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The **NORTH CAROLINA REGISTER**

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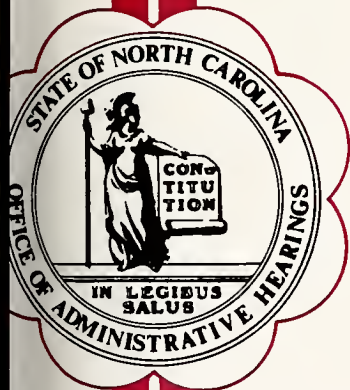
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ISSUE DATE: March 2, 1992

Volume 6 • Issue 23 • Pages 1742- 1815



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month 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 notices of public hearings filed under G.S. 150B-21.2 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. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any 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 (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

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% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 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 are available.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, NC 27611-7447
(919) 733 - 2678

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

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

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NORTH CAROLINA REGISTER

Publication Schedule

(January 1992 - December 1992)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date

01/02/92	12/09/91	12/16/91	01/17/92	02/01/92	02/20/92	04/01/92
01/15/92	12/20/91	12/31/91	01/30/92	02/14/92	02/20/92	04/01/92
02/03/92	01/10/92	01/17/92	02/18/92	03/04/92	03/20/92	05/01/92
02/14/92	01/24/92	01/31/92	02/29/92	03/15/92	03/20/92	05/01/92
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12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

EXECUTIVE ORDER

EXECUTIVE ORDER NUMBER 160 AMENDMENT TO EXECUTIVE ORDER NUMBER 152

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

Executive Order Number 152 is hereby amended to add the following member to the Persian Gulf War Memorial Commission.

Section 1. ESTABLISHMENT

There is hereby established the Persian Gulf War Memorial Commission. It shall be comprised of the following. . .

11. One at-large member.

This Executive Order shall become effective immediately.

Done in Raleigh, this the 27th day of January, 1992.

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:GS:FHD:gmh
DJ 166-012-3
91-4648

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

February 6, 1992

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

Dear Mr. Weaver:

This refers to the temporary polling place change for the Town of Black Creek in Wilson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on December 20, 1991.

The Attorney General does not interpose any objection to the specified change. 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 change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

**TITLE 5 - DEPARTMENT OF
CORRECTION**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Correction intends to amend rules cited as 5 NCAC 2D .0307, .0309; 2F .1504 - .1506.

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 18, 1992 at the Conference Room, 831 W. Morgan St., Raleigh, NC.

Reason for Proposed Action: These Rules are being amended to upgrade departmental standards as it relates to use of force, inmate mail procedures and current case law.

Comment Procedures: Any person or organization desiring to make oral comments at the hearing should register to do so at the hearing. Statements will be limited to 10 minutes, and one typewritten copy of any such statement should be submitted to the panel conducting the hearing. Any additional comments should be forwarded to the North Carolina Division of Prisons. Attention: Jeffrey W. Cheek, 831 W. Morgan St., Raleigh, NC 27603.

Editor's Note: Rules .1504 - .1506 have been filed as temporary rules effective March 19, 1992 for a period of 180 days to expire on September 15, 1992.

CHAPTER 2 - DIVISION OF PRISONS

**SUBCHAPTER 2D - PUBLIC
COMMUNICATIONS**

SECTION .0300 - INMATE USE OF THE MAILS

.0307 CORRESPONDENCE

(a) Legal Mail.

- (1) Definition: Mail to or from attorneys, state and federal courts, the Attorney General of the United States or the Attorney General of North Carolina, the judiciary, the Industrial Commission, or legal aid services and Para-legals.
- (2) Legal mail from inmates shall not be opened for inspection or impeded in its transmission. If there is any question as to whether an addressee is one of these persons, the mail can be held for not more than 24 hours to resolve the question.

- (3) Postage for legal mail from inmates will be paid from the Operating Fund provided the inmate is indigent. No other eligibility requirements apply to postage for legal mail. The 10 letter limitation on personal mail does not apply to legal mail.

(b) Department of Correction Officials.

- (1) Definition: The Secretary of Correction, the Director of Prisons, any member of the Grievance Resolution Board or its staff, any member of the Board of Correction, the Parole Commission or its staff, or any official of the Department of Correction in the chain of command above the superintendent/warden to which the inmate is assigned, are defined as DOC officials.
- (2) Mail to DOC officials will be accepted within our system without postage.
- (3) Mail to DOC officials shall not be opened for inspection or impeded in its transmission. If there is any question as to whether an addressee is one of these persons, the mail can be held for not more than 24 hours to resolve the question.

(c) Other Government Officials.

- (1) Definition: Any member of the Congress of the United States or any member of the General Assembly of North Carolina; the President of the United States or the Governor of North Carolina; ~~the Attorney General of the United States or the Attorney General of North Carolina~~; the Director or any agent of the Federal Bureau of Investigation are defined as other government officials.
- (2) Mail to other government officials will be considered as personal mail for the purpose of postage.
- (3) Mail to other government officials shall not be opened for inspection or impeded in its transmission. If there is any question as to whether an addressee is one of these persons, the mail can be held for not more than 24 hours to resolve the question.

(d) Personal Mail.

- (1) Definition: Any mail to or from an inmate that is not defined in Paragraphs (a), (b), or (c) of this Rule.
- (2) Postage for personal mail from inmates without funds will be paid from the Operating Fund provided the inmate is indigent.
- (3) Postage for personal mail from indigent inmates shall be limited to the cost of 10 first-class one ounce letters per month per indigent inmate.

(e) Other Outgoing Mail. Personal mail from inmates may be sealed when placed in the outgoing mail and shall not be opened and censored unless the superintendent, warden or his designee has good cause to believe that:

- (1) The mail contains threats of physical harm against any person or threats of criminal activity.
- (2) The mail threatens blackmail or extortion.
- (3) The mail concerns sending contraband in and out of the correctional facility.
- (4) The mail concerns plans to escape.
- (5) The mail concerns plans to violate departmental rules and policies necessary to maintain security and control.
- (6) The mail concerns plans for criminal activity or violation of state or federal laws.
- (7) The mail concerns information which if communicated would create a clear and present danger of violence and physical harm.

(f) Incoming Mail.

- (1) Inspection: The superintendent/warden shall provide for the inspection of all incoming mail by qualified members of the correctional facility. The inspection shall serve to prevent inmates from receiving through the mail contraband or any other material that threatens to undermine the security and order of the facility or which cannot be lawfully sent through the mail. Mail to inmates which appears to be from one of the persons listed in ~~Paragraphs (b), or (c)~~ Paragraph (a) of this Rule, shall be opened by correctional staff in the presence of the inmate. Correctional staff will insure that who shall see that the contents of letters from persons listed in Paragraph (a), (b), or (c) of this Rule are free of contraband and are in fact official or legal correspondence from the person whose name and return address appears on the outside of the envelope or package. The correspondence shall not be read beyond what is necessary to make this determination.
- (2) Censorship: Incoming personal mail may be opened and read by the superintendent/warden or his designee only if he has reason to believe that the contents of the letter fall into one of the categories listed in Paragraph (e) of this Rule. This Paragraph and Paragraph (e) of this Rule allow for inspection and censorship of mail only when necessary to protect the security of the facility and prevent criminal activity. No letter is to

be opened or censored in order to eliminate critical opinions of Departmental policy or the Department's employees. All incoming personal mail is to be inspected but not read unless it falls in one of the categories listed in Paragraph (e) of this Rule. Under normal circumstances, incoming mail should not be read.

