to its Third Party Testing program, for the purpose of determining whether the applicant is qualified to be certified.
- (b) Third Party Testers who have been certified shall permit the Division or FHWA to periodically, but at least annually, inspect and audit its Third Party Testing program to determine whether it remains in compliance with the certification requirements.
- (c) The Division and FHWA will perform inspections and audits with or without prior notice to the Third Party Tester.
- (d) Inspections and audits will include, at a minimum, an examination of:
  - (1) Records relating to Third Party Testing program;
  - (2) Evidence of compliance with the FMCSR's;
  - (3) Skills testing procedures practices and operations;
  - (4) Vehicles used for testing;
  - (5) Qualifications of Third Party Examiners;
  - (6) Effectiveness of the skills test program by either testing a sample of drivers who have been issued skills test certificates by the Third Party Tester or having Division employees take the skills tests from a Third Party Examiner; and
  - (7) Any other aspect of the Third Party Tester's operation that the Division determines is necessary to verify that the Third Party Tester meets the requirements for the certification.
- (e) The Division will prepare a written report of each inspection and audit report of the results of each inspection and audit. A copy of the report will be provided to the Third Party Tester.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

**.0710 NOTIFICATION REQUIREMENTS**

- (a) Third Party Tester must:
  - (1) Notify the Division in writing 30 days prior to any change in the Third Party Tester's name or address.
  - (2) Notify the Division in writing within ten days of any change in:
    - (A) The Third Party Examiners who are employed by the Third Party Tester; and
    - (B) The driving status of any Third Party Examiner.
  - (3) Notify the Division in writing within ten days of any of the following occurrences:
    - (A) The Third Party Tester ceases business operations in North Carolina.
    - (B) The Third Party Tester fails to comply with any of these Division requirements.
    - (C) Any Third Party Examiner receives notice from the Division of their license suspension, revocation, disqualification, or cancellations or DWI conviction.
    - (D) Any Third Party Examiner fails to comply with any of these Division requirements.
  - (4) Be recertified if a Third Party Tester ceases operation and reopens for business.
  - (5) Be reinspected prior to administering road tests if a Third Party Tester's business address changes.
  - (6) Request and obtain approval from the Division of any proposed changes in the skills test route, test content, or examiner administrative procedures.

(b) Third Party Examiners shall notify the Division within ten days of leaving the employ of the Third Party Tester and must be recertified by the Division before testing elsewhere.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0711 EVALUATION OF APPLICANTS BY THE DIVISION**

(a) The Division will evaluate the materials submitted by the Third Party Tester applicant, and if the application materials are satisfactory, the Division may schedule an on-site inspection and audit of the applicant's Third Party Testing Program to complete the evaluation.

(b) The Division will evaluate the materials submitted by the Third Party Examiner applicant including the applicant's driving record, qualification questionnaire, and certificate of training.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0712 CERTIFICATION BY THE DIVISION**

(a) Upon successful application and evaluation, a Third Party Tester will be issued a certificate which must be prominently displayed at the approved testing facility giving them the authority to administer a Third Party Testing program for the classes and types of vehicles listed.

(b) Upon successful application, evaluation and training, a Third Party Examiner will be issued a certificate which must be prominently displayed at the approved testing facility giving him/her the authority to conduct skills tests for the classes and types of commercial motor vehicles listed.

(c) Certificates will remain valid until canceled by the Division or voluntarily relinquished by the Third Party Tester or Examiner.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0713 PROFESSIONAL CONDUCT**

(a) No examiner, employee, or agent of the Third Party Tester will be permitted to accompany any Commercial Driver License applicant into any examining office rented, leased, or owned by the Division for the purpose of taking a written or skills test driver examination given by the Division.

(b) No examiner, employee, or agent of the Third Party Tester will be permitted to personally solicit any individual on the premises rented, leased, or owned by the Division for the purpose of enrolling that individual in any Third Party Testing program.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0714 INSURANCE REQUIREMENTS**

(a) All Third Party Testers shall maintain bodily injury and property damage liability insurance on motor vehicles used in driving tests, insuring the liability of the testing program, the Examiner and any person taking tests in the amount required by state law.

(b) Evidence of such insurance coverage, in the form of a certificate from the insurance carrier, shall be filed by the Tester with the Division. The certificate shall stipulate that the insurance contract carried by the Tester provides for cancellation only upon 30 days prior written notice to the Division. The certificate shall include the make, model, year and motor or serial number of every vehicle covered by the policy.

(c) When a vehicle is added to, exchanged or deleted from coverage under a fleet insurance plan, the Third Party Tester shall provide the Division a copy of a policy rider issued by the insurance carrier showing the addition or exchange, with complete descriptions of the vehicles involved.

