

7-107-1267

The **NORTH CAROLINA REGISTER**

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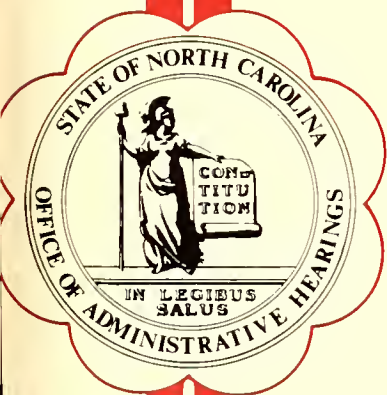
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ARRC OBJECTIONS

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ISSUE DATE: MARCH 1, 1991

Volume 5 • Issue 23 • Pages 1323-1366



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 27447, Raleigh, N. C. 27611-7447, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 page or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER

Publication 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
04/16/90	03/23/90	03/30/90	05/16/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
05/15/90	04/24/90	05/01/90	06/14/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
06/15/90	05/24/90	06/01/90	07/15/90	10/01/90
07/02/90	06/11/90	06/18/90	08/01/90	11/01/90
07/16/90	06/22/90	06/29/90	08/15/90	11/01/90
08/01/90	07/11/90	07/18/90	08/31/90	12/01/90
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08/15/91	07/25/91	08/01/91	09/14/91	12/01/91
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11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
11/15/91	10/24/91	10/31/91	12/15/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92
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.

CHANGE OF HEARING LOCATION FOR THE NOTICE PUBLISHED IN THE NORTH CAROLINA REGISTER, VOLUME 5, ISSUE 20 ON PAGE 1222.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-12 that the Board of Medical Examiners of the State of North Carolina intends to amend rule(s) cited as 21 NCAC 32L .0001, .0005, and .0009.

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

The public hearing will be conducted at 6:30 p.m. on March 13, 1991 at the Marriott RTP, 4700 Guardian Drive, Morrisville, N.C.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before March 1, 1991, to the following address: Administrative Procedures, NC Board of Medical Examiners, 1313 Navaho Drive, Raleigh, NC 27609.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32L - APPROVAL OF PHYSICIAN ASSISTANTS

.0001 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Physician Assistant or PA" means an auxiliary, paramedical person who functions at the direction of or under the supervision of a physician licensed by the Board and who performs tasks traditionally performed by the physician, such as history taking, physical examination, diagnosis, and treatment.
- (2) "Physician Assistant Applicant" means the individual upon whose behalf an application is submitted who may function before approval by the Board in the same manner in which he functioned as a student under strict supervision as outlined in Rule .0002 of this Subchapter.
- (3) "Supervision" means the physician's function of overseeing, managing, and directing

the medical acts performed by the PA as outlined in Rule .0009 of this Subchapter.

- (4) "Primary Supervising Physician" means the physician who, by signing the application to the Board, accepts full medical administrative responsibility for the PA's medical activities and conduct at all times whether he personally is providing supervision or supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume total responsibility to assure the Board that the PA is sufficiently qualified by education and training to perform all medical acts required of the PA and shall assume total responsibility for the PA's performance in the particular field or fields in which the PA is expected to perform medical acts.
- (5) "Back-up Supervising Physician" means the physician who, by signing the application to the Board, accepts the responsibility to be available to supervise the PA's activities in the absence of the Primary Supervising Physician only in the practice sites listed in the application approved by the Board. The Back-up Supervising Physician is responsible for the activities of the PA only when he is providing supervision.
- (6) "Formulary" means the document which lists generic categories of drugs to be prescribed, ordered, or dispensed by physician extenders under written standing orders from the supervising physician for patient care in approved practice sites.
- (7) "Approved practice sites" means only those practice sites specifically listed in the approved application on file in the Board's office in which the PA may legally perform medical acts.

Statutory Authority G.S. 90-18(13); 90-18.1.

.0005 PRESCRIBING PRIVILEGES

(a) The PA Applicant and the supervising physicians shall acknowledge in the application that they are familiar with laws and rules of the Board regarding prescribing; and shall agree to comply with these laws and rules by incorporating the laws and rules, including the Formulary, into their written standing orders.

(b) The generic categories listed in the Formulary are based on the American Hospital

Formulary Service published by the American Society of Hospital Pharmacists. The Formulary is adopted by reference by the Board as a part of this Rule in accordance with provisions of G.S. 150B-14(c).

(c) The prescribing stipulations contained in these rules and in the Formulary apply to writing prescriptions, ordering the administration of medications in out-patient and inpatient settings, and dispensing medications. Approval to dispense must be obtained from the Board of Pharmacy.

(d) Prescribing stipulations are as follows:

(1) Controlled Substances:

(A) No controlled substances (Schedules 2, 2N, 3, 3N, 4, 5) defined by the State and Federal Controlled Substances Acts may be prescribed, ordered, or dispensed.

(B) Verbal orders given to the PA by the supervising physician for administration of a controlled substance to a specific patient may be entered into the patient chart by the PA just as an RN may transcribe a physician's verbal order into a patient chart.

(2) Parenteral Medications - No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Subparagraph (3)(B) of this Rule, with the following exceptions:

(A) Insulin;

(B) Immunizations (DPT, MMR, Hib);

(C) Tetanus toxoid, DT, or hyperimmune serum;

(D) Epinephrine;

(E) Benadryl.

(2) Parenteral Medications - No parenteral preparations may be prescribed, ordered, dispensed, or administered unless under the order of the supervising physician as set forth in Paragraph (d)(3)(B) of this Rule with the exception of those medications listed on the Formulary as allowed.

(3) Excluded Drugs:

(A) Any pure form or combination of the generic classes of drugs listed in the Formulary may be prescribed, ordered, or dispensed, unless the drug or class of drug is listed as excluded from the Formulary.

(B) Drugs excluded by the Formulary, except controlled substances, may be prescribed by the PA only upon specific written or verbal orders from the supervising physician for a specific patient given before the prescription or order is issued by the PA. Such a prescription or order

must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.

(B) The PA may prescribe an excluded drug or class of drug only as follows:

(i) after the patient has been previously seen by the supervising physician for initial treatment of that illness and a written order has been entered into the chart by the physician for future treatment by the PA; or

(ii) upon a specific written or verbal order obtained from the supervising physician before the prescription or order is issued by the PA.

(C) Such a prescription or order written as described in Paragraph (d)(3)(B) of this Rule must be signed by the PA with a notation that it is issued on the specific order of the supervising physician. For example: Mary Smith, PA, on order of John Doe, M.D.

(4) Refills - A prescription may not indicate a refill with the exception of birth control medications which may be issued for a period not to exceed one year.

(5) Dosage Units - Amount of drug prescribed, ordered, or dispensed can be no more than 100 dosage units or a one month supply with the exception of birth control medications which may be issued for a period not to exceed one year.

(6) Prescription Notations - Every prescription must be noted on the patient's chart. A second prescription for the same medication may be authorized by telephone by the PA and must be entered on the patient's chart and countersigned by the supervising physician within the specified countersigning time approved by the Board.

(7) Prescribing Number - A prescribing number is assigned by the Board to a PA upon approval by the Board. This number must appear on all prescriptions issued by the PA. The prescribing number is used as the PA's Approval Number.

(8) Prescription Blank Format - All prescriptions issued by a PA ~~should~~ shall contain the name and telephone number of the supervising physician; the name, practice address, telephone number, and prescribing number of the PA, as well as all information required by law. A suggested prescription format is included in the application packet.

- (9) Pre-signed Prescription Blanks - The supervising physician shall not leave pre-signed prescription forms for use by the PA.

Statutory Authority G.S. 90-18(13); 90-18.1; 150B-14(c).

.0009 SUPERVISION OF A PA

Supervision shall be provided by the responsible physician as follows:

- (1) Availability:
 - (a) The supervising physician shall be available for direct communications by radio, telephone, or telecommunications.
 - (b) The supervising physician shall be available on a regularly scheduled basis for referrals of patients from the PA.
 - (c) ~~A PA shall refer a patient to another health provider other than an approved supervising physician only on the order of an approved supervising physician.~~
- (2) Written Standing Orders:
 - (a) The supervising physician shall provide in each practice location, for use by the PA and for referral by other personnel, written standing orders and drug protocols to cover most commonly encountered problems in the practice setting.
 - (b) The written standing orders shall include a predetermined plan for emergency services.
 - (c) The PA shall refer a patient to another physician other than an approved supervising physician only in accordance with written standing orders.
- (3) Countersigning:
 - (a) The time interval between the PA's contact with the patient and chart review and countersigning by the supervising physician shall be 72 hours.
 - (b) A longer countersigning time interval may be considered by the Board upon specific request. The request should explain the

practice circumstances which necessitate the longer countersigning interval.

- (c) All entries by a PA into patient charts in all approved practice locations must be countersigned by the supervising physician. Entries include but are not limited to: progress notes; treatment rendered; tests or procedures ordered; and notations of prescriptions or orders, and drugs dispensed or administered.
- (4) Supervision Arrangements:
 - (a) If the PA is to perform duties away from the supervising physician, the application must clearly specify the circumstances which would justify this action and the supervisory arrangements established to protect the patient.
 - (b) Details must be submitted describing distance, time, topography, physical characteristics, and communication ability between the PA and the supervising physician.
- (5) Supervising Physicians:
 - (a) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, cannot be named as a supervising physician.
 - (b) A physician in a graduate medical education program who is also practicing in a non-training situation may supervise physician assistants in the non-training situation if fully licensed.
 - (c) All physicians who may supervise the PA in any manner must be approved by the Board before PA supervision occurs.
 - (6) The PA must be prepared to demonstrate upon request to a member of the Board, or its delegates, the ability to perform the medical acts assigned by the supervising physician.

Statutory Authority G.S. 90-18(13).

EXECUTIVE ORDER NUMBER 131
AMENDMENT TO EXECUTIVE ORDER
NUMBER 15
JUVENILE JUSTICE PLANNING COMMITTEE

WHEREAS, The Juvenile Justice Planning Committee was established by Executive Order Number 15 on June 28, 1985, and extended by Executive Order Number 94 on July 14, 1989; and

WHEREAS, In order to meet the Federal guidelines contained in the Federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended, it is now necessary to alter the membership requirements of that committee;

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

The first sentence of Executive Order Number 15, Section 1, is amended to read:

"The membership of the Juvenile Justice Planning Committee, an adjunct committee of the Governor's Crime Commission, shall consist of twenty-five (25) members selected as follows:"

Section 1(b) of Executive Order Number 15 is amended to read as follows:

"The following nine members shall be appointed by the Secretary of the Department of Crime Control and Public Safety and shall serve at his pleasure:

- i) a representative of a business group or a business that employs youth;
- ii) a representative of private organizations, including those with a special focus on maintaining and strengthening the family unit, or those representing parents or parent groups, or those concerned with delinquency prevention and treatment and with neglected or dependent children, or those concerned with the quality of juvenile justice, education, or social services for children;
- iii) a representative of an organization that utilizes volunteers to work with delinquents or potential delinquents;
- iv) a representative of a community-based delinquency prevention or treatment program;
- v) a youth worker involved with alternative youth programs;
- vi) a person with special experience and competence in addressing the problems of the family, school violence and vandalism, and learning disabilities; and
- vii) three members under the age of 24, and who have been or are currently under the jurisdiction of the juvenile justice system."

All other provisions of Executive Order Number 15 remain in force.

This order shall be effective immediately and shall remain in effect until June 30, 1993.

Done in Raleigh, North Carolina this the 7th day of February, 1991.

VOTING RIGHTS ACT FINAL DECISION LETTER

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

U.S. Department of Justice
Civil Rights Division

JRD:MAP:TCR:lrj
DJ 166-012-3
90-4812
91-0056

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

February 8, 1991

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

Dear Mr. Holec:

This refers to the two annexations (adopted November 26, 1990, and December 10, 1990) to the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submissions on December 17, 1990 and January 8, 1991.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

J. Gerald Hebert
Acting Chief, Voting Section

**TITLE 1 - DEPARTMENT OF
ADMINISTRATION**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to amend rule(s) cited as 1 NCAC 4G .0212.

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

The public hearing will be conducted at 2:00 p.m. on April 3, 1991 at the Department of Administration, Policy and Planning Conference Room 5062C, 116 West Jones Street, Raleigh, NC 27603-8003.

Comment Procedures: Any interested person may present his/her comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003 (919) 733-7232.

CHAPTER 4 - AUXILIARY SERVICES

SUBCHAPTER 4G - SURPLUS PROPERTY

SECTION .0200 - STATE SURPLUS PROPERTY

**.0212 TELEFAX AND TELEGRAPH
PROPOSALS**

Under emergency conditions, telegraph proposals. Telegraph or telephone facsimile machine (FAX) bids may be considered if received prior to specified time and date of the bid opening and are confirmed in writing and postmarked the same day. Any bid submitted under this Rule which is not confirmed in writing and postmarked by midnight of the published date for receipt of bids will not be considered.

Statutory Authority G.S. 143-49.

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26D .0014.

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

The public hearing will be conducted at 1:30 p.m. on May 2, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina 27603.

Comment Procedures: Written comments concerning this amendment must be submitted by May 2, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

**SUBCHAPTER 26D - LIMITATIONS ON
AMOUNT; DURATION; AND SCOPE**

.0014 THERAPEUTIC LEAVE

(e) A patient's 12-month entitlement period shall begin on the date the first approved therapeutic absence begins and continue through that date in the next calendar year. After the first entitlement period, a new 12-month entitlement period shall begin on the date following the end of the previous entitlement period on which approved therapeutic leave again begins. January 1 and continue through December 31 of a calendar year. Unused therapeutic leave days shall not be carried over from one entitlement period calendar year to another.

Statutory Authority G.S. 108A-25(b); 108A-62; Chapter 1014, Session Laws, 2nd Session 1986.

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 50B .0101 - .0102.

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

The public hearing will be conducted at 1:30 p.m. on April 1, 1991 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.