(g) Mass Mailing. Any massive attempt to use the mails to reach the inmate population or facility is inherently suspect. If the superintendent/warden has good cause to believe that such an attempt has been initiated in order to cause disruption or otherwise threaten the order and security of the facility, the mail involved will be censored. If necessary, due to the security consideration stated in this Paragraph, the superintendent/warden may refuse delivery of this mail without notice to the inmate addressee.

(h) Rules on Letter Content and Structure.

- (1) Letters to and from inmates must be written in English unless an exception to this requirement is made by the superintendent/warden.
- (2) Letters may be typewritten, printed, or written legibly in longhand.
- (3) Letters to inmates should be addressed so that the full name of the inmate appears on the envelope. The inmate shall instruct his correspondents to use the correct address as posted on the inmate's bulletin board.
- (4) Letters from inmates must have their full name and return address of the facility in the upper left corner of the envelope.

Statutory Authority G.S. 148-11.

.0309 PACKAGES AND OTHER ITEMS

(a) Sent by Inmates. Packages and large envelopes addressed to persons other than one of those listed in Rule .0307(a), (b), or (c) of this Section, may not be sealed for mailing by an inmate until inspected by a correctional officer and found free of contraband or material which constitutes a threat to the order and security of the facility or which cannot be lawfully sent through the mail. This inspection shall be done in the presence of the inmate. If cleared for mailing, the item shall be sealed and placed in the mail by the sender in the presence of the inspector.

(b) Sent to Inmates. Additional items sent to inmates shall be subject to inspection and handling by a correctional officer. The inspection shall be done in a secure location in the facility and shall not be done in the presence of the inmate. If the officer determines that the package or envelope contains contraband or other mate-

rial that threatens the order and security of the facility, this material shall be confiscated.

(c) Additional Items Sent to Inmates. In addition to letters, the following items may be received by an inmate through the mail, and are always subject to inspection and handling as provided in these Regulations:

- (1) clothing approved for use while incarcerated;
- (2) clothing to be used upon release (if received within 15 days of a scheduled release date);
- (3) musical instruments (when approval is secured in advance from the superintendent/warden);
- (4) unframed photographs, not to exceed 8" x 10";
- (5) legal papers;
- (6) publications which may be received under 5 NCAC 2D .0100;
- (7) religious items;
- (8) money shall be sent by postal or bank money order or cashiers or certified checks. ~~Cash sent by mail shall be returned to the sender with an explanation of the requirements for money orders and or certified checks. Cash that is concealed or hidden within other mailed items in an attempt to avoid detection shall prompt an investigation and appropriate disciplinary action. Such cash will be confiscated if the inmate is found guilty of a disciplinary offense. Otherwise, it will be returned to the sender. If no return address is provided, cash received will be confiscated as contraband and deposited in the Inmate Welfare Fund. Procedures for the proper handling of money are contained in Fiscal Policy .1002 (b)(1).~~

(d) Inmate Request for Other Items. Any inmate may request in writing permission from the Command Manager to receive through the mail a specific item that is not otherwise authorized. This request shall be forwarded through the chain of command to permit the views of area staff to be expressed. Seasonal exceptions may be authorized by the Director of Prisons in addition to the list of items an inmate may receive through the mail.

(e) COD Packages Sent to Inmates. No COD packages shall be accepted for any inmate and no inmate shall be authorized to send mail COD. Unauthorized items arriving by mail shall be returned to the sender at the expense of the inmate addressed. If the inmate is without funds, the package shall be returned at the state's expense or the inmate may donate it to a charitable or-

ganization or request it to be destroyed. A copy of the mail regulations shall be enclosed in the package to be returned. Packages that postal authorities will not accept for return to the sender shall be delivered to some charitable organization, or to a law enforcement agency in appropriate cases, and a receipt shall be obtained for the same.

Statutory Authority G.S. 148-11.

SUBCHAPTER 2F - CUSTODY AND SECURITY

SECTION .1500 - USE OF FORCE

.1504 POLICY

The following general guidelines apply to the use of force in the Division of Prisons.

- (1) The use of force shall be permissible only to the extent reasonably necessary for a proper correctional objective. Excessive force is prohibited. ~~but~~ This prohibition shall not be construed to mean that staff must suffer an assault upon their person before taking appropriate defensive action or that the use of force by another must be met with strictly equal force on the part of the staff. ~~The degree of force necessary to control the situation shall be determined in the context of the number of staff present, the type of resistance employed, the relative size and strength of the persons involved and similar criteria.~~
- (2) An officer is authorized to use whatever degree of force reasonably appears to be necessary to defend the officer or a third party from imminent assault. Reasonable force is authorized in order to prevent an escape or to ensure compliance with a lawful order or to protect property or to return an escapee to custody. When time and circumstances permit, a sergeant or supervisor of higher rank should be present to supervise anticipated use of force or situations likely to result in use of force. An officer should attempt non forcible methods of inmate control, but only to the extent reasonably possible under the circumstances as they appear to that officer.
- (3) An officer may lawfully utilize deadly force to: prevent the escape of a convicted felon, prevent or stop a life threatening assault on themselves or another person, or to prevent escape of a pre-trial detainee awaiting felony charges. Deadly force may not be used solely to protect property or ensure compliance with a lawful order that does not implicate personal safety.

- (4) An officer is prohibited from using force solely as a result of verbal provocation, ~~however extreme~~. An officer shall not strike or attempt to strike an inmate who has abandoned his resistance or who is effectively restrained. The use of force as punishment is strictly prohibited.
- (5) When employing any degree of force, the officer shall use reasonable care to ensure that uninvolved persons ~~innocent parties~~ are not endangered by such use of force.
- (6) Each facility will designate the post approved to be routinely issued batons.
- (7) ~~(6)~~ The long and short batons are the only ~~individual impact devices~~ tools authorized for duty use by division personnel. ~~Each facility will designate the posts approved to routinely be issued batons. However, in extreme circumstances staff are expected to use any means available to protect themselves from assault and injury.~~
- (8) ~~(7)~~ Firearms will be limited to those approved by the Director of Prisons. Personal weapons ~~firearms~~ are prohibited. All ~~weapons~~ firearms must be the property of the Division of Prisons.
- (9) ~~(8)~~ If an inmate complains of a use of force in a grievance and a Use of Force Report was not completed, the Officer-In-Charge will investigate. The investigation should begin with a medical examination as soon as possible. If the Officer-In-Charge determines that a Use of Force Report should have been completed, the responsible officer will be subject to disciplinary action.
- (9) ~~When time and circumstances permit, a Sergeant or supervisor of higher rank will be present to supervise anticipated use of force or situations likely to result in use of force.~~
- (10) ~~An officer should attempt non-forceable methods of inmate control, but only to the extent reasonably possible under the circumstances as they appear to that officer.~~
- (11) ~~Application of force will depend on a determination by the Officer on the scene who will be guided by the facility's Standard Operating Procedures. Standard Operating Procedures shall be approved by the Area-Complex Administrator or Institution Head and shall include the necessary procedures for implementing this policy.~~
- (12) ~~This policy recognizes that use of force is more likely to occur in segregation-maximum custody facilities and, therefore, an officer will not be assigned to a single cell segregation cell block unless he has completed the basic training program or~~

~~is in an on-the-job training capacity in a double posting with a trained officer or in emergency and life threatening situations.~~

(10) ~~(13)~~ Escapes.