(d) If the Third Party Tester is self-insured, an appropriate certificate shall be filed with the Division.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0715 TEST ADMINISTRATION**



(a) Skills tests shall be conducted strictly in accordance with the provisions of these requirements and with current test instructions provided by the Division. Such instructions may include information on skills test content, route selection revision, test forms, examiner procedures, and administrative procedures and or changes.

(b) Skills test shall be conducted:

- (1) On test routes approved by the Division.
- (2) In a vehicle that is representative of the class and type of vehicle for which the CDL applicant seeks to be licensed and for which the Third Party Examiner is qualified to test.
- (3) Using Division approved content, forms, and scoring procedures.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

#### **.0716 DENIAL/TERMINATION OF THIRD PARTY TESTING PROGRAM/CERTIFICATION**

(a) The Division may deny any application for a Third Party Tester or Examiner's Certificate, if the applicant does not qualify for the certificate under provisions of these Rules. Misstatements or misrepresentation may be grounds for denying a certificate.

(b) Any Third Party Tester or Examiner may relinquish certification upon 30 days notice to the Division.

(c) The Division reserves the right to cancel the Third Party Testing Program provided for in these requirements, in its entirety.

(d) The Division may revoke the certificate of a Third Party Tester or Examiner upon the following grounds:

- (1) Failure to comply with or satisfy any of the provisions of these requirements, the Division instructions or the Third Party Tester Agreement;
- (2) Falsification of any record or information relating to the Third Party Testing program;
- (3) Commission of any act which compromises the integrity of the Third Party Testing program;
- (4) For Third Party Examiner: driver license suspension, revocation, cancellation, or disqualifications; and
- (5) For Third Party Examiner: conviction of driving while impaired (DWI).
- (6) Hold more than one license.
- (7) Has a physical impairment that in the judgment of the Division would impair his ability to safely operate a motor vehicle of the class required to certify others.

(e) If the Division determines that grounds for cancellation exist for failure to comply with these requirements or the Third Party Tester Agreement, the Division may postpone cancellation and allow the Third Party Tester or Examiner 30 days to correct the deficiency.

(f) If Third Party Examiner or Tester is alleged to be in violation of any provisions of these Regulations, the Examiner or Tester:

- (1) Shall be notified by registered or certified mail;
- (2) May request a "show-cause" hearing. The request must be within ten days of receipt of the registered or certified letter;
- (3) May be represented by counsel;
- (4) Upon completion of the hearing, the Division shall notify the Third Party Tester or Examiner within ten days of its decision which may be appealed; and
- (5) Recertification will be required if any Third Party Tester or Examiner, or Third Party Tester's or Examiner's certification is revoked or cancelled.

*History Note: Statutory Authority G.S. 20-37.22;  
Eff. September 1, 1990.*

### **SUBCHAPTER 3D - LICENSE AND THEFT SECTION**

#### **SECTION .0800 - SAFETY RULES AND REGULATIONS**

##### **.0801 SAFETY OF OPERATION AND EQUIPMENT**

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 - formerly Parts 290-298 - and amendments thereto) shall apply to all for-hire motor carrier vehicles engaged in interstate commerce and intrastate

commerce over the highways of the State of North Carolina, whether common carriers, contract carriers or exempt carriers.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall also apply to all private motor carriers engaged in the transportation of hazardous waste and radioactive waste in interstate and intrastate commerce over the highways of the State of North Carolina.

(c) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all private motor carrier vehicles on the highways of the State of North Carolina used in commerce to transport cargo:

- (1) if such vehicle has a gross vehicle weight rating of 10,000 pounds or more; or
- (2) if such vehicle is used in the transportation of materials found to be hazardous in accordance with the Hazardous Materials Transportation Act as amended in Title 49, Code of Federal Regulations.

Provided, Part 396.17 shall not apply to vehicles operated by farmers or their employees solely within North Carolina.

Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina will be exempt from provisions of Part 391.11(b)(1) and Part 391.41(b)(1) through (11) and therefore will be authorized for intrastate operation if licensed prior to March 30, 1992, are approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles and meet all other requirements of this Section. These drivers shall continue to be exempt upon completion of a biennial medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer.