Comment Procedures: Written comments concerning these amendments must be submitted by April 1, 1991, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina

27603, ATTN.: Bill Hottel, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0100 - COVERAGE GROUPS

.0101 MANDATORY

The following groups required by 42 U.S.C. 1396a (a)(10)(A)(i) shall be eligible for Medicaid:

- (14) Children under age ~~one~~ six whose countable income does not exceed the percent of the income official poverty line, established at 42 U.S.C. 1396a(1)(2).

Authority G.S. 108A-54; 150B-14(c); 42 U.S.C. 1396a (a)(10)(A)(i); 42 U.S.C. 1396a(f); 42 C.F.R. 435.110; 42 C.F.R. 435.112; 42 C.F.R. 435.113; 42 C.F.R. 435.114; 42 C.F.R. 435.115; 42 C.F.R. 435.116; 42 C.F.R. 435.117; 42 C.F.R. 435.118; 42 C.F.R. 435.121; 42 C.F.R. 435.131; 42 C.F.R. 435.132; 42 C.F.R. 435.133.

.0102 OPTIONAL

The following optional groups of individuals described by 42 U.S.C. 1396a(a)(10)(A)(ii) and 42 U.S.C. 1396a(a)(10)(C) shall be eligible for Medicaid:

- (4) Pregnant women:
 - (a) Whose countable income is more than the amount established under Paragraph ~~(15)~~ (13); Rule .0101 of this Section and not more than a percent of the federal poverty level established by the General Assembly, or
 - (b) Who, if their countable income exceeds the percent of the federal poverty level, established in Subparagraph (4)(a) of this Rule, meet the eligibility criteria for medically needy set forth in this Subchapter.

Authority G.S. 108A-54; 42 U.S.C. 1396a(a)(10)(A)(ii); 42 U.S.C. 1396 a (a)(10)(C); 42 C.F.R. 435.210; 42 C.F.R. 435.222; 42 C.F.R. 435.230; 42 C.F.R. 435.301; 42 C.F.R. 435.308; 42 C.F.R. 435.322; 42 C.F.R. 435.330; S.L. 1983, c. 1034, s. 62.2; S.L. 1987, c. 738, s. 69 and 70; S.L. 1989, c. 752, s. 133.

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

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Environment, Health, and Natural Resources, Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2H .0103, .0105, .0107, .0127 and repeal rule(s) cited as 15A NCAC 2H .0128 - .0137.

A fiscal note has been issued and a copy is available from the agency.

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

The public hearing will be conducted at 2:00 p.m. on April 3, 1991 at the Archdale Building - Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Notice is hereby given of a public hearing to be held by the North Carolina Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission (EMC) concerning modification of the State's procedural rules for the issuance of National Pollutant Elimination System (NPDES) permits as follows.

This public hearing is being held for the purpose of receiving public comment on the proposals to modify the discharge permit procedural rules (Title 15A NCAC 2H .0103; .0105; .0107; .0127; .0128; .0129; .0130; .0131; .0132; .0133; .0134; .0135; .0136; and .0137). The EMC previously had approved modification of these rules in 1987 and 1988 to create the structure for a General NPDES Permit in the rules. These modifications were initiated with the expectation of securing approval of the U.S. Environmental Protection Agency (EPA) to utilize General Permits as a permitting tool in the State administration of the NPDES permitting program for discharges to the surface waters of the State. Subsequent to the amendment of the rules, the EPA advised the State that the rules, in part, contradicted the federal rules for permitting and that these parts of the rules would have to be revised before the State could qualify for this General Permit authorization. In order for EPA to approve North Carolina's use of General NPDES Permits, changes need to be made in the previously adopted rules, as described briefly below.

The primary change being proposed is the removal of the specific provisions for limitations and monitoring requirements that are currently detailed in

the rules for each type of general permit. Description of these specific general permits are proposed to be deleted from the rules. The procedure for the issuance of general permits would become an administrative action by the Department staff rather than being specifically described for each general permit in the rules. Each draft general permit would be publicly noticed for comment with the opportunity for public hearing before any final action is taken by the Department. EPA would have to review and approve each general permit before it could become effective.

Additional changes are proposed to add specific provisions for administration of the general permits which are necessary for consistency with federal regulations, and to revise the application procedures for general permits to reflect the deletion of the specific general permits from the rules.

The authority to issue General Permits will be an important capability for the State to have in order to administer the new federally promulgated NPDES requirements for stormwater permits. In order to gain this General Permit authorization at the earliest possible time, IT WILL BE NECESSARY FOR THE 30 DAY PUBLIC NOTICE PERIOD PRIOR TO THE PUBLIC HEARING DATE TO SERVE ALSO AS THE PUBLIC COMMENT PERIOD. THIS REPRESENTS A CHANGE FROM THE ROUTINE PROCEDURE USUALLY FOLLOWED BY THE EMC IN CONDUCTING RULEMAKING PUBLIC HEARINGS. CONSEQUENTLY, THE PUBLIC COMMENT PERIOD WILL CLOSE ON APRIL 5, 1991. The proposed effective date for the amendments is August 1, 1991.

Comments, data, statements and other information may be submitted in writing prior to the public hearing through April 5, 1991 (inclusive), or may be presented orally at the hearing. So that all persons desiring to speak may do so, statements may be limited to three minutes at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged.

The statutory authority for these actions is as follows: N.C.G.S. 143-215; 143-215.1; 143-215.3. Further information on the final proposals may be obtained by writing or calling: William Mills, P.E. or Coleen Sullins, P.E. N. C. Division of Environmental Management, P.O. Box 27687, Raleigh, North Carolina 27611 (919) 733-5083.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - WASTEWATER DISCHARGES TO THE SURFACE WATERS

.0103 DEFINITION OF TERMS

(1) - (12) No Change

(13) "General permit" means an NPDES "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122 authorizing a category of discharges which all involve the same or substantially similar types of operations, discharge the same types of wastes, require the same effluent limitations or operating conditions, require the same or similar monitoring, and in the opinion of the Director are more appropriately controlled under a general permit than under individual permits.

(14) - (22) No change

(23) "Stormwater" means the flow of water which results from precipitation and which occurs immediately following rainfall or a snowmelt.

Statutory Authority G.S. 143-215.3(a)(1); 143-213.

.0105 APPLICATION: PERMIT FEES: ASSESSMENT FOR NEW SOURCES

(a) Except as provided in Paragraphs (d) and (e) of this Rule, any person who discharges or who proposes to discharge pollutants to the surface waters of the state or to a POTW when pretreatment of the wastewater is required shall complete, sign, and submit, in triplicate, an application accompanied by the processing fee described herein for each application in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources.

The NPDES application forms to be used for the various types of discharges are as follows:

Std. Form A:	all municipal systems greater than or equal to 1.0 MGD as well as any municipal system receiving industrial waste from a primary industry.
Short Form A:	any municipal system not covered by Std. Form A.
Short Form B:	All agriculture related discharges.
Std. Form C:	All primary industries as listed in 40 CFR 122.21,

PROPOSED RULES

	Appendix A and all other industrial process and commercial discharges except cooling waters, cooling
or EPA Form 2-C:	tower blowdown, and boiler blowdown.
<u>EPA Form 1 and 2F:</u>	<u>Discharges consisting entirely of stormwater.</u>
<u>EPA Form 2D:</u>	<u>Discharges consisting of stormwater and non-stormwater.</u>
Short Form C:	Cooling waters, cooling tower blowdown, and boiler blowdown.
Short Form D:	All domestic waste discharges not covered by Std. Form A and Short Form A.
Short Form E:	Notice of Intent to be covered by general permit for once - through non - contact cooling waters, statewide.
Short Form F:	Notice of Intent for mine dewatering facilities, statewide.
Short Form G:	Notice of Intent for water filtration facilities, statewide.
Short Form H:	Notice of Intent for seafood packing facilities, statewide.
Short Form I:	Notice of Intent for oil terminal storage facilities discharging to water supply (WS-III) waters.
Short Form J:	Notice of Intent for oil terminal storage facilities discharging to waters, other than water supply (WS-III) waters.
Short Form K:	Notice of Intent for sand dredges, statewide.
Short Form L:	Notice of Intent for trout farms, statewide.
Short Form M:	Notice of Intent for aquifer restoration.
<u>Short Form N:</u>	<u>Notice of Intent for stormwater discharges, statewide.</u>

The pretreatment application forms to be used will be supplied by the Division.

- (b) Permit Fees.
- (1) No change
 - (2) Annual Administering and Compliance Monitoring Fees. An annual fee for administering and compliance monitoring shall be charged in each year of the term of every NPDES permit, including general permits, according to the schedule in Subparagraph (b)(5) of this Rule.
 - (A) - (F) No change
 - (G) A discharge which has recognized low potential for environmental impact may be charged the same fee schedule as cooling water and domestic waste. A low potential for environmental impact exists if it can be shown that the effluent flow ~~originates as stormwater runoff or groundwater seepage and~~ can be expected to meet all water quality standards including a BOD 5 concentration of less than 2 mg/l at the outlet of the treatment works. Also, i these quality criteria with average flows less than 100,000 GPD but which are permitted at a higher flow may upon request be allowed to meet the fee schedule of the cooling water rate of the less than 100,000 GPD category. Request for this special consideration should be made as part of the permit application and must be accompanied by documentation of eligibility under this Rule.
 - (H) No change
 - (3) - (4) No Change
 - (5) Schedule of Fees:

PERMIT APPLICATION PROCESSING FEE

	NEW APPLICATIONS MODIFICATIONS	RENEWALS WITHOUT MODIFICATIONS
--	--------------------------------------	--------------------------------------

CATEGORY

> 10,000,000 GPD		
Industrial	\$400	\$400
Domestic/Cooling Water	400	400
1,000,001 - 10,000,000 GPD		
Industrial	400	300
Domestic/Cooling Water	400	300
100,001 - 1,000,000 GPD		
Industrial	400	250
Domestic/Cooling Water	400	250

< / = 100,000 GPD

PROPOSED RULES

Industrial	400	200	and aquifer		
Domestic/Cooling			restoration		
Water	400	200		400	0
Single family			General permit	400	0
dwelling	240	120	for mine		
			dewatering,		
Stormwater-			sand dredges	400	0
Municipal Sep.					
Stormwater Sys.	400	400			
Industrial Activity			General permit	0	0
Stormwater	400	400	for swimming		
			pools	0	0
General Permits	200	200			
ANNUAL ADMINISTERING AND			Other general	200	0
COMPLIANCE MONITORING FEE			permits	200	0
IN					
STANDARD COMPLIANCE			(6) - (9) No change.		
Industrial	\$1500	\$1125	(10) Any applicant whose facility qualifies for		
Domestic/Cooling			a general permit under Rules Rule .0127		
Water	1500	1125	and .0128 through .0137 of this Section		
			may pay the lower fees set in Subpara-		
			graph (b)(5) of this Rule for the appro-		
			prate general permit.		
Industrial	1500	1125	Statutory Authority G.S. 143-215.1(c);		
Domestic/Cooling			143-215.3(a); 143-215.3B.		
Water	1200	900			
			.0107 STAFF REVIEW AND EVALUATION		
Industrial	800	600	(a) - (c) No change		
Domestic/Cooling			(d) In the case of permits for which notice of		
Water	600	450	intent is given on short forms E through M N		
			as described in Rule .0105(a) of this Article, Sec-		
			tion , a Certificate of Coverage under a general		
			permit shall be prepared and issued directly to the		
			applicant in lieu of any other acknowledgement.		
			If the Notice of Intent is unacceptable, it will be		
			returned to the applicant with a brief explana-		
			tion.		
Single family			Statutory Authority G.S. 130-161;		
dwelling	0	0	143-215.3(a)(1); 143-215.3(a)(4).		
			.0127 GENERAL PERMITS		
Stormwater-			(a) <u>In accordance with the provisions of G.S.</u>		
Municipal Sep.			<u>143-215.1 (b)(3) and (4), general General permits</u>		
Stormwater Sys.	600	450	<u>which are may be developed by the Division and</u>		
Industrial Activity			<u>issued by the Director for categories of activities</u>		
Stormwater	600	450	<u>shown in this Rule. will cover All those</u>		
			<u>dischargers in the State that receive received a</u>		
			<u>"Certificate of Coverage" for that category from</u>		
			<u>the Division will be deemed covered under that</u>		
			<u>general permit.</u> Each of the general permits will		
			be issued as an individual permit under G.S.		
			143-215.1, using all procedural requirements		
			specified for individual NPDES or state permits		
			including application and public notice. Each		

general permit must be approved by the U.S. EPA, before it becomes effective. Dischargers covered under general permits, developed in accordance with this Rule, will be subject to the same effluent standards and limits, management practices enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the ~~Commission~~ Director and approval by EPA, dischargers in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate:

- (1) once-through non-contact cooling waters with no biocidal additives;
- (2) mine dewatering facilities;
- (3) water filtration facilities;
- (4) swimming pool filter backwash facilities;
- (5) seafood packing facilities;
- (6) oil terminal storage facilities discharging to water supply (WS-III) waters;
- (7) oil terminal storage facilities discharging to waters other than those classified as water supply waters;
- (8) sand dredges;
- (9) trout farms;
- (10) aquifer restoration;
- (11) stormwater discharges;
- (12) categories of other discharges that all:
 - (A) involve the same or substantially similar operations;
 - (B) discharge the same type of waste;
 - (C) require the same effluent limitations or operating conditions;
 - (D) require the same or similar monitoring; and
 - (E) in the opinion of the Director are more appropriately controlled by a general permit.

(b) Coverage under general permits will only be granted for discharge into waters classified either WS or SA following review and written approval by the Division of Environmental Health, ~~Services~~, Department of ~~Human Resources~~ Environment, Health, and Natural Resources.

(c) Coverage under general permits will only be granted where the individual requesting coverage verifies that the management practices required as conditions in each general permit have been installed. ~~These general permits apply statewide except where restrictions based on the classification of receiving waters are stated.~~

(d) - (e) No change.

(f) For one of these general permits to apply to a facility, a Notice of Intent to be covered by the general permit must be given using short forms E through ~~M~~ N described in Rule .0105(a) of this Section and, as appropriate, following the application procedures specified in Rules .0105 and .0106 of this ~~Article~~ Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure will be required.