- (a) An escapee is any individual attempting to leave the custody of the Division of Prisons without prior authorization.
- (b) Deadly force is not authorized against a misdemeanor escapee, a pretrial detainee awaiting misdemeanor charges or in the apprehension of these persons except where there is an imminent threat of death or serious bodily injury presented. ~~or in the apprehension of a misdemeanor escapee, except when there is a clear and present danger of serious injury or loss of life to an employee or third party.~~
- (c) ~~Deadly force is not authorized against a pre-trial detainee escapee awaiting misdemeanor charges.~~
- (c) ~~(d)~~ Deadly force is authorized against a felon escapee or a pretrial detainee awaiting felony charges.
- (e) ~~Deadly force is authorized against a pre-trial detainee awaiting felony charges.~~

Statutory Authority G.S. 148-11; 148-46.

.1505 PROCEDURES

- (a) Hands-on Physical Force.
 - (1) Hands-on physical force, including approved unarmed self defense techniques, is authorized to restrain or otherwise control an inmate when control through communication has failed or is not feasible.
 - (2) Hands-on physical force may be used to defend the officer or a third party from imminent assault, or to prevent an escapee, or to protect property, or to ensure compliance with a lawful order or to return an escapee to custody.
- (b) Chemical Mace.
 - (1) Chemical mace may be used to the extent necessary to control or deter violent or aggressive acting inmates.
 - (2) An officer should attempt to avoid discharging mace into direct contact with an inmate's face.
 - (3) An inmate subjected to mace ~~will~~ should be moved to a ventilated area and ~~will~~ should be afforded an opportunity to shower and change clothes once control has been restored. An inmate's refusal of the opportunity to shower and change clothes shall be documented in the Use of Force Report.

PROPOSED RULES

(c) Individual Control Devices (Long Baton, Short Baton).

- (1) Individual control devices may be used to control violent or aggressive inmates.
- (2) Intentional ~~overhead~~ powered strikes with a baton to vital areas are prohibited unless reasonably necessary to defend oneself or others from imminent threat of death or serious bodily injury. Vital areas include the head, throat, neck, plexus, spine, kidneys, or coccyx. However, in extreme circumstances, staff members are expected to use any means available to protect themselves from assault and injury. ~~deadly force is to defend himself or others from imminent serious personal injury or deadly peril.~~

(d) Mechanical Restraints.

- (1) Approved Division of Prisons' mechanical or physical restraints to immobilize an inmate, may be used to control inmates who have demonstrated behavior that presents a significant risk of injury to self or others. Interim steps such as handcuffs, wrist chains, and leg-cuffs may be used to attempt to control the inmate before immobilizing.
- (2) The Officer-In-Charge may authorize the use of restraints to immobilize an inmate for up to four hours. If the inmate is immobilized with the use of restraints, the Officer-In-Charge should immediately notify the Area, Institution or Correctional Center Duty Officer, Psychological Services staff, and Medical staff.
- (3) The Area/Complex Administrator, Institution Head, or designee may authorize immobilization of an inmate for up to 48-hours. Immobilization beyond four hours is not authorized except at prison locations which have 24-hour Health Care staffing and single cell facilities. Reasonable effort will be made to avoid undue physical hardship for restrained inmates. Restrained inmates will be temporarily released from immobilization every three hours during the first and second shifts, so they may eat, drink, and take care of their bodily functions. During the third shift, an inmate may not be temporarily released, unless the inmate requests release to take care of bodily functions. Periodic observation will be required every 15 minutes while immobilized and will be documented.
- (4) Immobilization for longer than 48-hours shall require transfer to Central Prison, or

to the North Carolina Correctional Institution for Women for appropriate treatment and supervision. Transfer of a male inmate under the age of 18 to Central Prison will require approval of the Command Manager or the Division Duty Officer.

- (5) The approving authority for the use of restraints for immobilization should consult with the facility Medical staff as well as the facility or Area Mental Health staff, one of whom who will examine the inmate as soon as possible, and at least every four hours thereafter, and will document those examinations in the inmate's medical record.
- (6) ~~Reasonable effort will be made to avoid undue physical hardship for restrained inmates. Restrained inmates will be temporarily released from immobilization every three hours during the first and second shifts, so they may eat, drink, and take care of their bodily functions. During the third shift, an inmate may not be temporarily released, unless the inmate requests release to take care of bodily functions. Periodic observation will be required every 15 minutes while immobilized and will be documented on Form DC-141.~~
- (6) ~~(7)~~ The use of therapeutic restraints as part of mental health treatment is outlined in the Health Care Procedures Manual. ~~at Section 418.~~

(e) Tear Gas.

- (1) Tear gas canisters and other tear gas weapons will be used only if an exit is available to a ventilated area or can be made available to a ventilated area for the inmates following the return of control.
- (2) Affected inmates will be given the opportunity to shower and ~~will~~ receive clean clothes once control has been established.
- (3) Only the Officer-In-Charge of the correctional facility may authorize the use of tear gas.

(f) Firearms.

- (1) The use of firearms are authorized in the deadly force situations described in ~~Rule 1502 (c)~~ of this Section.
- (2) In an emergency, the Emergency Response Commander may authorize the use of firearms to assure compliance with a lawful order when failure to comply jeopardizes the safety of the public, staff, or other inmates to the extent that serious injury or death is likely to occur.

- (3) No firearms of any description shall be allowed at any time in a correctional facility except as directed by the Emergency Response Commander.
- (3) ~~(4)~~ No firearm is to be left unattended or unsecured at any time or in any place accessible to the public or inmates, either directly or indirectly.
- (5) ~~An officer should apply good safety techniques when it is necessary to run with a firearm in hand.~~
- (4) ~~(6)~~ In a pursuit situation outside the confines of the facility, An officer officers should avoid firing at or from a moving vehicle.
- (5) ~~(7)~~ An officer should avoid firing warning shots but when good judgment dictates their use, care shall be taken to not injure other persons or property.
- (6) An officer should not cock revolvers; the firing of revolvers should be double action at all times.

Statutory Authority G.S. 148-11; 148-46.

.1506 MEDICAL RESPONSE

(a) A medical evaluation will be conducted on each inmate involved in a use of force incident. ~~Medical evaluations will be made available to staff involved in a use of force incident. Any injury to staff should be evaluated and documented and treatment provided. Medical evaluation and treatment of an inmate shall be provided by correctional medical staff or, if not available, by the nearest medical facility.~~

(b) The Officer-In-Charge will determine whether or not immediate medical attention is required for an inmate. Application of one or more of the following circumstances will require medical evaluation and treatment immediately:

- (1) The inmate complains of injury;
- (2) Staff observe any injury;
- (3) Staff employed a firearm, mace, a baton or any other device likely to cause injury; or
- (4) The amount of force used has rendered the inmate immobile, unconscious or unable to communicate.