*History Note: Statutory Authority G.S. 20-384;  
Eff. December 1, 1983;  
Amended Eff. September 1, 1990; November 1, 1988;  
July 1, 1988; June 1, 1988.*

## **SUBCHAPTER 3G - TRAFFIC SAFETY EDUCATION SERVICES SECTION**

### **SECTION .0200 - SCHOOL BUS DRIVER TRAINING AND CERTIFICATION**

#### **.0206 PERIOD OF CERTIFICATION**

As of September 1, 1990, a school bus driver certificate shall be valid for a period of four years to coincide with the four-year period of the driver's Commercial Driver License. The expiration date shall be the driver's birthday in the fourth year following the year of issuance in conformity with the provisions of the first Paragraph of General Statute 20-7(f).

*History Note: Statutory Authority G.S. 20-39(b); 20-218;  
Eff. April 1, 1989;  
Amended Eff. September 1, 1990.*

#### **.0209 CANCELLATION OF CERTIFICATION**

The Division of Motor Vehicles shall cancel the school bus driver certificate of any driver for the following reasons:

- (1) Any determination that the certificate was issued on the basis of misinformation, false statements, or fraud.
- (2) A suspension, revocation, or cancellation of the driver license.
- (3) Conviction of a motor vehicle moving offense, to the following extent:
  - (a) Driving while impaired;
  - (b) Passing a stopped school bus;
  - (c) Hit and run;
  - (d) Reckless driving;
  - (e) Speeding more than 15 mph above the posted limit;
  - (f) Two convictions within a period of 12 months;
  - (g) A conviction of violation committed while operating a school bus.
- (4) A determination of physical or mental inadequacy under the provisions of the physical requirements noted in Rule .0205 of this Section.

- (5) A local cancellation of certification, in the discretion of the local administrative unit, for violation of local regulations, submitted formally to the Driver Education Specialist for cancellation at the state level.
- (6) Should evidence of improper or unsafe driving practices and driving procedures on the part of any certified driver come to the attention of the Driver Education Specialist, the Specialist may require re-examination of that driver. The Driver Education Specialist shall have authority to suspend certification of a driver until the Driver Education Specialist is satisfied, by additional training and observation, that the driver is a fit and competent person to operate or drive a school bus.
- (7) A driving record which in its overall character arouses serious question about the reliability, judgment, or emotional stability of the driver.

*History Note: Statutory Authority G.S. 20-39(b); 20-218;  
Eff. April 1, 1989;  
Amended Eff. September 1, 1990.*

## **SUBCHAPTER 3I - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTIONS**

### **SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL DRIVER TRAINING SCHOOLS**

#### **.0202 ORIGINAL APPLICATION**

Each original application for a commercial driver training school license shall consist of the following:

- (1) Application for license;
- (2) Personal history statement of owner-operator or manager. This information is confidential and for use by the Division only;
- (3) Proposed plan of operation;
- (4) Proof of liability insurance;
- (5) Sample copies of contracts;
- (6) A check or money order in the amount of forty dollars (\$40.00). This fee is due for both original and renewal applications for license;
- (7) Certificate of assumed name;
- (8) Surety Bond;
- (9) A report from the appropriate government agency indicating that the location or locations meet fire safety standards;
- (10) A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations;
- (11) List of fees for all services offered by the school; and
- (12) A copy of lease agreement if leasing vehicles.

*History Note: Statutory Authority G.S. 20-322 through 20-324;  
Eff. July 2, 1979;  
Amended Eff. September 1, 1990; April 1, 1989;  
May 1, 1987; June 1, 1982.*

#### **.0209 LICENSE REQUIRED**

No school or branch is permitted to operate, advertise for business or collect monies without the proper license in hand as set forth in these Regulations.

*History Note: Statutory Authority G.S. 20-322;  
Eff. July 2, 1979;  
Amended Eff. September 1, 1990.*

### **SECTION .0400 - MOTOR VEHICLES USED IN INSTRUCTION**

#### **.0401 VEHICLE EQUIPMENT**

Behind-the-wheel instruction of students in commercial driver training schools shall be conducted in motor vehicles owned or leased by the school. All vehicles used for the purpose of demonstration and practice shall:



- (1) be equipped with:
  - (a) dual controls on the foot brake;
  - (b) dual controls on the clutch, if the vehicle is equipped with a clutch and manual transmission;
  - (c) seatbelts for both the instructor and the students which shall be worn by the instructor and students while the vehicle is being used for instructional purposes;
  - (d) an outside rearview mirror mounted on the right side of the vehicle;
  - (e) a heater and defroster in working condition;
  - (f) all other equipment required by Chapter 20 of the North Carolina General Statutes;
  - (g) cushions: for short drivers;
  - (h) seat adjustments: moves easily, smoothly; secures after moving;
  - (i) door locks: operation; no sharp knobs;
  - (j) cleanliness inside: seats, dash, floors; outside: windows, lights, general appearance, license plate.
- (2) bear a conspicuously displayed sign with the words "Student Driver" in letters not less than three inches in height, and the name and location of the school in letters not less than one and one half inches in height. The required wording must be visible from both the front and rear of the vehicle.