(g) - (j) No Change

(k) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual NPDES permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) noncompliance with the general permit;
- (2) noncompliance with Division Rules; or
- (3) a determination that the water of the stream receiving the discharge is not meeting applicable water quality standards.

(l) Any interested person may petition the Director to take an action under Paragraph (k) of this Rule to require an individual NPDES permit.

(m) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .0112 and .0114 of this Section.

Statutory Authority G.S. 143-215(1); 143-215(3)(a)(1).

- .0128 GENERAL PERMIT FOR COOLING WATERS (REPEALED)
- .0129 GENERAL PERMIT FOR MINE DEWATERING FACILITIES (REPEALED)
- .0130 GENERAL PERMIT FOR WATER FILTRATION FACILITIES (REPEALED)
- .0131 GENERAL PERMIT/SWIMMING POOL FILTER BACKWASH FACILITIES (REPEALED)
- .0132 GENERAL PERMIT FOR SEAFOOD PACKING FACILITIES (REPEALED)
- .0133 GENERAL PERMIT/OIL STORAGE FACILITIES DISC/WS-III WATERS (REPEALED)
- .0134 GENERAL PERMIT OTHER THAN WS-I; WS-II; OR WS-III (REPEALED)

- .0135 GENERAL PERMIT FOR SAND DREDGES (REPEALED)
- .0136 GENERAL PERMIT FOR TROUT FARMS (REPEALED)
- .0137 GENERAL PERMIT FOR AQUIFER RESTORATIONS (REPEALED)

Statutory Authority G.S. 143-215; 143-215(1); 143-215(3); 143-215.1; 143-215.3.

* * * * *

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 10D .0003.

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

The public hearings will be conducted at 7:00 p.m. on April 2, 1991 at:

Western Piedmont Community College
Auditorium
Morganton, North Carolina

Davie County Courthouse
Room 2
Mocksville, North Carolina

Buncombe County Courthouse
District Courtroom 1
Asheville, North Carolina

Stanly County Courthouse
Superior Courtroom
Albemarle, North Carolina

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing or by mailing to N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188. The record of hearing is open from fifteen days preceding the date of hearing to fifteen days after the date of hearing.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0003 HUNTING ON GAME LANDS

(e) Hunting Dates:

- (3) Any game may be taken on the following game lands during the open season, except that:

(C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, dogs may not be used for any hunting (day or night) during the regular season for hunting deer with guns; except that ~~small game birds~~ may be hunted with dogs in season on all game lands; ~~other than bear sanctuaries, in the counties of Cherokee, Clay, Jackson, Macon, Madison, Polk and Swain;~~

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

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to adopt rule(s) cited as 16 NCAC 6C .0207.

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

The public hearing will be conducted at 9:00 a.m. on April 1, 1991 at the 1st Floor Conference Room, Education Annex 1, 217 W. Jones Street, Raleigh, N.C.

Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0200 - TEACHER EDUCATION

.0207 PROSPECTIVE TEACHER SCHOLARSHIP LOANS

(a) Recipients who attend a college or university will receive up to two thousand dollars (\$2,000) per year to pay for courses, fees and books. Recipients who attend a technical community college will receive nine hundred dollars (\$900) per year to pay for courses, fees and books.

(b) Loans are available only to legal residents of North Carolina. To be considered a legal resident, a person must have lived in the state for at least 12 months before applying for the loan. In addition to the requirement of G.S. 115C-471(2) regarding endorsement of the note

by a minor's parent, each recipient must obtain the signature as surety of one resident of the state who is at least age 21.

(c) Persons who are in default on another student loan will not be eligible for a scholarship loan under this Rule.

(d) Loan recipients must enroll in and attend a public or private college or university in this state with an approved teacher education program, or a technical/community college in this state with a program of study that leads to teacher certification.

(e) Scholarship loans may not be used to obtain credits through correspondence courses or extension courses even if the recipient uses less than the maximum amount as an undergraduate.

(f) The Department may cancel a loan if the recipient:

- (1) willfully reports requested information that is erroneous or incomplete;
- (2) fails to complete and return requested forms by the required dates;
- (3) fails to pursue a full-time program in teacher education or withdraws permanently from college;
- (4) is not admitted to the college's teacher education program;
- (5) is convicted of a felony or other crime other than minor traffic offenses;
- (6) does not maintain a 2.0 cumulative average for the freshman year and a 2.5 cumulative average for following years, based upon a 4.0 grading scale; or
- (7) fails to keep the Department informed of any address change or change in status as a prospective teacher.

(g) Upon cancellation or default, the entire principal balance, together with accrued interest, becomes immediately due and payable.

(h) Once a recipient receives a certificate based upon the entry-level degree, the amount of the loan and accrued interest must be repaid by either employment as a regular full-time teacher or by making cash payments. Recipients who do not begin teaching in the school year following their qualifying for certification must begin repayment upon their failure to begin teaching. The entire principal and accrued interest must be repaid within the same number of years as the number of loans received, beginning September 1 of the year following the recipient's qualifying for certification.

(i) For purposes of credit for teaching, "full school year" means a minimum of six calendar months. Service as a tutor, a substitute teacher, or a teacher in a non-public school does not qualify as service credit for loan repayment.

Statutory Authority G.S. 115C-471.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. State Board of Cosmetic Art Examiners intends to amend rule(s) cited as 21 NCAC 14A .0101; 14F .0008 - .0010; 14G .0007, .0017; 14I .0304.

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

The public hearing will be conducted at 10:00 a.m. on April 2, 1991 at the Grove Towers (5th Floor), 1110 Navahoe Dr., Raleigh, N.C. 27609.

Comment Procedures: The record shall be open for 30 days before the hearing to receive written comments. Written comments should be received by the N.C. State Board of Cosmetic Art Examiners by April 1, 1991, to be considered as part of the hearing record. Comments should be addressed to: Vicky R. Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, Grove Towers (5th Floor), 1110 Navahoe Dr., Raleigh, N.C. 27609. Requests to speak must be in writing and received by Mrs. Goudie five days (March 28, 1991) prior to the hearing. Speaking time ten minutes.

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

SUBCHAPTER 14A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

.0101 DEFINITIONS

The following definitions apply in this Chapter:

- (12) "Booth" is a work station within a cosmetic art shop which is used primarily by one cosmetologist or manicurist in performing cosmetic art services for their clientele. "Booth" does not include the reception area, lavatories, common hair-drying facilities, common shampooing facilities or other areas used in common by the cosmetologists or manicurists working within a cosmetic art shop.

Statutory Authority G.S. 88-1.

SUBCHAPTER 14F - RULES AND REGULATIONS GOVERNING THE LICENSING OF COSMETIC ART SHOPS

.0008 INSPECTION OF COSMETIC ART SHOPS

(a) A newly established ~~beauty salon, cosmetic art shop, a salon shop~~ which has been closed for more than 90 days, a ~~salon shop~~ which has changed ownership, or a ~~salon shop~~ which has been operating without a permit shall be inspected before a permit will be issued. The Board shall be given 30 days notice to schedule an inspection.

(b) Each ~~beauty salon~~ must pass inspection by the Board pursuant to 21 NCAC Subchapter 14I of these Rules. Inspections shall be conducted at least annually and may be conducted without notice.

Statutory Authority G.S. 88-1; 88-21; 88-23.

.0009 SIGNS

(a) ~~Cosmetic art shops~~ A ~~beauty salon~~ shall be designated by a sign of not less than four inch letters at the outside entrance to said premises provided it is not contrary to a local ordinance.

(b) In any cosmetic art shop in which any cosmetologist and or manicurist is not an employee of the owner of the cosmetic art shop, the owner of the shop shall display in a conspicuous place a sign available from the Board containing the following language verbatim:

Notice to the Public: The cosmetologists or manicurists who work in this cosmetic art shop may not be employees of this shop but are self-employed. These cosmetologists and manicurists have a sign posted adjacent to their booths stating that they are independent operators. This notice is supplied to inform you that the owner of this shop does not intend to accept responsibility for any acts of these cosmetologists or manicurists which result in injury to you. This notice is not a limitation of your legal rights, but is posted to notify you of the operator's and shop owner's intent. If injured, you may or may not have some legal remedy against the cosmetic art shop.

(c) In any cosmetic art shop in which any cosmetologist and or manicurist is not an employee of the owner of the cosmetic art shop, such non-employees shall display immediately adjacent to their work station a sign available from the Board containing the following language verbatim:

Independent Operator. The cosmetologist or manicurist who operates this work station is not an

employee of the cosmetic art shop but is self-employed. This notice is supplied to inform you that the owner of this shop does not intend to accept responsibility for any acts of the cosmetologist or manicurist which result in injury to you. This notice is not a limitation of your legal rights, but is posted to notify you of the operator's and shop owner's intent. If injured, you may or may not have some legal remedy against the cosmetic art shop.

Statutory Authority G.S. 88-23.

.0010 SANITARY RULES

All sanitary rules governing ~~beauty salons and cosmetology schools establishments~~ must be complied with at all times.

Statutory Authority G.S. 88-23.

SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF SCHOOLS OF COSMETIC ART

.0007 EQUIPMENT AND TEACHERS

(c) A cosmetologist who is not licensed to teach cosmetology may substitute for a cosmetology teacher in case of emergency for not more than 12 days in one calendar year. Otherwise, all courses in a cosmetology school must be taught by a cosmetology teacher.

Statutory Authority G.S. 88-23; 88-30.

.0017 CHANGES IN TEACHING STAFF

A change in teaching staff must be reported to the Board immediately after it occurs. A change in teaching staff includes any substitution for the regularly scheduled teacher and any change, scheduled or otherwise, in the list of teachers last given to the Board's school administrator.

Statutory Authority G.S. 88-23.

SUBCHAPTER 14I - OPERATIONS OF SCHOOLS OF COSMETIC ART

SECTION .0300 - CLASSROOMS

.0304 CLASSROOM WORK

(a) All of the work outlined in the Beginners' Department and the Advanced Department shall be given to the students through practical demonstrations and recitations.

(b) ~~Five~~ A minimum of five hours of recitations shall be given to full-time students per week.

~~Two~~ A minimum of two and one-half hours of recitation shall be given to part-time students per week.

(c) Recitations shall include lectures, questions and answers on textbooks, and written examinations.

(d) All papers written shall be carefully graded and returned to the students in order that the students may see their errors.

Statutory Authority G.S. 88-23.

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 34A .0101 - .0104, .0123, .0201; 34B .0203, .0612, .0703; and adopt rule(s) cited as 21 NCAC 34C .0101 - .0106, .0201 - .0206, .0301 - .0306.

Note: Pursuant to G.S. 150B-61, the Director of OAH has approved the request to rearrange the codification of existing rules into subchapters 34A and 34B.

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

The public hearing will be conducted at 1:00 p.m. on April 8, 1991 at the Office of NC Board of Mortuary Science, 412 N. Wilmington St., 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 mail or personal delivery addressed to Ms. Corrine J. Culbreth, Executive Secretary, Board of Mortuary Science, 412 N. Wilmington St., Raleigh, NC 27601.

CHAPTER 34 - BOARD OF MORTUARY SCIENCE

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

.0101 AGENCY NAME: ADDRESS: OFFICE HOURS: MEETINGS: FORMS (formerly 21 NCAC 34 .0101)

The name of the agency promulgating the rules in this Chapter is the North Carolina State Board of Mortuary Science. As used in these rules, the word "board" shall refer to this agency. The office of the board is located at 412 North

Wilmington Street, Raleigh, North Carolina 27601. Office hours are 9:00 a.m. until 5:00 p.m., Monday through Friday, with the exception of closings on those holidays observed by agencies of the State of North Carolina. Meetings of the board may be called by the president or a majority of its members. Forms and information may be obtained at the office of the board during regular office hours. Checks are to be made payable to "North Carolina State Board of Mortuary Science."

Statutory Authority G.S. 90-210.22;
90-210.23(a).

.0102 PURPOSE OF BOARD (formerly 21 NCAC 34 .0102)

The purpose and function of the Board ~~is~~ are to examine, ~~and~~ license practitioners of funeral service and ~~to~~ regulate the practice of funeral service and crematories in North Carolina, pursuant to the authority granted by Article 13A, Articles 13A and 13C, Chapter 90, General Statutes of North Carolina.

Statutory Authority G.S. 90-210.23(a);
90-210.42; 90-210.50(a).

.0103 PETITION FOR NOMINATION (formerly 21 NCAC 34 .0103)

(a) Form BMS-1 is the petition for nomination of a person for election to the Board. It is used for the submission of the name of a nominee for election to the Board. It contains space for the name of the nominee, the ~~office seat~~ office seat to which he is nominated and the signatures of 20 ~~licensees~~ persons licensed to practice embalming, funeral directing or funeral service. The form is filed with the Board when making nominations pursuant to G.S. 90-210.18(c)(4).

(b) Form BMS-1a is the petition for nomination of a person for election to the North Carolina Crematory Authority. It contains space for the name of the nominee and the signatures of three crematory operators licensed by the Board. The form is filed with the Board when making nominations pursuant to G.S. 90-210.42(c).

Statutory Authority G.S. 90-210.18(c)(4);
90-210.23(a); 90-210.42(c); 150B-11(1).

.0104 VOTING RECORDS (formerly 21 NCAC 34 .0104)

(a) Form BMS-3 is the voting record for elections to the Board. It is used to maintain in the office of the Board a record for each licensee for the purpose of showing that a ballot has been mailed to him and to show whether a ballot-

enclosing envelope has been returned. It contains the name, address and license number of the licensee and space for indicating the mailing of the ballot and the return of the ballot-enclosing envelope.

(b) Form BMS-3a is the voting record for elections to the North Carolina Crematory Authority. It is used to maintain in the office of the Board a record for each crematory operator for the purpose of showing that a ballot has been mailed to it and to show whether a ballot-enclosing envelope has been returned. It contains the name, address and license number of the crematory operator and space for indicating the mailing of the ballot and the return of the ballot-enclosing envelope.

Statutory Authority G.S. 90-210.18(c)(6); 90-210.23(a); 90-210.42(c); 150B-11(1).