If no trained medical staff is available at the facility and the Officer In Charge determines the inmate requires immediate medical attention, the inmate will be transported to an appropriate medical facility.

(c) An inmate's refusal of treatment shall be documented on both the use of force report and the medical record.

(d) Any injury to staff should be evaluated, documented and treatment provided.

~~Inmates not requiring immediate medical attention will receive a medical evaluation as soon as medical staff are available.~~

Statutory Authority G.S. 148-11; 148-46.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule(s) cited as 11 NCAC 16 .0205 - .0206.

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 10:00 a.m. on March 24, 1992 at the Dobbs Building, 430 N. Salisbury Street, Third Floor Hearing Room, Raleigh, N.C. 27611.

Reason for Proposed Action: 11 NCAC 16 .0205 - The submission of data is required to establish the actuarial reasonableness of the rate revision requested. 11 NCAC 16 .0206 - Prohibit insurers from establishing classes within a policy form or policy forms that results in the elimination of new entrants to the class.

Comment Procedures: Written comments may be sent to Walter James, Actuarial Services Division, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284, or Ellen Sprenkel at (919) 733-4529.

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0200 - INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

.0205 DATA REQUIREMENTS FOR RATE REVISION SUBMISSION

With respect to any individual accident and health insurance policy for which an adjustment of premium rate is allowed by law, the insurer shall submit an actuarial memorandum describing and demonstrating the development of any requested premium rate revision. The actuarial memorandum shall contain a subsection clearly identified as "Additional Data Requirements." All data required by this Rule must be submitted to the Department's Life and Health Division within 45 days after the date that the rate revision

submission is received and stamped by that Division. An insurer may continue to submit data in accordance with data submission procedures followed before the effective date of this Rule for a period not to exceed one year after the effective date of this Rule if an authorized officer of the insurer certifies to the Commissioner that the insurer's current information system cannot assemble data as required by this Rule. The data required in the "Additional Data Requirements" subsection shall include:

- (1) Identification of the submitted data as North Carolina or countrywide and consistent use of this data identification throughout this Section.
- (2) Identification of all policy forms by approved North Carolina policy form number.
- (3) The month, year, and percentage amount of all previous rate revisions.
- (4) The month and year that the rate revision is scheduled to be implemented (hereinafter referred to as the "implementation date").
- (5) The type of renewability provision contained in each policy form, e.g. guaranteed renewable.
- (6) The type of coverage provided by each policy form, e.g. medical expense.
- (7) The National Association of Insurance Commissioners minimum guideline loss ratio and, if different, the insurer's minimum guideline loss ratio.
- (8) The average annual premium for North Carolina and countrywide before and after the implementation of the rate revision.
- (9) The number of North Carolina and countrywide policyholders affected by the rate revision.
- (10) The requested rate revision percentage attributable to experience.
- (11) The requested rate revision percentage attributable to changes in benefits promulgated by Medicare, if applicable.
- (12) Identification and actuarial justification of all groupings of policy forms.
- (13) The historical calendar year earned premium subdivided by duration and expressed on an actual and a current premium rate basis for the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- (14) The "expected" incurred loss ratios for duration one through the duration coinciding with the fifth year following the implementation date.
- (15) The "expected" lapse rates for duration one through the duration coinciding with the fifth year following the implementation date.

- (16) The "actual" lapse rates for duration one through the duration coinciding with the calendar year for which the most recent experience is recorded.
- (17) The historical calendar year incurred claims, for other than Medicare supplement insurance, covering the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- (18) The historical calendar year incurred claims, for Medicare supplement insurance, expressed on an actual and a current benefit level basis covering the period of time from the earliest date experience is recorded to the most recent date experience is recorded.
- (19) The number of policy years contained within each historical calendar year of data provided.
- (20) A statement declaring whether this is an open block of business or a closed block of business.
- (21) An estimation of the annual earned premium on new issues for the period of time from the date that the most recent experience is recorded to the fifth year following the implementation date.
- (22) The number of months that the rate will be guaranteed to an individual policyholder.
- (23) The rate revision implementation method, such as the next premium due date following a given date, the next policy anniversary date, or otherwise; if otherwise, an explanation must be included.
- (24) A statement declaring the month and year of the earliest anticipated date of the next rate revision.
- (25) An explanation and actuarial justification of the apportionment of the aggregate rate revision within each policy form or between policy forms that have been grouped; and a demonstration that the apportionment of the aggregate rate revision yields the same premium income as if the rate revision had been applied uniformly.
- (26) An explanation and actuarial justification, if applicable, for changing any factor that affects the premium.
- (27) An explanation of the effect that the rate revision will have on the incurred loss ratio on those policies in force for three years or more as exhibited in the Medicare Supplement Experience Exhibit of the Annual Statement.
- (28) The name, address, and telephone number of an insurance company representative who will be available to answer questions relating to the rate revision.

Statutory Authority G.S. 58-2-40(1); 58-51-95; 58-63-15(7)b.

.0206 CLASS DEFINITION RESTRICTION

With respect to individual accident and health insurance policies for which the adjustment of premium rates is allowed by law, the insurer shall not establish, for rate revision purposes, a class within a policy form or group of policy forms so as to eliminate the possibility of new entrants into the class. This Rule does not preclude actuarially justified apportionments of aggregate rate revisions on either open or closed blocks of business between classes established at the time the policy form or group of policy forms were approved by the Commissioner.

Statutory Authority G.S. 58-2-40(1); 58-51-95; 58-63-15(7)b.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Division of Soil and Water Conservation intends to amend rules cited as 15A NCAC 6E .0006 - .0007.

The proposed effective date of this action is July 1, 1992.

Instructions on how to demand a public hearing: Any person(s) requesting a public hearing on the proposed rules must submit such a request in writing within 15 days after publication of the notice. The request must be submitted to: Glenn Sappie, Economist, P.O. Box 27687, Raleigh, NC 27611. Mailed written request must be postmarked no later than March 17, 1992.

Reason for Proposed Action: To make minor technical adjustments to existing rules of procedure for implementing the NC Agriculture Cost Share Program, regarding technical assistance and maintenance of cost share agreement.

Comment Procedures: Interested persons may contact Glenn Sappie at (919) 733-2302 for more information regarding these rules. Written comments will be received for 30 days after publication of the notice. The request must be submitted to: Glenn Sappie, DSWC, P.O. Box 27687, Raleigh, NC 27611. Mailed written comments must be postmarked no later than April 1, 1992.

Editor's Note: These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on January 30, 1992, OSBM on January 30, 1992, N.C. League of Municipalities on January 30, 1992, and N.C. Association of County Commissioners on January 30, 1992.