*History Note: Statutory Authority G.S. 20-322 through 20-324;  
Eff. July 2, 1979;  
Amended Eff. September 1, 1990; February 1, 1983.*

## SECTION .0500 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR

### .0501 REQUIREMENTS

- (a) Each instructor of a commercial driver training school or branch shall:
  - (1) be of good moral character;
  - (2) have at least four years of experience as a licensed operator of a motor vehicle;
  - (3) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the ten years immediately preceding the date of application;
  - (4) not have had a revocation or suspension of his driver's license in the four years immediately preceding the date of application;
  - (5) have graduated from high school or hold a high school equivalency certificate;
  - (6) not have had convictions for moving violations totaling seven or more points in the three years preceding the date of application;
  - (7) have completed the two-semester hour, college credit preparatory course for teachers; an equivalent course approved by the commissioner, or an Instructor Training Program conducted by an approved Commercial Driver Training School;
  - (8) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest)
  - (9) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest)
  - (10) be given a three month probation period until evaluated and recommended by a Driver Education Specialist.
- (b) An applicant may apply for an instructor's learner's permit which would be valid for three months. To be eligible for an instructor's learner's permit, the applicant shall meet requirements (a) (1) through (6); and shall:
  - (1) submit an Instructor Application with an eight dollar (\$8.00) application fee, copy of high school diploma or high school equivalency certificate, and physical examination form;
  - (2) successfully complete 30 hours of classwork as a student at an approved commercial driver training school;
  - (3) successfully complete six hours of behind-the-wheel training as a student at an approved commercial driver training school;
  - (4) successfully complete six hours of observation of behind-the-wheel instruction of a new driver by a licensed instructor trainer;
  - (5) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest)
  - (6) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest)
  - (7) shall after completing (b)(1) through (6) practice teach in the presence of an instructor trainer;

- (8) successfully complete two hours of classroom instruction while being observed by a Driver Education Specialist;
  - (9) successfully complete two hours of behind-the-wheel instruction while being observed by a Driver Education Specialist;
  - (10) be recommended by a Driver Education Specialist to receive an instructor's license.
- (c) An instructor at an approved commercial driver training school may apply for an Instructor Trainer license. The Instructor Trainer shall:
- (1) have five consecutive years as an active licensed instructor;
  - (2) submit an application for Instructor Trainer License with a fee of eight dollars (\$8.00);
  - (3) complete two hours of classroom observation by a Driver Education Specialist while training instructors, not driver education students;
  - (4) complete two hours of behind-the-wheel observation by a Driver Education Specialist while training instructors, not driver education students;
  - (5) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest)
  - (6) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest)
  - (7) be recommended by a Driver Education Specialist;
  - (8) must requalify each school year.

*History Note: Statutory Authority G.S. 20-322 through 20-324;  
Eff. July 2, 1979;  
Amended Eff. September 1, 1990; April 1, 1989;  
February 1, 1988; May 1, 1987.*

*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**

### **Banking Commission**

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| <i>4 NCAC 3C .0201 - Establishment of Branch and Limited Svcs Facilities</i> | <i>ARRC Objection 7/19/90</i> |
| <i>4 NCAC 3C .0202 - Branch Closing</i>                                      | <i>ARRC Objection 7/19/90</i> |
| <i>4 NCAC 3C .0901 - Books and Record</i>                                    | <i>ARRC Objection 7/19/90</i> |
| <i>4 NCAC 3C .1301 - Annual Vacation</i>                                     | <i>ARRC Objection 7/19/90</i> |

### **Community Assistance**

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| <i>4 NCAC 19L .0501 - Definition</i> | <i>ARRC Objection 7/19/90</i> |
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### **Savings Institutions Division**

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| <i>4 NCAC 16A .0302 - Response of Administrator to Petition</i> | <i>ARRC Objection 5/17/90</i> |
| <i>Agency Revised Rule</i>                                      | <i>Obj. Removed 6/21/90</i>   |
| <i>4 NCAC 16A .0402 - Informal Settlement</i>                   | <i>ARRC Objection 5/17/90</i> |
| <i>Agency Revised Rule</i>                                      | <i>Obj. Removed 6/21/90</i>   |

## **ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

### **Environmental Health**

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| <i>15A NCAC 18A .1814 - Disposal of Garbage and Trash: Premises</i>    | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 7/19/90</i>   |
| <i>15A NCAC 18C .1529 - Point-of-Entry and Other Treatment Devices</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 7/19/90</i>   |