.0123 CONSUMER COMPLAINT FORM
(formerly 21 NCAC 34 .0124)

Form BMS-50 is the consumer complaint form. ~~It is used in submitting a complaint to the Board concerning a funeral establishment or a person licensed by the Board.~~ It contains space for the names and addresses of all parties involved, a description of the complaint, the signature of the complainant and information on procedures concerning consumer complaints, including a summary of acts and omissions which are legitimate subjects of complaints. The form is filed with the Board when a consumer wishes to make a complaint against a funeral establishment, crematory operator or individual licensed by the Board.

Statutory Authority G.S. 90-210.18(a); 90-210.23(a); 90-210.25(e); 90-210.50(a); 150-11(1).

**SECTION .0200 - FEES AND OTHER
PAYMENTS**

.0201 FEES AND PENALTIES
(formerly 21 NCAC 34 .0123)

(a) Fees for funeral service shall be as follows:

Establishment permit	
Application	\$250.00
Annual renewal	\$150.00
Late renewal penalty	\$100.00
Establishment reinspection fee	\$100.00
Courtesy card	
Application	\$ 75.00
Annual renewal	\$ 50.00
Out-of-state licensee	
Application	\$200.00
Embalmer, funeral director,	

funeral service	
Application, North Carolina resident	\$150.00
Application, non-resident	\$200.00
Annual renewal	
Embalmer	\$ 40.00
Funeral director	\$ 40.00
Funeral service	\$ 60.00
Reinstatement fee	\$ 50.00
Resident trainee permit	
Application	\$ 50.00
Annual renewal	\$ 35.00
Late renewal penalty	\$ 25.00
Duplicate license certificate	\$ 25.00
Chapel registration	
Application	\$150.00
Annual renewal	\$100.00

(b) Fees for crematories shall be as follows:

License	
Application	\$400.00
Annual renewal	\$100.00
Late renewal penalty	\$ 75.00
Crematory reinspection fee	\$100.00
Per-cremation fee	\$ 10.00

Statutory Authority G.S. 90-210.23(a); 90-210.28; 90-210.48.

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0200 - EXAMINATIONS

**.0203 APPLICATION FORM FOR FUNERAL
DIRECTOR'S LICENSE**
(formerly 21 NCAC 34 .0303)

Form BMS-12 is the application for the examination for a funeral director's license. It contains space for the applicant's photograph, name, address, biographical data, education, employment history, criminal convictions, and verification. A transcript of the applicant's mortuary science college record (~~general or mortuary science~~) must accompany the application. Three affidavits of the moral character of the applicant submitted by three persons, in compliance with G.S. 90-210.26, must also accompany the application. The form is filed with the Board when making application.

Statutory Authority G.S. 90-210.23(a); 90-210.25(a)(1); 150B-11(1).

SECTION .0600 - FUNERAL ESTABLISHMENTS

**.0612 PART-TIME AND INDEPENDENT
CONTRACTORS AFFIDAVIT**
(formerly 21 NCAC 34 .0712)

Form BMS-25 is the affidavit for part-time employees and independent contractors. It is used

for certifying to the Board, as provided in ~~Rule .0711~~ Rule .0611 of this Section, that the person signing it is performing services for one or more funeral establishments. It contains space for the names and locations of the establishments, a certification of the licensee that he will notify the Board when he ceases to perform such services, the signature of the licensee and verification. The form is filed with the Board upon request of the Board.

Statutory Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d); 150B-11(1).

SECTION .0700 - PREPARATION OF BODIES

.0703 DISPOSAL OF REFUSE; VENTILATION (formerly 21 NCAC 34 .0803)

Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies, which and all ~~shall be destroyed by incineration immediately~~ properly disposed of at the conclusion of each case, to the end that the public health may thereby be protected. Every preparation room shall comply, with respect to ventilation, with state and local laws, ordinances and regulations. No obnoxious or deleterious odors shall be allowed to remain therein nor to enter into any other part of the premises of the funeral establishment or into any adjoining premises.

Statutory Authority G.S. 90-210.23(a),(d),(e); 90-210.27A.

SUBCHAPTER 34C - CREMATORIES

SECTION .0100 - GENERAL PROVISIONS

.0101 ELECTION TO CREMATORY AUTHORITY

The nomination and election of members of the North Carolina Crematory Authority shall be conducted simultaneously with the nomination and election of members of the Board, and the procedures in G.S. 90-210.18(c) shall apply, except that nomination shall be made by a written petition signed by at least three crematory operators licensed by the Board.

Statutory Authority G.S. 90-210.42(c); 90-210.50(a); 150B-11(1).

.0102 APPLICABILITY OF STATUTES

The North Carolina Anatomical Commission, licensed hospitals and medical schools and the office of the Chief Medical Examiner may show to the Board that they are exempt from the pro-

visions of Article 13C, Chapter 90, of the North Carolina General Statutes in those instances when and because, from time to time, they have the legal responsibility to dispose of human remains.

Statutory Authority G.S. 90-210.50(a),(b); 150B-11(1).

.0103 FORM OF DOCUMENTS

When any provision of Article 13C, Chapter 90, of the North Carolina General Statutes or any rule in this Subchapter requires a crematory operator to obtain any death certificate, report, authorization, waiver, statement or other document prior to cremation, it shall be deemed that such requirements are complied with if the crematory operator receives the applicable document or documents, in the time specified, in the form of the original, a photocopy or by facsimile transmission.

Statutory Authority G.S. 90-210.44; 90-210.50(a).

.0104 APPLICATION FORM FOR CREMATORY LICENSE

Form BMS-52 is the application form for a crematory operator's license. It is designed for the applicant to furnish his or its name; address; type of business entity; location of crematory; description of crematory, facilities and equipment; name and address of crematory manager; and criminal convictions of applicant and manager. Three affidavits of the moral character of the owners, partners or officers and of the manager, in compliance with G.S. 90-210.26, shall accompany the application.

Statutory Authority G.S. 90-210.43; 90-210.50(a); 150B-11(1).

.0105 CREMATORY LICENSE CERTIFICATE

Form BMS-53 is the crematory license certificate. It is used for certifying that the holder thereof is a licensed crematory operator. It contains the name of the crematory operator, signatures of the board members and the date of issuance.

Statutory Authority G.S. 90-210.43; 90-210.50(a); 150B-11(1).

.0106 CREMATORY INSPECTION FORM

Form BMS-54 is the crematory inspection report form. It is used by the Board and its inspectors to record the results of crematory inspections for the Board files. It contains space

for the name and address of the crematory, names of the owner and manager, check list of facilities and equipment, condition of facilities and equipment, recommendations and signatures of the inspector and an official of the crematory.

Statutory Authority G.S. 90-210.43; 90-210.50(a); 150B-11(1).

SECTION .0200 - EQUIPMENT AND PROCESSING

.0201 REFRIGERATION

Human remains retained in the custody of a crematory operator for more than 24 hours prior to cremation shall be kept in a refrigeration unit. Such unit shall meet the following minimum standards:

- (1) Capable of maintaining an interior temperature of 40 degrees Fahrenheit while loaded with the maximum number of bodies for which it is designed.
- (2) Sealed concrete, stainless steel, galvanized, aluminum or other easily cleaned flooring in walk-in units.
- (3) Stainless steel, aluminum or other non-corrosive and easily cleaned materials for the remainder of the interior of all units.

Statutory Authority G.S. 90-210.41(9),(12); 90-210.50(a).

.0202 HOLDING FACILITY; CREMATION UNIT; PROCESSOR

Every crematory shall have the following:

- (1) A holding facility of suitable size to accommodate all human remains which are retained and awaiting cremation. If the crematory has one or more refrigeration units on the premises of the crematory, they shall be installed in the holding facility.
- (2) A commercially-manufactured cremation unit, within the crematory, made specifically for the cremation of human remains, meeting the following minimum standards:
 - (a) An ash collection pan to minimize commingling of cremated remains of one human remains with another.
 - (b) A hearth or floor without depressions so as to minimize commingling of cremated remains of one human remains with another.
 - (c) A door safety switch to stop the burner operation when the front charging door is opened.
 - (d) A pollution monitoring system to monitor and detect smoke when the density exceeds applicable federal and state standards, whereupon the system will

automatically stop the burner operation on a time setting of not less than three minutes.

- (e) Approval by Underwriters Laboratory or a comparable testing agency.
- (3) A commercially-manufactured processor, within the crematory, made specifically for the pulverization of cremated remains, meeting the following minimum standards:
 - (a) Capable of consistently processing cremated remains to unidentifiable dimensions.
 - (b) A dust-resistant processing chamber.
 - (c) An exterior surface made of easily cleaned, non-corrosive material.

Statutory Authority G.S. 90-210.41(9),(12); 90-210.45(d),(e); 90-210.50(a).

.0203 PULVERIZATION

Unless otherwise directed by the authorizing agent, cremated remains recovered after cremation shall be pulverized in the processor required by Rule .0202 of this Section, and the cremated remains shall then be immediately placed in a temporary container or in an urn or other permanent container.

Statutory Authority G.S. 90-210.41(9); 90-210.45(e); 90-210.50(a).

.0204 CREMATION CONTAINERS

Cremation containers shall be closed, leak resistant and made entirely of combustible materials. A casket shall not be required as a cremation container.

Statutory Authority G.S. 90-210.41(8); 90-210.50(a).

.0205 LABELS

The crematory operator shall attach a typed or printed label to the temporary container, urn or other permanent container at the time the cremated remains are placed therein. If an inside and outside container are used, then both shall be labelled. The label shall contain the name of the decedent, the date of cremation and the name of the crematory.

Statutory Authority G.S. 90-210.46; 90-210.50(a).

.0206 CLEANLINESS

All areas of the crematory and holding facility devoted to the reception, storage and cremation of human remains and to the pulverization and delivery of cremated remains, and all equipment

located therein, shall be kept in good repair and in a sanitary condition and subject to inspection by the Board or its agents at all times.

Statutory Authority G.S. 90-210.41(9),(12); 90-210.50(a).

SECTION .0300 - AUTHORIZATIONS, REPORTS, RECORDS

.0301 AUTHORIZATION TO CREMATE

(a) No human remains shall be cremated before the crematory operator receives a written statement signed by an authorizing agent, containing the following:

- (1) Express authorization to cremate.
- (2) Name of person who will accept the cremated remains.
- (3) Ultimate disposition of cremated remains, if known.

(b) The crematory operator shall retain the statement and shall make it available to the Board or its agents upon request.

Statutory Authority G.S. 90-210.44; 90-210.46(a),(e); 90-210.50(a).

.0302 WAIVER FORM

Form BMS-55 is the waiver of waiting period for cremation form. It is used by a person so authorized, pursuant to G.S. 90-210.45(b), to notify a crematory operator that the 24-hour waiting period for cremation is waived for one of the reasons stated in that statute.

Statutory Authority G.S. 90-210.44; 90-210.45(b); 90-210.50(a); 150B-11(1).

.0303 RECORD OF CREMATION AND DELIVERY

Every crematory operator shall make a separate written record, on a form provided by the Board, of each cremation it performs and of the delivery of each cremated remains, including evidence by signature, postal receipt or its equivalent, of the receipt thereof. The crematory operator shall retain the completed forms and shall make them available to the Board or its agents upon request.

Statutory Authority G.S. 90-210.44; 90-210.50(a); 150B-11(1).

.0304 CREMATION AND DELIVERY FORM

Form BMS-56 is the record of cremation and delivery form. It is used, pursuant to Rule .0303 of this Section, to record the name of the decedent and the dates and times of death, delivery to the crematory, cremation, processing and delivery of the cremated remains.

Statutory Authority G.S. 90-210.44; 90-210.50(a); 150B-11(1).

.0305 MONTHLY REPORTS

No later than the tenth day of each month, as confirmed by the postmark date, every crematory operator shall remit to the Board the per-cremation fees for the cremations which the operator performed during the immediately preceding calendar month. The fees shall be accompanied by a statement signed by an authorized representative of the crematory indicating the name of the crematory, each decedent's name, date of each cremation, the person or other entity for whom each cremation was performed, the number of cremations contained in the report and the total amount of fees remitted with the report.

Statutory Authority G.S. 90-210.44; 90-210.48; 90-210.50(a); 150B-11(1).

.0306 RETENTION OF RECORDS

A copy of all death certificates, authorizations, waivers, statements, reports and other documents required by G.S. 90-210.45 and 90-210.46 and by the rules in this Subchapter shall be retained by the crematory operator for a period of three years and shall, during that period, be subject to inspection by the Board or its agents.

Statutory Authority G.S. 90-210.44; 90-210.50(a).

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Real Estate Commission intends to adopt rule(s) cited as 21 NCAC 58C .0501 - .0512; and amend rule(s) cited as 21 NCAC 58D .0204, .0206, .0501.

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

The public hearing will be conducted at 9:00 a.m. on April 3, 1991 at the Office of the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609.

Comment Procedures: Comments regarding the rules may be made orally or submitted in writing at the public hearing. Written comments not submitted at the hearing may be delivered to the North Carolina Real Estate Commission, Post

*Office Box 17100, Raleigh, North Carolina 27619,
so as to be received by the hearing date.*

CHAPTER 58 - REAL ESTATE COMMISSION

SUBCHAPTER 58C - REAL ESTATE AND APPRAISAL EDUCATION

SECTION .0500 - APPRAISAL CONTINUING EDUCATION COURSES

.0501 PURPOSE AND APPLICABILITY

This Section establishes minimum standards for appraisal continuing education courses authorized by G.S. 93A-74(b) and required by Rule .0204 of Subchapter 58D. These standards must be satisfied in order for course sponsors to obtain and maintain approval of their courses for appraiser continuing education credit. Except as provided in Rule .0502(a) of this Section, any school, organization, agency, individual or other entity is eligible to become a course sponsor. Course sponsors must obtain course approval by the Commission prior to advertising or otherwise representing that a course is or may be approved for continuing education credit in North Carolina.

Statutory Authority G.S. 93A-75(c).

.0502 APPLICATION AND FEE

(a) Course sponsors seeking approval of their courses as appraisal continuing education courses must make written application to the Commission on a form prescribed by the Commission. A course sponsor must be the owner of the proprietary rights to the course for which approval is sought or must have the permission of the course owner to seek course approval. If the course for which approval is sought is one that may be offered outside North Carolina, and the course owner wants the Commission to recognize such course when it is conducted outside North Carolina, application must be made by the course owner.