CHAPTER 6 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 6E - AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

.0006 TECHNICAL ASSISTANCE FUNDS

(a) The funds available for technical assistance shall be allocated by the commission based on the recommendation of the division and the needs as expressed by the district and needs to accelerate the installation of BMP's in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance positions. A maximum of fifteen thousand dollars (\$15,000) of N.C. Agriculture Cost Share program funds may be used per FTE technical position with the district matching 50 percent of the total position cost in order to qualify. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. Matching funds for district technical assistance shall be approved by the commission prior to any expenditure of funds. Budget revisions submitted by the districts can be approved by the NPS Section based on Paragraph (b) of this Rule. N.C. Agriculture Cost Share technical assistance funds may be used for each FTE technical position with the district matching 50 percent of the total. Priorities for funding positions are assigned based on the rating system as follows:

- | | |
|---|---------|
| (1) Position presently funded by program technical assistance funds | 50 pts. |
| (2) Position needed in district not presently receiving technical assistance monies | |
| (A) Position needed to qualify for cost share allocation | 15 pts. |
| (B) Position needed to further accelerate program | 10 pts. |

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- (3) Position needed to further accelerate program in district presently receiving technical assistance monies for another position

5 pts.

- (4) Position needed to further accelerate treatment of identified critical nonpoint source pollution problem (i.e., intense animal waste, PNA drainage area, Nutrient Sensitive Watershed, etc.)

15 pts.

(b) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage. A maximum of two thousand five hundred dollars (\$2,500) per year for each FTE technical position is allowed for mileage charges.

- (c) Minimum requirements for technical positions shall be one of the following:

(1) associated degree in engineering, agriculture, forestry or related field, or

(2) high school diploma with two years experience in the fields listed in Rule .0006, (c), (1), of this Subchapter or

(3) appropriate experience in the fields listed in Rule .0006, (c), (1) of this Subchapter.

(d) Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.

(e) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division will cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) will be paid to one district only.

(f) Funds, if available, will be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and will be matched with in-kind funds of an equal amount from the district.

Statutory Authority G.S. 139-4; 139-8; 143-215.74; 143B-294.

.0007 COST SHARE AGREEMENT

(a) The landowner shall be required to sign the agreement for all practices other than conservation tillage and land application of animal wastes. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the length of the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) As a condition for receiving cost share and/or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.

(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible. Soil testing shall be required a minimum of every two years on all cropland affected by cost share payments. Failure to soil test shall not constitute noncompliance with the cost share agreement.

(d) As a condition for receiving cost share payments for waste management systems, the applicant shall agree to have the waste material analyzed once every year to determine its nutrient content. If the waste is land applied, the applicant shall agree to soil test the area of application and to apply the waste as close as reasonably and practically possible to recommended rates. When waste is land applied, waste analysis and soil testing shall be conducted annually.

(e) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications as defined for the respective Program Year in the USDA-Soil Conservation Service Technical Guide, Section IV, Raleigh, North Carolina, or according to specifications approved by the division for district BMP's. The district shall be responsible for making an

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annual spot check of five percent of all the participating farms to ensure proper maintenance. Waste management systems will receive annual status reviews for five years following implementation.

(f) ~~If the technical representative of the district determines that practice(s) for which cost sharing was received have been destroyed or have not been properly maintained, the farmer will be notified that the cost shared practices must be repaired or reimplemented within one calendar year. If the technical representative of the district determines that a BMP for which cost sharing was received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.~~

(g) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the division a prorated amount as shown in Table 1 and/or 100 percent of the cost share incentive payments received during the current fiscal year.

Table 1
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE
OF COST SHARE PAYMENTS

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(h) An applicant who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices shall have the right to appeal to the district. Appeals must be received by the district within 30 days of issuance of the notice of noncompliance. The districts have 60 days to respond to appeals. In situations in which the applicant and the district continue to disagree after the appeals process, both parties may within 30 days of the district appeal decision jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding and that all further reviews and appeals are waived and abandoned.

(i) An applicant shall have a maximum of 180 days to make repayment to the division following the final appeals process.

(j) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.

(k) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to continue and maintain practice(s) previously implemented.

Statutory Authority G.S. 139-8; 143-215.74.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to amend rule(s) cited as 15A NCAC 7H .0208 - .0209, .0308.

The proposed effective date of this action is August 3, 1992.

The public hearing will be conducted at 4:00 p.m. on March 26, 1992 at the Holiday Inn, 1706 North Lumina Avenue, Wrightsville Beach, NC 28480.

Reason for Proposed Action: The purpose for these amendments is to make rules clearer and consistent with definitions of AECs presented in other parts of our rules.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive written comments up until April 1, 1992. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent will not be permitted in coastal wetlands, estuarine waters, and public trust ~~waters~~ areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent may include: utility easements; docks; wharfs; boat ramps; dredging; bridges and bridge approaches; revetments, bulkheads; culverts; groins; navigational aids; mooring pilings; navigational channels; simple access channels and drainage ditches.
- (2) Before being granted a permit by the CRC or local permitting authority, there shall be a finding that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved must be consistent with the stated management objective.
 - (B) Before receiving approval for location of a use or development within these AECs, the permit-letting authority shall find that no suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, submerged grass beds, spawning and nursery areas, important nesting and wintering sites for waterfowl

and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).

- (C) Development shall not violate water and air quality standards.
 - (D) Development shall not cause major or irreversible damage to valuable documented archaeological or historic resources.
 - (E) Development shall not measurably increase siltation.
 - (F) Development shall not create stagnant water bodies.
 - (G) Development shall be timed to have minimum adverse significant affect on life cycles of estuarine resources.
 - (H) Development shall not impede navigation or create undue interference with access to, or use of, public trust areas or estuarine waters.
 - (I) Development proposed in estuarine waters must also be consistent with applicable standards for the ocean hazard system AECs set forth in Section .0300 of this Subchapter.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits clearly outweigh the long range adverse effects of the project, that there is no reasonable and prudent alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and will be implemented at the applicant's expense. These measures taken to mitigate or minimize adverse impacts may include actions that will:
 - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
 - (4) Primary nursery areas are those areas in the estuarine system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly

early juvenile stages. They are officially designated and described by the N.C. Marine Fisheries Commission in 15A NCAC 3B .1405 and by the N.C. Wildlife Resources Commission in 15A NCAC 10C .0110.

- (5) Outstanding Resource Waters are those estuarine waters and public trust waters areas classified by the N.C. Environmental Management Commission pursuant to Title 15A, Subchapter 2B .0216 of the N.C. Administrative Code as Outstanding Resource Waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance. In those estuarine waters and public trust waters areas classified as ORW by the Environmental Management Commission (EMC), no permit required by the Coastal Area Management Act will be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or Marine Fisheries Commission (MFC) for estuarine waters, public trust waters areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource values unless such degradation is temporary.
- (b) Specific Use Standards
 - (1) Navigation channels, canals, and boat basins must be aligned or located so as to avoid primary nursery areas highly productive shellfish beds, beds of submerged vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.
 - (A) Navigation channels and canals can be allowed through narrow fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and, if there is no reasonable alternative that would avoid the wetland losses.
 - (B) All spoil material from new construction shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or marsh.
 - (C) Spoil from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of

by an acceptable method having no significant, long term wetland impacts. Under no circumstances shall spoil be placed on regularly flooded wetlands.