### **Environmental Management**

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| <i>15A NCAC 2F .0102 - General Criteria</i>                                  | <i>ARRC Objection 5/17/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 6/21/90</i>   |
| <i>15A NCAC 2F .0105 - Effective Contingent Upon Federal Funds Allocated</i> | <i>ARRC Objection 5/17/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 6/21/90</i>   |

### **Health: Epidemiology**

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| <i>15A NCAC 19B .0202 - Granting Permits</i>                               | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 7/19/90</i>   |
| <i>15A NCAC 19D .0407 - Medical Eligibility</i>                            | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 7/19/90</i>   |
| <i>15A NCAC 19D .0408 - Medical Eligibility/Licensed Nursing Home Svcs</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i>   | <i>Obj. Removed 7/19/90</i>   |

### **Laboratory Services**

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| <i>15A NCAC 20A .0002 - Definitions</i> | <i>ARRC Objection 6/21/90</i> |
| <i>Agency Revised Rule</i>              | <i>Obj. Removed 7/19/90</i>   |



Wildlife Resources Commission

15A NCAC 10C .0501 - *Scope and Purpose*  
*Agency Revised Rule*

ARRC Objection 6/21/90  
Obj. Removed 7/19/90

**HUMAN RESOURCES**

AFDC

10 NCAC 49C .0101 - *Eligibility for Coverage*

ARRC Objection 7/19/90

Governor Morehead School

10 NCAC 21A .0301 - *Eligibility*

ARRC Objection 7/19/90

Medical Assistance

10 NCAC 50B .0311 - *Reserve*  
*Agency Revised Rule*

ARRC Objection 6/21/90  
Obj. Removed 7/19/90

Youth Services

10 NCAC 44F .1305 - *Corporal Punishment and Child Abuse*  
*Agency Revised Rule*

ARRC Objection 5/17/90  
Obj. Removed 6/21/90

10 NCAC 44B .0504 - *Medical Care*

ARRC Objection 7/19/90

10 NCAC 44B .0506 - *Room Restriction or Confinement*

ARRC Objection 7/19/90

**LICENSING BOARDS AND COMMISSIONS**

Certification Board for Social Work

21 NCAC 63 .0104 - *Organization of the Board*  
*Agency Revised Rule*

ARRC Objection 5/17/90  
Obj. Removed 6/21/90

21 NCAC 63 .0301 - *Written Examinations*  
*Agency Revised Rule*

ARRC Objection 5/17/90  
Obj. Removed 6/21/90

21 NCAC 63 .0403 - *Renewal Fees*  
*Agency Revised Rule*

ARRC Objection 5/17/90  
Obj. Removed 6/21/90

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Elementary and Secondary Education

16 NCAC 6D .0105 - *Use of School Day*  
*Objection Reconsidered and Failed*  
*Clincher Motion Passed*

ARRC Objection 6/21/90  
7/19/90

**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

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## ARRC OBJECTIONS

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<i>18 NCAC 4 .0307 - Application For Reservation of Corporate Name</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0308 - Registered Office and Registered Agent</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0311 - Art of Merger/Share Exch /G.S. 55-11-07/55A-42.1</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0312 - Appl For Cert of Authority/Foreign Prof Corporation</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0313 - Filing Merger Involving Foreign Corporation</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0314 - Filing Evidence of Dissolution/Foreign Nonprofit Corp</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0316 - Form for Annual Report</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0401 - Documents</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0402 - Cert of Facts/Certificate of Exit/Authorization</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0501 - General</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0502 - Words Prohibited in Addition to Statutory Prohibitions</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0503 - Deceptively Similar and Distinguishable Names</i>	<i>ARRC Objection 6/21/90</i>
<i>18 NCAC 4 .0504 - Filing Fictitious/Assumed Name/Foreign Corporation</i>	<i>ARRC Objection 6/21/90</i>
<i>No Response Received From Agency</i>	<i>7/19/90</i>

### Securities Division

<i>18 NCAC 6 .1210 - Securities Exchgs/Auto Quotation Sys Approve/Admin</i>	<i>ARRC Objection 6/21/90</i>
<i>No Response Received From Agency</i>	<i>7/19/90</i>

*This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.*

**10 NCAC 3R .0317(g) - WITHDRAWAL OF A CERTIFICATE**

Robert Roosevelt Reilly, Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Dawn Health Care, a North Carolina General Partnership, Petitioner v. Department of Human Resources, Certificate of Need Section, Respondent* (90 DHR 0296).



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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

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*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.*

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3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
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8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
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# NORTH CAROLINA ADMINISTRATIVE CODE

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