(b) An application for original course approval that is received after February 15 of any year or that is not properly completed by such date shall be considered as an application for course approval to be effective for the year beginning on the next July 1 following receipt of the application.

(c) The original application fee shall be one hundred dollars (\$100.00) for each course for which approval is sought, provided that no fee is required if the course sponsor is an accredited North Carolina college, university, junior college, or community or technical college, or if the course sponsor is an agency of the federal, state

or local government. The fee shall be paid by certified check, bank check or money order payable to the North Carolina Real Estate Commission and is non-refundable. A course sponsor may offer approved courses as frequently as is desired during the period for which approval is granted without paying additional fees.

Statutory Authority G.S. 93A-75(c),(d).

.0503 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 58D and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time.
- (3) The course instructor(s) must possess good moral character and either two years' full-time experience that is directly related to the subject matter to be taught, or a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught, or two years' full-time experience teaching the subject matter to be taught, or an equivalent combination of such education and experience. If two or more instructors will be utilized to teach a course during the approval period and the course will be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements.
- (4) The course must be one involving a qualified instructor who will be physically present in the classroom at all times and who will personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons may not be considered to be the official course instructor and the official course instructor must be physically present where such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction.

- (5) The course must be an educational program intended to improve the knowledge, skill and competence of state-licensed and state-certified real estate appraisers and participation must be open to all state-licensed and state-certified real estate appraisers. Activities not eligible for approval as a continuing education course include trade organization conferences, in-house training programs of a firm, organization or agency, or similar activities.
- (6) The course sponsor must certify that the course will be conducted in accordance with the operational requirements stated in Rule .0506 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.

Statutory Authority G.S. 93A-75(c).

.0504 PRE-LICENSING AND PRE-CERTIFICATION COURSES

(a) Appraisal pre-licensing or pre-certification courses conducted by North Carolina schools approved or licensed to conduct such courses under Sections .0100, .0200 or .0300 of this Subchapter will not be approved as appraisal continuing education courses. State-licensed and state-certified appraisers may obtain continuing education credit for these courses only to the extent permitted by Rule .0204 of Subchapter 58D.

(b) Appraisal trade organization courses which are formally recognized by the Commission under Section .0400 of this Subchapter as equivalent to those North Carolina appraisal pre-licensing or pre-certification courses entitled Introduction to Real Estate Appraisal (R-1), Valuation Principles and Procedures (R-2), Introduction to Income Property Appraisal (G-1), and Advanced Income Capitalization Procedures (G-2) will not be approved as appraisal continuing education courses. Other appraisal trade organization courses which are not formally recognized by the Commission under Section .0400 of this Subchapter as equivalent to the North Carolina appraisal pre-licensing or pre-certification courses listed in this Paragraph, but which are substantially similar in content and level of instruction to such courses, will also not be approved as appraisal continuing education courses.

(c) Appraisal trade organization courses which are formally recognized by the Commission under Section .0400 of this Subchapter as equivalent, wholly or in part, to those North Carolina appraisal pre-licensing or pre-certification courses entitled Applied Residential Property Valuation

(R-3) and Applied Income Property Valuation (G-3) will automatically be considered to be Commission-approved continuing education courses, and the appraisal trade organization is not required to submit an application for approval of these courses under this Section; provided, however, that the appraisal trade organization must at all times assure compliance with Rules .0506, .0507 and .0508 of this Section in order to retain such approval for these courses.

Statutory Authority G.S. 93A-75(c).

.0505 CONTINUING EDUCATION CREDIT HOURS

The course approval issued to a course sponsor will include the number of hours of continuing education credit that will be awarded for the course. The minimum number continuing education credit hours awarded for a course will be three and one-half hours and the maximum number of continuing education credit hours awarded for a course will be ten hours.

Statutory Authority G.S. 93A-75(c).

.0506 COURSE OPERATIONAL REQUIREMENTS

Course sponsors must at all times assure compliance with the criteria for course approval stated in Rule .0503 of this Section and must also comply with the following requirements relating to scheduling, advertising and conducting approved appraisal continuing education courses:

- (1) Courses must be scheduled and conducted in a manner that limits class sessions to a maximum of seven classroom hours in any given day and that includes appropriate breaks for each class session.
- (2) Course sponsors must not utilize advertising of any type that is false or misleading in any respect. If the number of continuing education credit hours awarded by the Commission for a course is less than the number of scheduled classroom hours for the course, any course advertisement or promotional materials which indicate that the course is approved for appraiser continuing education credit in North Carolina must specify the number of continuing education credit hours awarded by the Commission for the course.
- (3) Course sponsors must, upon request, provide any prospective student a description of the course content sufficient to give the prospective student a general understanding of the instruction to be provided in the course.

- (4) Courses must be conducted in a facility that provides an appropriate learning environment. At a minimum, the classroom must be of sufficient size to accommodate comfortably all enrolled students, must be equipped with student desks or worktables with chairs for all enrolled students, must have adequate light, heat, cooling and ventilation, and must be free of distractions that would disrupt class sessions.
- (5) The course sponsor must require students to attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course, even if the number of continuing education credit hours awarded by the Commission for the course is less than the number of scheduled classroom hours. Attendance must be monitored during all class sessions to assure compliance with the attendance requirement.
- (6) Instructors must require reasonable student attentiveness during class sessions. Students must not be permitted to engage in activities that are not related to the instruction being provided.
- (7) Course sponsors for which an application fee is required by Rules .0502(c) and .0511(b) of this Section must fairly administer a reasonable course cancellation policy. In the event a scheduled course is canceled, reasonable efforts must be made to notify preregistered students of the cancellation and all prepaid fees received from such preregistered students must be refunded within ten days of the date of cancellation or, with the student's permission, applied toward the fees for another course. Such course sponsors must advise all students of the sponsor's fee refund policies not later than the time of registration or preregistration. Any flyer, brochure or advertisement soliciting preregistration and preregistration fees by mail must include a description of the course sponsor's policy regarding refund or forfeiture, as appropriate, of such preregistration fees in the event the preregistered student does not attend the course. Any deviations from established fee refund policies must be for the benefit of the student.

Statutory Authority G.S. 93A-75(c).

.0507 CERTIFICATION OF COURSE COMPLETION

Course sponsors must promptly issue a certificate of course completion to all students who satisfactorily complete an approved course. If the course was conducted in North Carolina, the

certificate, which the student must submit to the Commission to verify course completion, must be on a form or in a format prescribed by the Commission and must bear the original signature of a person designated by the course sponsor to sign such certificate. The course sponsor must notify the Commission in advance of the person(s) designated to sign certificates of course completion for courses conducted in North Carolina. If the course was conducted outside North Carolina, the certificate provided for submission to the Commission must show the name of the course sponsor, the name of the course, the number of classroom hours, the course dates, the state or city where the course was conducted, and the full name of the student.

Statutory Authority G.S. 93A-75(c).

.0508 SUBMISSION OF COURSE ROSTER

The course sponsor of courses conducted in North Carolina must, within 30 days of course completion, submit to the Commission a roster, in a format prescribed by the Commission, of all North Carolina state-licensed and state-certified appraisers who satisfactorily completed the course. The course sponsor of courses conducted outside North Carolina is not required to submit such a roster.

Statutory Authority G.S. 93A-75(c).

.0509 CHANGES DURING THE APPROVAL PERIOD

Course sponsors must obtain advance approval from the Commission for any changes to be made in approved courses with regard to the number of classroom hours, course content or instructors (instructor qualification requirements if more than one instructor is used to teach the course and the course is taught in states other than North Carolina). Requests for approval of such changes must be in writing.

Statutory Authority G.S. 93A-75(c).

.0510 COURSE RECORDS

Course sponsors must retain on file for three years records of student registration and attendance for each approved course that is conducted and must make such records available to the Commission upon request.

Statutory Authority G.S. 93A-75(c).

.0511 RENEWAL OF APPROVAL AND FEES

(a) Commission approval of appraisal continuing education courses expires on the next June

30 following the date of issuance. In order to assure continuous approval, applications for renewal of Commission approval, accompanied by the prescribed renewal fee, should be filed with the Commission annually on or before June 1. Incomplete renewal applications which are not completed by July 1 shall be treated as original applications.

(b) The annual fee for renewal of Commission approval shall be thirty-five dollars (\$35.00) for each course for which renewal of approval is requested, provided that no fee is required for course sponsors that are exempted from original application fees by Rule .0504 of this Section. The fee shall be paid by check payable to the North Carolina Real Estate Commission and is non-refundable.

Statutory Authority G.S. 93A-75(c),(d).

.0512 WITHDRAWAL OR DENIAL OF APPROVAL

The Commission may deny or withdraw approval of any course upon finding that:

- (1) the course sponsor has made any false statements or presented any false information in connection with an application for course approval or renewal of course approval;
- (2) the course sponsor has refused or failed to comply with any of the provisions of this Section;
- (3) the course sponsor has engaged in a pattern of consistently canceling scheduled courses; or
- (4) the instruction provided in a course is of unsatisfactory quality.

Statutory Authority G.S. 93A-75(c).

SUBCHAPTER 58D - REAL ESTATE APPRAISERS

SECTION .0200 - APPRAISER LICENSING AND CERTIFICATION

.0204 CONTINUING EDUCATION

(a) All real estate appraiser licensees and certificate holders shall, upon the second renewal of their license or certificate following their initial licensure or certification by the Commission, and upon each subsequent renewal, As a prerequisite to renewal of a real estate appraiser license or certificate for the year July 1, 1992 - June 30, 1993 and subsequent years, the licensee or certificate holder shall present evidence satisfactory to the Commission of having completed, obtained, during the immediately immediate preceding year, education consisting of at least ten class-

room hours of instruction. Except as provided in Paragraphs (i) and (j) of this Rule, such education must have been obtained by taking courses approved by the Commission for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of state-licensed and state-certified real estate appraisers.

(b) For all state-licensed and state-certified real estate appraisers, at least three and one-half hours of the required ten classroom hours must be obtained by taking a Commission-approved continuing education course that covers one or more of the following "appraisal law" topics:

- (1) the North Carolina Real Estate Appraiser Act and the North Carolina Real Estate Commission's rules relating to appraisers;
- (2) the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation; or
- (3) federal laws, regulations or guidelines governing appraisal practice, including guidelines relating to appraisal practice issued by the Federal National Mortgage Association.

(c) For state-licensed and state-certified residential real estate appraisers, the remaining six and one-half hours of the required ten classroom hours must be obtained by taking Commission-approved continuing education courses which cover the application of appraisal theory, concepts or methodology to the appraisal of residential one-to-four unit properties, including farms having residences, or which provide appraisal-related information important to residential appraisers, such as courses on real property law, real estate finance and investment, residential construction, land use planning and controls, and similar topics.

(d) For state-certified general real estate appraisers, the remaining six and one-half hours of the required ten classroom hours must be obtained by taking Commission-approved continuing education courses which cover the application of appraisal theory, concepts or methodology to the appraisal of any type of real estate, or which provide appraisal-related information important to general appraisers, such as courses on real property law, real estate finance and investment, building construction, land use planning and controls, statistics, accounting, property management, blueprint reading, property development, and similar topics.

(e) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on relevant topics

as described in either Paragraphs (b), (c) or (d) of this Rule and students must attend at least 90 percent of the scheduled classroom hours in order to satisfactorily complete the course.

(f) No carry-over to a future year of excess continuing education credit hours obtained in a previous year is permitted. A minimum of ten hours of continuing education must be obtained during each year.

(g) Course sponsors must provide a prescribed certificate of course completion to each licensee and certificate holder satisfactorily completing a course. The licensee or certificate holder should submit the original of this certificate to the Commission as soon as possible after completing the course and must submit such certificate not later than the next June 30 following course completion. In order to renew a license or certificate in a timely manner, the Commission must have received from the licensee or certificate holder proper proof of his having fully satisfied the continuing education requirement prior to processing his license or certificate renewal application. If a licensee or certificate holder fails to provide by June 30 of any year proper proof of having fully satisfied the continuing education requirement, his license or certificate will expire as of that date and he will be subject to the provisions of Rules .0203(c) and .0206 of this Section.

(h) A course may be taken only once for continuing education credit within a three-year period.

(i) A current or former licensee or certificate holder may request that the Commission grant continuing education credit for a course taken by the licensee or certificate holder that is not approved by the Commission, or for appraisal education activity equivalent to a Commission-approved course, by making such request on a form prescribed by the Commission and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course will be granted only if the licensee or certificate holder provides satisfactory proof of course completion and the Commission finds that the course satisfies the requirements for approval of appraisal continuing education courses by the Commission with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The

awarding of credit for such activities is wholly discretionary on the part of the Commission.

(j) A state-licensed or state-certified residential real estate appraiser may fully satisfy the continuing education requirement by taking the Applied Residential Property Valuation (R-3) pre-licensing and pre-certification course, provided that he has not taken such course within the previous three years. A state-certified general real estate appraiser may fully satisfy the continuing education requirement by taking either the Applied Residential Valuation (R-3) pre-licensing and pre-certification course or the Applied Income Property Valuation (G-3) pre-certification course, provided that he has not taken either of these courses within the previous three years.

(k) A licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Commission that he was unable to obtain the necessary education due to an incapacitating illness or similar condition. If an extension of time is granted, the licensee or certificate holder will be permitted to renew or reinstate, as appropriate, his license or certificate for that period of time for which the extension was granted. The granting of such requests and the length of any extension of time granted are wholly discretionary on the part of the Commission.

Statutory Authority G.S. 93A-74(a),(b); 93A-75(d); 93A-77.

.0206 EXPIRED LICENSE OR CERTIFICATE

(a) Expired real estate appraiser licenses and certificates may be reinstated within 12 months after expiration upon proper application, and payment to the Commission of the seventy-five dollar (\$75.00) renewal fee plus a late filing fee of ten dollars (\$10.00) per month for each month or part thereof that such license or certificate is lapsed, and provision of proof of having obtained continuing education equal to the total number of classroom hours that would have been required had the license or certificate been continuously renewed.