- (D) Widths of the canals and channels shall be the minimum required to meet the applicant's needs and provide adequate water circulation.
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland.
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting channels.
- (G) Canals for the purpose of multiple residential development shall have:
 - (i) no septic tanks unless they meet the standards set by the Division of Environmental Management and the Division of Environmental Health;
 - (ii) no untreated or treated point source discharge;
 - (iii) storm water routing and retention areas such as settling basins and grassed swales.
- (H) Construction of finger canal systems will not be allowed. Canals shall be either straight or meandering with no right angle corners.
- (I) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include bulkheading, vegetative stabilization, or adequate setbacks based on soil characteristics.
- (J) Maintenance excavation in canals, channels and boat basins within primary nursery areas should be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria as shown by clear and convincing evidence accompanying the permit application. This Rule does not affect restrictions placed on permits issued after March 1, 1991.
 - (i) The applicant can demonstrate and document that a water-dependent need exists for the excavation; and
 - (ii) There exists a previously permitted channel which was constructed or maintained under permits issued by the State and/or Federal government. If a natural channel was in use, or if a human-made channel was constructed

before permitting was necessary, there must be clear evidence that the channel was continuously used for a specific purpose; and

(iii) Excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas; and

(iv) The original depth and width of a human-made or natural channel will not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

(A) The terminal end of the dredge pipeline should be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow adequate settlement of suspended solids.

(B) Dredge spoil must be either confined on high ground by adequate retaining structures or if the material is suitable, deposited on beaches for purposes of renourishment, with the exception of (G) of this Subsection (b)(2).

(C) Confinement of excavated materials shall be on high ground landward of regularly and irregularly flooded marshland and with adequate soil stabilization measures to prevent entry of sediments into the adjacent water bodies or marsh.

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations must be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below mean low water.

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged.

(F) A water control structure must be installed at the intake end of the effluent pipe.

(G) Publicly funded projects will be considered by review agencies on a case by case basis with respect to dredging methods and spoil disposal.

(H) Dredge spoil from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any marshland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant can show that larger

ditches are necessary for adequate drainage.

(B) Spoil derived from the construction or maintenance of drainage ditches through regularly flooded marsh must be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Spoil derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites.

(C) Excavation of new ditches through high ground shall take place landward of a temporary earthen plug or other methods to minimize siltation to adjacent water bodies.

(D) Drainage ditches shall not have a significant adverse effect on primary nursery areas, productive shellfish beds, submerged grass beds, or other documented important estuarine habitat. Particular attention should be placed on the effects of freshwater inflows, sediment, and nutrient introduction. Settling basins, water gates, retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches must be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water.

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth.

(C) Drainage ditches shall not create stagnant water pools or significant changes in the velocity of flow.

(D) Drainage ditches shall not divert or restrict water flow to important wetlands or marine habitats.

(5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking and none of the preceding services. Expansion of existing facilities shall also comply with these standards for all devel-

- opment other than maintenance and repair necessary to maintain previous service levels.
- (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb valuable shallow water, submerged aquatic vegetation, and wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alternative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:
- (i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing adequate flushing by tidal or wind generated water circulation;
 - (ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in the significant degradation of existing fishery, shellfish, or wetland resources and the basin design shall provide adequate flushing by tidal or wind generated water circulation;
 - (iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and
 - (iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.
- (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas will be considered on a case-by-case basis.
- (C) To minimize coverage of public ~~waters~~ trust areas by docks and moored vessels, dry storage marinas shall be used where feasible.
- (D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 sq. ft. of public trust ~~waters~~ areas for every one lin. ft. of shoreline adjacent to these public trust ~~waters~~ areas for construction of docks and mooring facilities. The 27 sq. ft. allocation shall not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces.
- (E) To protect water quality of shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish apparently are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish which have been harvested or are available for harvest in the area where harvest will be affected by the development.
- (F) Marinas shall not be located without written consent from the controlling parties in areas of submerged lands which have been leased from the state or deeded by the state.
- (G) Marina basins shall be designed to promote flushing through the following design criteria:
- (i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and
 - (ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation.
- (H) Marinas shall be designed to minimize adverse effects on navigation and public use of ~~waters~~ public trust areas while allowing the applicant adequate access to deep waters.
- (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their immediate boundaries. This includes mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted.

- (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality.
 - (K) Marinas which require dredging shall provide acceptable areas to accommodate disposal needs for future maintenance dredging. Proof of the ability to truck the spoil material from the marina site to an acceptable disposal area will be acceptable.
 - (L) Marina design shall comply with all applicable requirements for management of stormwater runoff.
 - (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and explaining the availability of information on local pump-out services.
 - (N) Boat maintenance areas must be designed so that all scraping, sandblasting, and painting will be done over dry land with adequate containment devices to prevent entry of waste materials into adjacent waters.
 - (O) All marinas shall comply with all applicable standards for docks and piers, bulkheading, dredging and spoil disposal.
 - (P) All applications for marinas shall be reviewed to determine their potential impact and compliance with applicable standards. Such review shall consider the cumulative impacts of marina development.
 - (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the preceding rules are complied with to the maximum extent possible, with due consideration being given to replacement costs, service needs, etc.
- (6) Docks and Piers
- (A) Docks and piers shall not significantly interfere with water flows.
 - (B) To preclude the adverse effects of shading coastal wetlands vegetation, docks and piers built over coastal wetlands shall not exceed six feet in width. "T"s and platforms associated with residential piers must be at the waterward end, and must not exceed a total area of 500 sq. ft. with no more than six feet of the dimension perpendicular to the marsh edge extending over coastal wetlands. Water dependent projects requiring piers or wharfs of dimensions greater than those stated in this Rule shall be considered on a case-by-case basis.
 - (C) Piers shall be designed to minimize adverse effects on navigation and public use of waters while allowing the applicant adequate access to deep waters by:
 - (i) not extending beyond the established pier length along the same shoreline for similar use;
 - (ii) not extending into the channel portion of the water body; and
 - (iii) not extending more than one-third the width of a natural water body or man-made canal or basin. Measurements to determine widths of the channels, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The one-third length limitation will not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line.
 - (D) Pier alignments along federally maintained channels must meet Corps of Engineers District guidelines.
 - (E) Piers shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this rule may be aided by reference to an approved diagram illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management.
 - (F) Docks and piers shall not significantly interfere with shellfish franchises or leases. Applicants for authorization to construct a dock or pier shall provide notice of the