Statutory Authority G.S. 93A-74(b),(c); 93A-75(d); 93A-77.

SECTION .0500 - STANDARDS OF APPRAISAL PRACTICE

.0501 APPRAISAL STANDARDS

(a) Every state-licensed and state-certified real estate appraiser shall, in performing the acts and

services of a state-licensed or state-certified real estate appraiser, comply with those appraisal practice standards known as the "Uniform Standards of Professional Appraisal Practice" promulgated by the Appraisal Standards Board of the Appraisal Foundation, which standards are hereby adopted by reference in accordance with G.S. 150B-14(c). For the purpose of this Rule, the "Uniform Standards of Professional Appraisal Practice" shall include the Preamble, Ethics Provision, Competency Provision, Departure Provision, Jurisdictional Exception, Definitions, Supplemental Standards, Statements on Appraisal Standards, and Standards ~~4 and 2~~ 1, 2, and 3.

(b) Copies of the "Uniform Standards of Professional Appraisal Practice" are available upon request to the Commission.

Statutory Authority G.S. 93A-77.

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 .1126; 1E .1305; 1O .0201 - .0203, .0303 - .0304; adopt rule(s) cited as 25 NCAC 1E .0820; and repeal rule(s) cited as 25 NCAC 1O .0305.

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

The public hearing will be conducted at 9:00 a.m. on April 2, 1991 at the Personnel Development Center, 101 West Peace Street, Raleigh, North Carolina.

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 .1100 - PERFORMANCE SALARY INCREASES

.1126 PERFORMANCE SALARY INCREASE EFFECTIVE DATES

Performance increases shall be granted on the first day of the pay period ~~which includes nearest~~

to the first day of ~~the month in any of the following months: August, November, February and May. August or any month following during the fiscal year. Increases shall be paid on a current basis in the month in which they are effective and shall not be retroactive. This includes initial increases, as well as partial increases granted later in the year.~~ The performance increase shall be based on the employee's overall performance rating for the most recent performance appraisal review cycle. An employee shall receive a performance appraisal review at least once during every fiscal year. An employee may receive more than one performance increase during a fiscal year, but the total performance increase for a fiscal year shall not exceed the maximum percent set by the Office of State Personnel.

Statutory Authority G.S. 126-7.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

.0820 SPECIAL PROVISION FOR EMPLOYEES RETURNING//PERSIAN GULF CONFLICT

Upon reinstatement from military leave without pay following return from active duty during the Persian Gulf conflict (beginning on August 2, 1990), employees shall be credited with 80 hours (10 days) of personal leave. This leave may be used immediately upon reinstatement or, with approval of the supervisor, it may be used at any time during the 12 months following reinstatement. This leave must be kept separate from vacation leave. If it is unused at the end of 12 months, it will be lost. If an employee separates before all of the leave is used, any balance will be lost.

Statutory Authority G.S. 126-4.

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

.1305 PARTICIPATION REQUIREMENTS

(a) A non-family member donor may contribute only vacation leave to another employee within the same department or university. A non-family donor may not contribute leave outside the parent agency. A family member who is a state employee may contribute vacation or sick leave to another immediate family member state employee in any department or university, provided the recipient employee has been approved for leave transfer under this program. For transfer of sick leave to an immediate family member, immediate family member is defined as spouse, parents, children (including step re-

lationships) and any dependents living in the employee's household. For transfer of vacation leave to an immediate family member, immediate family is defined as spouse, parents, children, brother, sister, grandparents, and grandchildren. Also included are the step, half, and in-law relationships.

Statutory Authority G.S. 126-4.

SUBCHAPTER 10 - PERFORMANCE MANAGEMENT SYSTEM

SECTION .0200 - THE PERFORMANCE MANAGEMENT SYSTEM

.0201 PERFORMANCE MANAGEMENT PROCESS

The Performance Management Process is the sequence of actions that supervisors and managers take when interacting with employees about their performance. The three steps parts of this Process are as follows: planning, managing and appraising. These parts are accomplished by:

(1) Determine Performance Expectations: Planning.

- (a) At the beginning of the work period, cycle, the supervisor and the employee shall meet to determine the employee's performance expectations. It is the supervisor's responsibility to explain the performance management process to the employee so that the employee understands the importance of his/her role in the organization. This is a The purpose of this planning meeting intended is to discuss and record the employee's current responsibilities plus the expectations that describe successful completion of each responsibility. Another purpose is to identify how the expectations of each responsibility will be achieved by the use of Dimensions or behaviors skills.
- (b) As soon as performance expectations are agreed upon, the supervisor should begin employing modeling and coaching techniques that are continuous throughout the cycle. Modeling is putting positive organizational and managerial behaviors into practice. Coaching is checking with employees to determine and guide job performance. tracking sources must be identified which will provide an accurate picture of performance throughout the cycle.
- (c) The responsibility result, the corresponding expectation(s) and the tracking source(s) and frequency of tracking shall then be recorded on the work plan. The

same procedure shall be used for recording the Dimensions or behaviors skills to be used to achieve the performance expectations.

(2) Hold the Interim Review:

- (a) This part of the Performance Management process includes the day-to-day monitoring of the employee's progress toward achieving the performance expectations. The tracking sources that were identified must be reviewed with the agreed-upon frequency to determine how performance is progressing. Information gathered from these tracking sources should be used by the supervisor to coach the employee to improve or maintain performance in those areas where job performance and or use of Dimensions or behaviors skills are not at the "Good" level. Tracking sources should also be used by the supervisor to reinforce the employee to maintain "Good" level or improved performance in those areas where expectations are being met. Every supervisor shall meet with each employee at least at the midpoint of the work period for an interim review of performance. The purpose of this meeting is to discuss progress in meeting established expectations and initiate action toward improvement, if needed. It is intended to be informal in nature but must be documented by date as well as by placing a summary of the discussion in each employee's file. Progress toward each of the employee's expectations must be discussed in detail. If there are reasons why certain expectations can not be met, the supervisor and the employee shall determine alternative expectations or delete them from the work plan. The overall job performance shall also be discussed.
- (b) Throughout the work period, the supervisor continues to model and coach and reinforce employees because this is a vital part of the Performance Management Process.
- (c) The use of this component is recommended, but optional until July 1, 1991. After that date, its use shall be mandatory.
- (3) Performance Appraisal Review: Appraising. At the end of the work period, every supervisor shall meet with each employee to review the employee's actual performance against the expectations set at the beginning of the work period. The supervisor shall discuss how well the work was performed, identify good performance, and performance which needs improvement. The supervisor

shall also discuss how well the Dimension(s) or skills/behaviors had been used to achieve the expectations during the work cycle. They should also agree on a plan for improvement, as needed, for the next work plan period. The supervisor shall determine, communicate, and explain the rating for each expectation to the employee. The performance rating(s) shall be discussed so that each employee is told how he/she performed in achieving each expectation as well as how they performed in using the Dimensions or skills/behaviors during the work cycle to achieve the expectations. The overall performance rating shall also be discussed so that each employee is told how he performed his job overall throughout the work period. cycle. The results of this meeting must be recorded in the official Performance Appraisal Summary and signed by the employee, supervisor, and the supervisor's manager.

Statutory Authority G.S. 126-4; 126-7.

.0202 COMPONENTS OF AN OPERATIVE SYSTEM

In addition to the three step part process (see 25 NCAC 10 .0201) that supervisors must use when interacting with employees, there are certain components which each agency's system must have. An operative Performance Management System must have all of the following components to be approved:

- (1) Agency-Specific Policy. Top management within each department, agency, and institution shall develop, implement, and administer a Performance Management policy. This policy and procedures shall be tailored to meet the needs of the organization within the parameters of this Section. Each policy must reflect the conscious decisions that agency management makes in designing their performance management system not inconsistent with this policy. A department, agency or institution's policy must include:
 - (a) All of the components of an operative system;
 - (b) Instructions about how the system will operate using the three step part performance management process;
 - (c) An explanation about the role of the employee, the supervisor, and the supervisor's manager, and top management;
 - (d) A provision requiring that one of the responsibilities included in each supervisor's and manager's work plan is managing the performance of subordinate employees in

- accordance with the agency's Performance Management policies and procedures;
- (e) Sanctions to be levied by the agency head if all provisions are not met;
- (f) Relationships of Performance Management to other human resource systems;
- (g) Responsibilities of departments, agencies and institutions.
- (2) Individual Work Plan. Each employee shall have a work plan established at least on an annual basis. A work plan is a specific course of action outlining the significant responsibilities and duties results of an employee's job, taken from based on the employee's position description. If no position description exists, one shall be written using a job analysis approach. Expectations must be written in behavioral terms for each responsibility and/or duty. Performance expectations must be written for each responsibility/result and for each dimension, if used.
 - (a) Expectations are the objective measures or criteria which state specifically how performance is measured throughout the cycle. They also serve as the basis of the discussion during the interim and appraisal reviews. Expectations must be written at the "meets requirements level". These expectations must be substantive and include critical indicators so that if everyone in a unit performed at that level, the unit's goals and objectives would be met. Typically, indicators should measure both results and behaviors. The work plan must also include the methods which are going to be used in collecting information about the individual's performance. Each employee's work plan should include a measure of the ongoing aspects of each job as well as any special one-time projects and/or goals. A measure of both the day-to-day activities and the projects/goals combined comprise a true picture of the total job being performed. When the workplan is completed, it must be dated and signed by the employee, the supervisor and the supervisor's manager. The supervisor retains the original and the employee must receive a copy. Performance expectations must be written at the "Good" level. Performance expectations include the results to be achieved in a given period as well as the behaviors or skills needed to accomplish these results as stated throughout this policy and guidelines. The work plan must also include the tracking source frequency which

- is going to be used in collecting information about each employee's performance. Actual results and behaviors must be recorded for each expectation at the end of the cycle.
- (b) The method(s) used to define/establish expectations must be congruent with the job being done and the number of employees doing it. Methods selected must ensure that Performance Management Systems are as legally defensible as possible. If an agency chooses, it may write standards at each level of the rating scale for groups of employees performing repetitive, standardized jobs. If an agency chooses to pursue additional evaluative methods such as performance factor rating scales for specific categories of jobs, approval shall be required by the Office of State Personnel before the scale is implemented. Each employee's work plan should include a measure of the ongoing aspects of each job as well as any special one-time projects and/or goals. Work plans shall include the results of the work being done and the behaviors/skills needed to accomplish the results. When the work plan is completed at the beginning of the cycle, it must be signed and dated by the employee, the supervisor, and the supervisor's manager. If changes are made on the work plan during the cycle, the employee, the supervisor, and the manager must initial and date the changes before it is effective. In both of these cases, the supervisor retains the original and the employee must receive a copy. If a responsibility/result, dimension or performance expectation can not be accomplished at all five levels during the year due to circumstance beyond the control of the employee, it will not be rated during the interim or the final appraisal. As soon as the supervisor determines that it cannot be accomplished, it must be discussed with the manager and the employee. The work plan priorities must then be adjusted immediately so the work being done may be tracked accurately.
- (c) If there are large numbers of employees who are doing basically the same work, their work plans must be the same except for the parts of the job being done which are not alike. This ensures that the agency is legally defensible. If persons doing the same work do not have work plans which reflect these similarities, the agency is not defensible.
- (3) N.C. Rating Scale. The North Carolina Rating Scale shall be used by every department, agency, and institution. It is at least a five level rating scale. The levels and definitions follows: The North Carolina Rating Scale shall be used by every department, agency and institution to determine the employee's progress toward achieving performance expectations. The "Instructions for Completing the Work Plan," as published by the Office of State Personnel, shall be used throughout the cycle by every department, agency and institution. All employees, supervisors and managers must be informed of the N.C. Rating Scale at the beginning of the cycle in which it is used. The scale is as follows:
- (a) Level One - Does not meet expectations. Outstanding Performance = O. Performance is far above the defined job expectations. The employee consistently does outstanding work, regularly going far beyond what is expected of employees in this job. Performance that exceeds expectations is due to the effort and skills of the employee. Any performance not consistently exceeding expectations is minor or due to events not under the control of the employee.
- (b) Level Two - Meets expectations. Very Good Performance = VG. Performance meets the defined job expectations and in many instances, exceeds job expectations. The employee generally is doing a very good job. Performance that exceeds expectations is due to the effort and skills of the employee.
- (c) Level Three - Occasionally exceeds expectations. Good Performance = G. Performance meets the defined job expectations. The employee generally performs according to the expectations doing a good job. The employee is doing the job at the level expected for employees in this position. The good performance is due to the employee's own effort and skills.
- (d) Level Four - Exceeds expectations. Approaches Good Performance = AG. Performance meets some of the job expectations but only partially meets the remainder. The employee generally is doing the job at a minimal level, and improvement is needed to fully meet the expectations. Performance borders on or approaches a good job. Lapses in performance are due to the employee's lack of effort or skills.

- (c) ~~Level Five - Frequently exceeds expectations. Unsatisfactory Performance = U. Performance generally fails to meet the defined expectations or requires frequent, close supervision and/or the redoing of work. The employee is not doing the job at the level expected for employees in this position. Unsuccessful job performance is due to the employee's own lack of effort or skills.~~

~~Agencies have until July 1, 1991 to bring their overall rating scale into compliance with these new levels. When a new rating scale is implemented, managers, supervisors, and employees must be informed and trained in the use of the new measures. Employees must be informed of the new scale at the beginning of the cycle in which they will be used.~~

~~Agencies will have to notify the Office of State Personnel of the course of action their agency will follow for 1989 and 1990. Optional courses of action to help agencies change from their current scales are outlined in the Guidelines. (See 25 NCAG 10 Section .0300.)~~

If use of the N.C. Rating Scale proves that particular job(s) could not be defined without compromising accuracy at the meets level, the agency head may petition the Office of State Personnel to use an alternative approach. The approach and the scale shall be approved by the Office of State Personnel. ~~prior to use in the respective agency.~~

- (4) Performance Appraisal Summary. An official Performance Appraisal Summary is required (on at least an annual basis) for all employees and shall be maintained during the work period, completed at the end of the work period (at least annually), and placed in the employee's file. At the beginning of the work period, the supervisor shall record the employee's performance expectations in the Summary and ensure concurrence of the supervisor's manager.
- (a) At the end of the work period, the supervisor shall indicate a rating for each performance expectation and include a similar evaluation of the employee's overall performance in the Summary, responsibility/result as well as each Dimension or behavior/skills and record the actual performance results. A Summary evaluation statement statement(s) by the supervisor must be included supporting the overall rating. The employee ~~should~~ shall also be provided space and the opportunity to comment on his ~~overall rating.~~ rating(s). The Performance

Appraisal Summary shall then be signed and dated by the employee, the supervisor, and the supervisor's manager, treated in a confidential manner and filed in the Agency's official performance appraisal file. No changes shall be made or comments added to the Summary without the employee's knowledge. If additional information is needed, it must be initialed and dated by the employee, the supervisor and the supervisor's manager. If an employee chooses not to sign the Summary, it is management's responsibility to determine an alternative method of documenting that the appraisal has been completely discussed with the employee. Each employee is to be given a copy of his Appraisal Summary.

- (b) Each employee shall ~~be notified by his supervisor where his Performance Appraisal Summary is kept.~~ receive a copy of the signed and completed work planning document and shall be informed where this document is kept. The summary shall be kept for three years and disposed of according to G.S. 121.5(b), (c).
- (c) The same overall rating must be indicated on the form requesting an employee's performance ~~salary~~ increase.
- (5) Development or Performance Improvement Plan. Each department, agency, or institution's work planning document must include space for a development or performance improvement plan to be used as appropriate to document each employee's needs, interests, and activities to enhance the work being done. The development or performance improvement plan provides a specific course of action to be taken to improve the employee's performance or to document the growth opportunities in which the employee is participating. ~~The development plan may be a part of the work plan or stand alone as a separate part of the performance appraisal. The use of this component is recommended, but optional until July 1, 1991. After that date, its use shall be mandatory.~~
- (6) Education/Training Program. The State Personnel Commission recognizes the need for a comprehensive training ~~component for~~ within agencies to implement a fair and consistent performance management system. To be fair and beneficial to management and employees, all employees must have the skills and resulting practices to assure fairness and consistency. Agency management shall establish an information and ~~perform~~

ance management skills development program for employees, managers and supervisors respectively. The ~~State Personnel Director~~ Office of State Personnel will develop and issue guidelines that management can use in their program. Consultation and technical assistance will also be provided.

- (7) Performance Pay Dispute Resolution Procedure. Each department, agency, and institution shall have a procedure for reviewing and resolving disputes of employees concerning performance ratings and/or performance pay decisions. Such a procedure may be incorporated as part of an existing grievance procedure, or it may be separately administered. For policy requirements and guidelines on such procedures, see 25 NCAC 1J .0901 - .0903.

- (8) Performance Management and Pay Advisory Committee. Each department, agency and institution shall establish a Performance Management and Pay Advisory Committee as part of its performance management system.

Statutory Authority G.S. 121-5; 126-4; 126-7.

.0203 RELATIONSHIP/PERFORMANCE MGMT/OTHER HUMAN RESOURCES SYSTEMS

(a) Performance management is an integral part of the ~~overall total~~ management of an organization. Information obtained during the Performance Management Process about individual employees or from specific units of the organization shall be a consideration in making other personnel management decisions. In fact, connections with other systems indicate how effective the performance management system is. The design of the job is the basis for job analysis which determines the content of the performance appraisal. From an organizational perspective, information obtained from performance appraisals must influence selection, staffing, discipline, training, and development.

(b) Performance appraisal information is one consideration in making other personnel decisions such as promotions, reductions in force, performance salary increases, and all performance-based disciplinary actions. ~~on one or more aspects of the work plan, performance salary increases, and reductions in force.~~ Since the work plan does may not cover 100 percent of the job, represent all of the responsibilities results and behaviors skills needed to do the job, disciplinary action taken must be noted on the work plan as it occurs and

considered in the overall summary rating. ~~It is useful in comparing employees' performance as required in those decisions.~~ Personnel policies dealing with these actions also require consideration of other variables; information; therefore, performance appraisals alone can not dictate determine such decisions.

(c) In order to achieve internal consistency in personnel administration, agencies shall adopt procedures which meet the following requirements:

- (1) A current (within the past 12 months) Performance Appraisal Summary shall be on file for an employee before any of the personnel actions listed in Paragraph (b) of this Rule can be effected.
- (2) Any proposed personnel action as mentioned in this Rule shall be consistent with the overall rating of the employee's performance.
- (3) In cases in which the recommended personnel action appears inconsistent with the current overall rating, a written justification shall accompany the recommendation.

(d) In order to ensure that all employees have the opportunity to qualify for performance pay increase, agencies shall adhere to the following:

- (1) Probationary employees shall have a position description and work plan established within ~~30~~ 60 to 90 calendar days of date of employment and an appraisal completed at the end of the Agency's work cycle. A review shall be completed before an employee can be moved into permanent status in accordance with 25 NCAC 1C .0404.
- (2) Employees whose responsibilities and duties are changed either within their current position or by transfer (lateral, promotion, or demotion) shall have a new position description and work plan established within 30 days of the new assignment.
- (3) ~~An appraisal review~~ A Performance Appraisal Summary Transfer Form shall be completed with employees who transfer within state government, prior to their last day of work. The Work Plan and ~~Performance Appraisal Summary~~ Summary Transfer Form must be placed in the employee's personnel file and sent to the receiving unit. The employee, supervisor, and the supervisor's manager shall date and sign the form.
- (4) When the transferred employee arrives in the new unit, the supervisor may consider the level of documented performance in appraisal from the previous unit along

with the current overall performance rating in determining the time and amount of a performance salary increase.

- (5) Every employee in a trainee progression must have a work plan within ~~30~~ 60 to 90 calendar days of employment. This plan helps to guide the employee in reaching requirements for the full classification. A review shall be completed before each salary increase is granted within the progression.

(e) To provide continuity and consistency in treatment when a supervisor changes or an employee terminates employment, agencies must assure that when a supervisor is leaving a unit, the next level manager and the supervisor shall agree on each employee's progress towards his work plans and document this.

Statutory Authority G.S. 126-4; 126-7.

SECTION .0300 - PERFORMANCE MANAGEMENT SYSTEM: GUIDELINES

.0303 THE PERFORMANCE MANAGEMENT PROCESS

(a) The Performance Management process is cyclical in nature because one step in the process continuously leads to the next. The three stages deemed critical in managing performance in the broad organizational context are:

- (1) Establishing and Communicating Organizational Goals. Under G.S. 143A-17 and G.S. 143B-10(h), each department, agency, and institution is required to complete an annual plan of work. This plan should contain the organization's goals. After communicating them throughout the organization, these goals should set the direction of the organization and of the individual work plans for employees.
- (2) Monitoring Progress toward these Goals. Throughout the work period, management should continually monitor progress toward these goals through its employees' work performance. If sufficient progress has not been made or cannot be made, the goals may need to be revised and/or redirected based on the feedback received.
- (3) Evaluating Organizational Goals. At the end of the work period, management must decide if the organizational goals were met based on whether or not employees performance met expectations. After outputs have been determined, management uses information obtained from throughout the organization to determine their ac-

countability to the public, funding sources, and to the employees who did the work. After recognizing team effort, the cycle then begins again for the next year.

(b) The Office of State Personnel is not responsible for implementing or monitoring this process.

(c) Use of the three ~~step~~ part process for managing the performance of all employees, supervisors, and managers is crucial for sound employee-supervisor working relationships. The process of ~~appraisal~~ managing performance must be ~~regular and~~ ongoing; supervisors must not wait until the interim or appraisal reviews to ~~do it~~ praise or correct deficiencies. There are ~~two~~ three techniques which all supervisors and managers must use throughout the entire cycle. These techniques are ~~modeling and coaching, which includes reinforcing,~~ for managing performance are tracking, coaching and reinforcing.

(1) Modeling is demonstrating desired behavior which should be imitated. It is crucial that positive, sound management techniques be practiced every day. Tracking is the process of referring to sources that document an employee's performance throughout the cycle. The supervisor is responsible for monitoring the employee's performance at the agreed-upon times using self-reports, third party reports, observations and other sources that indicate how an employee is performing. Information on the achievement of expectations as well as on how the expectations were accomplished by the use of Dimensions or behaviors/skills is included in the supervisor's tracking. The information revealed through the tracking sources is used in applying coaching and reinforcing techniques.

(2) Coaching involves the informal job-oriented conversations that supervisors usually initiate with employees about how the work is progressing. They are usually positive in nature with emphasis on teaching or training the employee. Specific advice may be given, but the objective is to improve the employee's job performance as an individual and as a team member. Coaching is a way of moving employees toward new areas of experience, new demands for skill development, and new application of ingenuity and problem solving. Coaching is based on observation of the employee's performance. The key to effective coaching is handling problem situations without causing resentment. Coaching refers to

the informal discussions in which the supervisor instructs, directs or prompts the employee to improve performance for an expectation. The supervisor provides the feedback and models the behaviors or skills needed to improve performance when appropriate. Coaching is one of the logical ways that supervisors carry out their responsibility to develop employees.

- (3) Reinforcing is another powerful management technique. The emphasis is on providing praise to maintain the "Good" level of performance or to improve performance. Because reinforcement fulfills a basic human need to be recognized positively, this technique becomes a critical tool to use in helping an employee continue skills or behaviors that are successful.

(d) Beginning with ~~step part~~ one, "Determining Performance Expectations", "Planning," the supervisor is responsible for assuring that expectations for all jobs within his purview are consistent and equitable. The supervisor's manager must see that the expectations for similar jobs across all units reporting to him are consistent and equitable.

(e) The performance management process is a two-way system. Vital information must flow back and forth between the supervisor and employee. Employees have an active role. They must be prepared for the three meetings with management. They should gather information related to their past performance including specific data on activities and accomplishments. It is the employee's responsibility to tell the supervisor if expectations seem inappropriate and the reasons why. After expectations are negotiated and the work plan is in place, employees must also keep supervisors informed as changes occur in case expectations can not be met as planned.

(f) The interim review is a minimum requirement. To be most effective, supervisors and managers need to be ~~coaching and providing feedback tracking performance as well as coaching and reinforcing~~ throughout the process. If an employee is not progressing as expected at the interim review, the supervisor should meet with that employee at least once more before the final appraisal to discuss progress toward improved performance to the "Good" level. This meeting fulfills one of the primary purposes of performance management, which is to help employees to be successful. One of the purposes of this system is to help employees be successful.

Statutory Authority G.S. 126-4; 126-7; 143A-17; 143B-10(h).

.0304 COMPONENTS OF AN OPERATIVE SYSTEM

(a) Agency-Specific Policy. To simply adopt the provisions of the state's policy is unacceptable. Since the policy must be agency-specific, additional management considerations in defining the policy are what they want to accomplish; how they will implement, monitor, and evaluate their system; the process and procedures that need be established to make the system effective for their organization; appropriate methods of appraisal to be used for various jobs; and the education/training needed by employees, supervisors and managers to implement all of this Paragraph.

- (1) Agency management is expected to hold managers and supervisors responsible for carrying out the Performance Management Process fairly and equitably. Sanctions and/or definite consequences must be clearly understood and must then occur as stated in the agency's policy.
- (2) Performance management is a key major responsibility for supervisors and managers. This shall be one of the responsibilities included on every supervisor's and every manager's work plan. The expectations for performance management at all levels of management should be defined in the department, agency, or institution's policy.
- (3) Examples of sanctions which could be levied are:
 - (A) Automatic denial of any performance ~~salary increase if the supervisor's for a supervisor who receives a less than "Good" rating on the performance management factor does not meet requirements even if all other performance exceeds requirements at the highest level; ratings are at or above the "Good" level;~~
 - (B) Issuance of appropriate disciplinary warnings, up to and including dismissal, for failure to carry out the performance management process in accordance with agency policy;
 - (C) Automatic transfer/demotion of a manager following a second warning for failure to carry out performance management policy or to see that subordinate supervisors carry out the responsibility in accordance with policy.

The intent behind these sanctions is that no employee should be penalized or excluded from consideration for a performance ~~salary~~ increase because a supervisor or manager has

not done his job in managing the Performance Management Process.

(b) Individualized Work Plans. The policy (See 25 NCAC 10 .0101, .0201 - .0206) states that every employee shall have a work plan which specifies what each employee does (~~responsibilities and duties~~) (responsibilities/results) and how it is performed ~~satisfactorily~~ (expectations). (Dimensions or behaviors/skills). The following explains these two in detail.

(1) ~~Significant Responsibilities and Duties.~~ Responsibilities/Results. In order for an employee to perform satisfactorily, at the "Good" level or above, he must have a description of the entire job he is to do. The various responsibilities and duties in a job are listed in the position description. This position description should be used as a basis for selecting the responsibilities responsibilities/results listed in the work plan. The ones selected should cover ~~60-70 percent~~ 80 percent or more of the job being done. All ~~would~~ may not be used because they may not be significant enough to warrant the time required for measuring performance. Listing only one or two ~~responsibilities~~ responsibilities/results is unacceptable because it does not cover the job being done.

(A) Responsibilities include the ongoing aspects of the employee's job that continue from one cycle to the next and the one-time goals and/or special projects for that cycle. ~~It is important to capture the actual work being done.~~

(B) Performance expectations must be established for each responsibility and/or duty, responsibility/result. To be considered substantive at the "meets requirements" "Good" level, performance expectations must be measured by one or more indicators. Indicators used to clarify aspects of the responsibilities being measured are quality, quantity, timeliness, ~~manner of performance~~, and cost. ~~effectiveness, and resources.~~ Performance expectations must measure behavioral aspects of the job as well as the product or result.

(C) It is the immediate supervisor's responsibility to determine performance expectations with the next level manager's approval. The supervisor shall involve the employee in the process, but retains final authority, with the approval of the manager, for approving the expectations.