- permit application or exemption request to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend.
- (7) Bulkheads and Shore Stabilization Measures
- (A) Bulkhead alignment, for the purpose of shoreline stabilization, must approximate mean high water or normal water level.
- (B) Bulkheads shall be constructed landward of significant marshland or marshgrass fringes.
- (C) Bulkhead fill material shall be obtained from an approved upland source, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead.
- (D) Bulkheads or other structures employed for shoreline stabilization shall be permitted below approximate mean high water or normal water level only when the following standards are met:
- (i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Regulation;
 - (ii) the bulkhead alignment extends no further below approximate mean high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;
 - (iii) the bulkhead alignment will not result in significant adverse impacts to public trust rights or to the property of adjacent riparian owners;
 - (iv) the need for a bulkhead below approximate mean high water or normal water level is documented in the Field Investigation Report or other reports prepared by the Division of Coastal Management; and
 - (v) the property to be bulkheaded is in a nonoceanfront area.
- (E) Where possible, sloping rip-rap, gabions, or vegetation may be used rather than vertical seawalls.
- (8) Beach Nourishment
- (A) Beach creation and/or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use.
 - (B) Beaches can be created and/or maintained in areas where they have historically been found due to natural processes. They will not be allowed in areas of high erosion rates where frequent maintenance will be necessary.
 - (C) Placing unconfined sand material in the water and along the shoreline will not be allowed as a method of shoreline erosion control.
 - (D) Material placed in the water and along the shoreline shall be clean sand free from pollutants and highly erodible finger material. Grain size shall be equal to or larger than that found naturally at the site.
 - (E) Material from dredging projects can be used for beach nourishment if:
 - (i) it is first handled in a manner consistent with regulations governing spoil disposal;
 - (ii) it is allowed to dry for a suitable period; and
 - (iii) only that material of acceptable grain size is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
 - (F) Beach creation shall not be allowed in any primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds.
 - (G) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation.
 - (H) Material shall not be placed on any submerged bottom with significant shellfish resources.
 - (I) Beach construction shall not create the potential for filling adjacent or nearby navigation channels, canals, or boat basins.
 - (J) Beach construction shall not violate water quality standards.
 - (K) Permit renewal of these projects shall require an evaluation of any adverse impacts of the original work.
 - (L) Permits issued for this development shall be limited to authorizing beach nourishment only one time during the life of the permit. Permits may be renewed for maintenance work or repeated need for nourishment.
- (9) Wooden and Riprap Groins

- (A) Groins shall not extend more than 25 ft. waterward of the mean high water or normal water level unless a longer structure can be justified by site specific conditions, sound engineering and design principals.
- (B) Groins shall be set back a minimum of 15 ft. from the adjoining property lines. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
- (C) Groins shall pose no threat to navigation.
- (D) The height of groins shall not exceed 1 ft. above mean high water or the normal water level.
- (E) No more than two structures shall be allowed per 100 ft. of shoreline unless the applicant can provide evidence that more structures are needed for shoreline stabilization.
- (F) "L" and "T" sections shall not be allowed at the end of groins.
- (G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant in other than non-harmful quantities and of a size sufficient to prevent its movement from the site by wave and current action.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

.0209 ESTUARINE SHORELINES

(a) **Rationale.** As an AEC, estuarine shorelines, although characterized as dry land, are considered a component of the estuarine system because of the close association with the adjacent estuarine waters. This Section defines estuarine shorelines, describes the significance, and articulates standards for development.

(b) **Description.** Estuarine shorelines are those non-ocean shorelines which are especially vulnerable to erosion, flooding, or other adverse effects of wind and water and are intimately connected to the estuary. This area extends from the mean high water level or normal water level along the estuaries, sounds, bays, and brackish waters as set forth in an agreement adopted by the Wildlife Resources Commission and the De-

partment of Environment, Health, and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the mean high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties.

(c) **Significance.** Development within estuarine shorelines influences the quality of estuarine life and is subject to the damaging processes of shore front erosion and flooding.

(d) **Management Objective.** To ensure shoreline development is compatible with both the dynamic nature of estuarine shorelines and the values of the estuarine system.

(e) Use Standards

(1) All development projects, proposals, and designs shall substantially preserve and not weaken or eliminate natural barriers to erosion, including, but not limited to, peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Re-development of areas exceeding the 30 percent impervious surface limitation can be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent practical.

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer

zone nearest the land disturbing development.

- (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other adequate erosion-control devices or structures.
- (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine resources.
- (5) Development shall not significantly interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No major public facility shall be permitted if such facility is likely to require extraordinary public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" shall mean a project which is paid for in any part by public funds.
- (7) Development shall not cause major or irreversible damage to valuable, documented historic architectural or archaeological resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AEC for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit will be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust ~~waters~~, areas, or coastal wetlands. For development activities not covered by specific use standards, no permit will be issued if the activity would, based on site specific information, materially degrade the water quality or outstanding resource

values unless such degradation is temporary.

(f) Specific Use Standards for ORW Estuarine Shorelines.

- (1) Within the AEC for estuarine shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area to no more than 25 percent of the AEC area of the land to be developed or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - (A) have no stormwater collection system;
 - (B) provide a buffer zone of at least 30 feet from the mean high water line;
 - (C) otherwise be consistent with the use standards set out in Paragraph (e) of this Rule.
- (2) Development (other than single-family residential lots) more than 75 feet from the mean high water line but within the AEC which as of June 1, 1989:
 - (A) has a CAMA permit application in process, or
 - (B) has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which substantial financial resources have been invested in design or improvement;
 will be permitted in accordance with rules and standards in effect as of June 1, 1989.
- (3) Single-family residential lots which would not be buildable under the low-density standards defined in Paragraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
- (4) For ORW's nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.

Statutory Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.

SECTION .0300 - OCEAN HAZARD AREAS

.0308 SPECIFIC USE STANDARDS

- (a) Ocean Shoreline Erosion Control Activities:
 - (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) Preferred erosion control measures shall be beach nourishment projects and relo-

- cation. Alternative approaches will be allowed where the applicant can show that such measures are necessary to provide adequate protection. Comprehensive shoreline management shall be preferred over small scale methods.
- (B) Erosion control structures which cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach are prohibited. Such structures include, but are not limited to, wooden bulkheads, seawalls, rock or rubble revetments, wooden, metal, concrete or rock jetties, groins and breakwaters; concrete-filled sandbags and tire structures.
- (C) Rules concerning the use of oceanfront erosion control measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) Erosion control measures which will interfere with public access to and use of the ocean beaches are prohibited.
- (E) Erosion control measures which significantly increase erosion on adjacent properties are prohibited.
- (F) All oceanfront erosion control activities, other than beach bulldozing, placement of sandbag structures or artificial seaweed shall demonstrate sound engineering for their planned purpose and shall be certified by a licensed engineer prior to being permitted.
- (G) Shoreline erosion control projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
- (H) Project construction shall be timed to have minimum significant adverse effect on biological activity.
- (I) The applicant shall notify all littoral property owners within 100' of the boundaries of the project site and no permit shall be issued until the property owner(s) has signed the notice form or until a reasonable effort has been made to serve notice on the owner(s) by registered or certified mail.
- (J) All oceanfront erosion control projects shall be consistent with the general policy statements in 15A NCAC 7M .0200.
- (K) Prior to beginning any beach nourishment or structural erosion control project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (L) All permitted erosion control devices shall be marked so as to allow identification for monitoring and potential cleanup purposes.
- (M) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
- (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;
 - (ii) the preferred erosion control measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control measure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.
- (2) Temporary Erosion Control Structures
- (A) Permittable temporary erosion control structures include only the following:
- (i) Bulkheads or similar structures made of sandbags or comparable materials;
 - (ii) Low sandbag groins or sandbag sediment trapping structures above mean high water provided they are continuously buried by suitable sand from an outside source.
- (B) Temporary erosion control structures as defined in (A) of this Paragraph may be used only to protect imminently threatened structures. Normally, a structure will be considered to be imminently threatened if its foundation is less than 20 feet away from the erosion scarp.
- (C) Shore-parallel temporary erosion control structures must not extend more than 20 feet past the end of the structure to be protected. The erosion control structure also must not come closer than 15 feet to the applicant's side property lines unless the application is part of a joint project with neighbors trying to protect similarly threatened structures or unless the applicant has written permission from the affected property owner. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the property to be protected.