(2) Determination of the performance expectations requires a mutual understanding of:

(A) ~~primary~~ responsibilities and duties or projects;

(B) relationship of the responsibilities to the goals of the work unit and the Agency;

(C) the ~~relative importance~~ priority order of the employees responsibilities and duties listed in relation to each other;

(D) what the ~~indicators~~ tracking sources for measuring performance at "~~meets requirements~~" the "Good" level are as well as what and how information will be collected and used;

(E) how information will be reviewed throughout the cycle and formally appraised at the end of the ~~work period~~ cycle.

(3) Performance expectations must be established or updated at least annually. Performance expectations for ongoing responsibilities may remain constant from year to year, but they should be reviewed to verify ~~that they are the same or have changed.~~ whether they have changed or remained the same.

(4) ~~Standards.~~ Agency management should analyze the jobs in the organization to determine the appropriate methods for establishing expectations for similar jobs across the organization. Standards for groups of employees with the same or similar responsibilities may be developed through a group process. Standards are the expectations written each level of the approved rating scale. Formal standards are preferable for groups of positions which have the same responsibilities and duties so that all employees are appraised in a consistent manner. Different supervisors, supervising the same types of jobs, but in different units, should evaluate their employees using the same criteria.

(5) Additional Evaluation Methods. Use of a list of performance factors that management deems necessary for certain categories of jobs such as housekeeping or nurses may only be used in addition to the required work plan. A performance factor checklist is not an acceptable replacement for a work plan. The following guidelines should be followed:

(A) Obtain approval from State Personnel to proceed with this process.

(B) Analyze jobs to break them into specific functions and key elements. ~~Dem-~~

onstrate similarities for job category groupings.

- (C) Weigh the importance of each function.
- (D) Develop elements that are expressed in objective, measurable terms.
- (E) Specify the level of performance necessary to achieve a particular rating for each function.
- (F) Use separate elements for each job category, keying elements to the specific behaviors on which assessment of performance is based.
- (G) Train raters in the use of the rating scale.

Performance factor rating scales will have to be individualized to reflect the specific group of jobs being analyzed. Documentation should also be provided for specific performance data such as critical incidents that support the ratings.

(c) Overall North Carolina Rating Scale. The North Carolina Overall N.C. Rating Scale has been established to provide consistency in the Performance Management Process throughout State Government. Although the policy is effective January 1, 1990, agencies have until July 1, 1991 to implement the new scale. Performance increases are limited to those employees whose performance exceeds requirements. In order to determine the agency's course of action toward implementing the new scale, management may want to consider the following factors:

- (1) Length of time current appraisal system and rating scale have been in place and the amount of resistance expected;
- (2) Experience and skill of managers and supervisors in writing performance expectations that clearly distinguish levels of performance;
- (3) The numbers of employees comprising the organization and their locations;
- (4) Number of different jobs;
- (5) Relationship of measurement scale changes to other improvement plans, goals, and activities involved in implementing the performance management system;
- (6) Time and effort required to communicate information and train to all employees;
- (7) Training required to build skills of managers and supervisors in writing expectations using the new scale.

(d) Performance Appraisal Summary. Management may choose to provide space on the Summary for employees to evaluate themselves or comment on the supervisor's evaluation. The policy also requires that a Summary statement be recorded on the work plan at the end of the

cycle. The Summary statement supports the overall summary rating and reflects the ratings based on actual results. Specific examples that highlight outstanding accomplishments, distinguished performance and areas of development should be included. The Summary statement should be written carefully so that it is a balanced, fair representation of the employee's performance for the cycle. Since performance appraisal is a sensitive situation for employees, top management should adopt procedures to ensure that appraisals are kept confidential. Employees deserve to know how the Summary is processed when completed, the safeguards taken to insure privacy, and location of the permanent file. Since the overall performance Summary rating must be consistent with other personnel actions, the Agency's procedures should address who has access to this information and under what circumstances.

(e) Development or Performance Improvement Plan. The knowledge and skills addressed in the work plan are directed to strengthening these areas to either correct deficiencies or to help maintain and enhance the employee's performance. Therefore, an employee's first development plan should be included in his work plan while in probationary status. Supervisors assess the employee's development level in relation to assigned responsibilities when establishing work plans and continue to assess progress throughout the cycle. Development activities must be planned when the work plan is established and/or revised during the cycle as needed.

- (1) The Development and Improvement Plan should specify the steps the employee must take to gain the knowledge or skill, and must clearly indicate what steps the supervisor will take to ensure that the employee acquires that knowledge and skills. The expected results have to be specified before the activity begins so that both the employee and supervisor understand and agree what knowledge and/or skill is to be gained and how it is applied after training. Timeframes for completion and demonstrated improvement should also be set.
- (2) Growth opportunities to enhance their performance in the current job and encourage employees to meet their fullest potential shall be offered to each employee. Employees may elect not to participate in this type of development, but should be encouraged because of the benefits to the employee and the organization.

(f) Education/Training. To be successful, a performance management system will have has

to include training. Employees need to understand what the process is, what to expect and how they fit in. Supervisors must be skilled in the coaching, modeling, and ~~interaction process~~ reinforcing techniques. Finally, the characteristics of a performance management training program and the competencies for those providing information and training are very important in providing the skills ~~require~~ required.

(g) Performance Pay Dispute Resolution Procedure. Each agency, institution or university shall have, either as a component of an existing internal grievance procedure or as a separate procedure, a process to address complaints of employees regarding performance-based pay decisions. For more detailed requirements and

guidelines for such procedures, see 25 NCAC 1J .0901 - .0903.

(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. 126-4; 126-7; 126-7(c)(7a).

**.0305 OPTIONAL COURSES OF ACTION
BETWEEN 1989 AND JULY 1, 1991
(REPEALED)**

Statutory Authority G.S. 126-4; 126-7.

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

Hazardous Waste Management Commission

4 NCAC 18 .0309 - Final Site

ARRC Objection 1/18/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

15A NCAC 16A .0804 - Financial Eligibility

ARRC Objection 1/18/91

15A NCAC 16A .0806 - Billing the HIV Health Services Program

ARRC Objection 1/18/91

Coastal Management

15A NCAC 7J .0409 - Civil Penalties

ARRC Objection 1/18/91

15A NCAC 7J .1109 - Permit Fee

ARRC Objection 1/18/91

Environmental Health

15A NCAC 18C .0102 - Definitions

ARRC Objection 10/18/90

15A NCAC 18C .1532 - Variances and Exemptions

ARRC Objection 10/18/90

15A NCAC 18C .1534 - Max Contaminant Levels for Coliform Bacteria

ARRC Objection 10/18/90

15A NCAC 18C .2001 - General Requirements

ARRC Objection 10/18/90

15A NCAC 18C .2002 - Disinfection

ARRC Objection 10/18/90

15A NCAC 18C .2003 - Filtration

ARRC Objection 10/18/90

15A NCAC 18C .2004 - Analytical and Monitoring Requirements

ARRC Objection 10/18/90

15A NCAC 18C .2005 - Criteria for Avoiding Filtration

ARRC Objection 10/18/90

Marine Fisheries

15A NCAC 3C .0311 - Cancellation

ARRC Objection 9/20/90

Agency Revised Rule

Obj. Removed 10/18/90

15A NCAC 3O .0203 - Shellfish Lease Application Processing

ARRC Objection 8/16/90

Agency Revised Rule

Obj. Removed 9/20/90

Wildlife Resources Commission

15A NCAC 10H .0302 - Minimum Standards

ARRC Objection 9/20/90

Agency Revised Rule

Obj. Removed 10/18/90

HUMAN RESOURCES

Facility Services

*10 NCAC 3V .0303 - Insurance Required**ARRC Objection 11/14/90*

Individual and Family Support

*10 NCAC 42B .1201 - Personnel Requirements**ARRC Objection 1/18/91**10 NCAC 42C .2001 - Qualifications of Administrator**ARRC Objection 1/18/91**10 NCAC 42C .2002 - Qualifications of Supervisor-in-Charge**ARRC Objection 1/18/91**10 NCAC 42C .2006 - Qualifications of Activities Coordinator**ARRC Objection 1/18/91**10 NCAC 42C .3301 - Existing Building**ARRC Objection 11/14/90**10 NCAC 42D .1401 - Qualifications of Administrator/Co-Administrator**ARRC Objection 11/14/90***INSURANCE**

Life: Accident and Health Division

*11 NCAC 12 .0904 - Requirements for Utilization Review
Agency Revised Rule**ARRC Objection 12/20/90
Obj. Removed 1/18/91***LICENSING BOARDS AND COMMISSIONS**

Medical Examiners

*21 NCAC 32M .0007 - Termination of NP Approval**ARRC Objection 11/14/90*

Nursing, Board of

*21 NCAC 36 .0217 - Revocation, Suspension, or Denial of License
No Response from Agency**ARRC Objection 12/20/90
1/18/91**21 NCAC 36 .0504 - Certificate of Registration**ARRC Objection 1/18/91**21 NCAC 36 .0505 - General and Administrative Provisions**ARRC Objection 1/18/91**21 NCAC 36 .0507 - Fees**ARRC Objection 1/18/91*

Physical Therapy

*21 NCAC 48C .0102 - Responsibilities
Agency Returned Rule Unchanged**ARRC Objection 9/20/90
No Action 10/18/90**21 NCAC 48C .0501 - Exemption for Students
Agency Returned Rule Unchanged**ARRC Objection 9/20/90
No Action 10/18/90*

Plumbing and Heating Contractors

*21 NCAC 50 .1203 - Disposition of Petitions**ARRC Objection 11/14/90**21 NCAC 50 .1207 - Request to Participate**ARRC Objection 11/14/90***SECRETARY OF STATE**

Securities Division

*18 NCAC 6 .1210 - Securities Exchgs/Autod Quot. Sys. Approved/Admin
Agency Responded to Objection**ARRC Objection 12/20/90
No Action 1/18/91*

STATE PERSONNEL

25 NCAC 1B .0107 - Personnel Commission Meetings	ARRC Objection	9/20/90
25 NCAC 1B .0108 - Commission Staff	ARRC Objection	9/20/90
25 NCAC 1B .0109 - Commission Actions	ARRC Objection	9/20/90
25 NCAC 1B .0110 - Motions	ARRC Objection	9/20/90
25 NCAC 1B .0111 - Voting	ARRC Objection	9/20/90
25 NCAC 1B .0112 - Abstention	ARRC Objection	9/20/90
25 NCAC 1B .0113 - Duties of the Chairman	ARRC Objection	9/20/90
25 NCAC 1B .0114 - Order of Business	ARRC Objection	9/20/90
25 NCAC 1B .0115 - Special Meetings	ARRC Objection	9/20/90
25 NCAC 1B .0116 - Duties of Chairman Between Meetings of the Comm	ARRC Objection	9/20/90
25 NCAC 1B .0117 - Standing/Special Committees	ARRC Objection	9/20/90
25 NCAC 1B .0118 - Minutes	ARRC Objection	9/20/90
25 NCAC 1B .0119 - Notice of Commission Action	ARRC Objection	9/20/90
25 NCAC 1B .0120 - Appointment of Vice-Chairman	ARRC Objection	9/20/90
Agency Withdrew Rules .0107 - .0120		10/18/90
25 NCAC 1D .0509 - Severance Salary Continuation	ARRC Objection	1/18/91
25 NCAC 1L .0201 - Purpose	ARRC Objection	9/20/90
25 NCAC 1L .0202 - Policy	ARRC Objection	9/20/90
Agency Withdrew Rules .0201 - .0202		10/18/90

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 1B .0202(c) - REQUEST FOR DETERMINATION

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *New Hanover Memorial Hospital, Inc., Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0792).

10 NCAC 1B .0202(c) - REQUEST FOR DETERMINATION

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 1B .0202(c) void as applied in *High Point Regional Hospital, Inc., Petitioner v. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0770).

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).

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

Michael Rivers Morgan, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .0317(g) void as applied in *Autumn Corporation, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent* (90 DHR 0321 and 90 DHR 0318).

10 NCAC 26I .0101 - PURPOSE: SCOPE/NOTICE OF CHANGE IN LEVEL OF CARE

10 NCAC 26I .0102 - REQUESTS FOR RECONSIDERATION AND RECIPIENT APPEALS

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rules 10 NCAC 26I .0101, 10 NCAC 26I .0102 and 10 NCAC 26I .0104 void as applied in *Linda Allred, Petitioner v. North Carolina Department of Human Resources, Division of Medical Assistance, Respondent* (90 DHR 0940).

10 NCAC 42W .0003(c) - COUNTY DEPT OF SOCIAL SERVICES RESPONSIBILITIES

10 NCAC 42W .0005 - REPORTING CASES OF RAPE AND INCEST

The North Carolina Court of Appeals, per Judge Robert F. Orr, declared Rules 10 NCAC 42W .0003(c) and 10 NCAC 42W .0005 void as applied in *Rankin Whittington, Daniel C. Hudgins, Dr. Takey Crist, Dr. Gwendolyn Boyd and Planned Parenthood of Greater Charlotte, Inc., Plaintiffs v. The North Carolina Department of Human Resources, David Flaherty, in his capacity as Secretary of the North Carolina Department of Human Resources, The North Carolina Social Services Commission, and C. Barry McCarty, in his capacity as Chairperson of the North Carolina Social Services Commission, Defendants* [100 N.C. App. 603 (398 S.E.2d 40) (1990)].

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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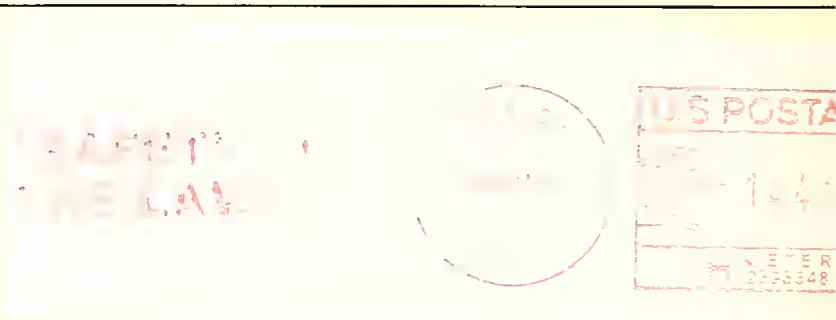
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