- (D) If a temporary erosion control structure interferes with public access and use of the ocean beach, or if it requires burial but remains continuously exposed for more than six months it must be removed by the permittee within 30 days of notification by the Coastal Resources Commission or its representatives. In addition, the permittee shall be responsible for the removal of remnants of all or portions of the temporary erosion control structure damaged by storms or continued erosion.
- (E) Once the temporary erosion control structure is determined to be unnecessary due to a natural reversal of the eroding condition, relocation of the threatened structure, or adoption of an alternate erosion control method, any remnants of the temporary erosion control structure exposed seaward of or on the beach must be removed by the permittee within 30 days of notification by the Coastal Resources Commission or its representatives.
- (F) Temporary sandbag bulkheads permissible by this Rule shall be of a size and configuration consistent with their allowed purpose. Such structures may be appropriately anchored and shall not exceed a width at their base of three sandbags or a maximum of fifteen feet. In no case shall the structure extend below the mean high water line.
- (3) Sand-Trapping Devices: Low intensity off-shore passive sand-trapping devices may be permitted provided:
 - (A) A minimum of two signs no smaller than 12 inches x 18 inches will be placed and maintained on poles on the ocean beach at least 6' above ground level that will indicate to fishermen, surfers and bathers that the structures or devices are present offshore.
 - (B) The structures or devices will be removed at the expense of the applicant should they be documented as a nuisance to private property or to the public well being. "Nuisance" will be defined as any interference with reasonable use of public trust waters or the ocean beaches for navigation, swimming, fishing, sunbathing, or other recreational uses, areas or other lands within the ocean hazard system AECs that are subject to public trust use.
 - (C) The structures or devices will be aligned no closer than 450 feet seaward of the first line of stable natural vegetation or 300 feet from the mean high water line, whichever is further seaward.
- (4) Beach Nourishment. Sand used for beach nourishment should be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (5) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion control measure if the following conditions are met:
 - (A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and should follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment should not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) Movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:
 - (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
 - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing

vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

- (4) Sand used to establish or strengthen dunes must be brought in from a source outside the ocean hazard area and must be of the same nature as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) That sand held in storage in any dune other than frontal or primary dunes may be moved laterally in order to strengthen existing primary or frontal dunes if the work would enhance the protection to the proposed development activity.
 - (7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.
- (c) Structural Accessways
- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune if:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is less than six feet in width; and
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
 - (3) An accessway which does not meet (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") should be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways should be no greater than ten feet in width and should be constructed of wooden sections fastened together over the length of the affected dune area.
- (d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:
- (1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume I or Section 39, Volume I-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
 - (2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
 - (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.
 - (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

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

**TITLE 21 - OCCUPATIONAL LICENSING
BOARDS**

Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rule(s) cited as 21 NCAC 36 .0109, .0301 - .0303, .0318, .0320 - .0324; adopt rule(s) cited as 21 NCAC 36 .0309 - .0310, .0315, .0317; and repeal rule(s) cited as 21 NCAC 36 .0304.

Editor's Note: Pursuant to G.S. 150B-21.20 the North Carolina Board of Nursing is requesting that the rules listed below be recodified. The reason for the recodification of the rules is for the sequence of the process for Approval of Nursing Programs.

*21 NCAC 36 .0309 to 21 NCAC 36 .0318 - Faculty
21 NCAC 36 .0310 to 21 NCAC 36 .0320 - Students
21 NCAC 36 .0315 to 21 NCAC 36 .0321 - Curriculum
21 NCAC 36 .0317 to 21 NCAC 36 .0322 - Facilities
21 NCAC 36 .0318 to 21 NCAC 36 .0323 - Records and Reports
21 NCAC 36 .0320 to 21 NCAC 36 .0324 - Experimental Approaches*

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 4:00 p.m. on March 20, 1992 at the North Carolina Board of Nursing, 3724 National Drive, Suite 201, Raleigh, North Carolina.

Reason for Proposed Action: 21 NCAC 36 .0109 - To give each candidate on the Ballot a more equitable opportunity to be elected. 21 NCAC 36 .0301 - .0304, .0309 - .0310, .0315, .0317 - .0318, .0320 - .0324 - These Rules are being proposed for adoption, amendment, or repeal to clarify, strengthen and incorporate adopted policies into the Process and Standards for Approval of Nursing Programs and Clinical Agencies.

Comment Procedures: Any person wishing to present oral testimony relevant to proposed rules may register at the door before the hearing begins and present hearing officer with a written copy of testimony. Written statements may be directed five days prior to the hearing date to the North

CHAPTER 36 - BOARD OF NURSING

SECTION .0100 - GENERAL PROVISIONS

**.0109 SELECTION AND QUALIFICATIONS
OF NURSE MEMBERS**

(a) Vacancies in nurse member positions on the Board that are scheduled to occur during the next year shall be announced in the December issue of the North Carolina Board of Nursing "Bulletin", which shall be mailed to the address on record for each North Carolina currently licensed nurse on December 1. The "Bulletin" shall include a petition form for nominating a nurse to the Board and information on filing the petition with the Board.

(b) Each petition shall be checked with the records of the Board to validate that the nominee and each petitioner hold a current North Carolina license to practice nursing. If the nominee is found to be not currently licensed, the petition shall be declared invalid. If any petitioners are found to be not currently licensed and this finding decreases the number of petitioners to less than ten, the petition shall be declared invalid.

(c) On a form provided by the Board, each nominee shall indicate the category for which nominee is seeking election, shall attest to meeting the qualifications specified in G.S. 90-171.21(d) and shall provide written permission to be listed on the ballot. The form must be returned on or before April 15.

(d) The majority of employment income of registered nurse members of the Board, must be earned by holding positions of primary responsibility as specified in G.S. 90-171.21(d). The following definitions apply in determining qualifications for registered nurse categories of membership:

- (1) Nurse Educator includes any nurse who teaches in or directs a basic or graduate nursing program; or who teaches in or directs a continuing education or staff development program for nurses.
- (2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.
- (3) Hospital Nursing Service Director is any nurse who is the chief executive officer for nursing service.
- (4) Employed by a hospital includes any nurse employed by a hospital.

- (5) Employed by a physician includes any nurse employed by a physician or group of physicians licensed to practice medicine in North Carolina and engaged in private practice.
- (6) Employed by skilled or intermediate care facility includes any nurse employed by a long term nursing facility.
- (7) Registered nurse approved to perform medical acts includes any nurse approved for practice in North Carolina as a Nurse Practitioner or Certified Nurse Midwife.
- (8) Community health nurse includes any nurse who functions as a generalist or specialist in areas including, but not limited to, public health, student health, occupational health or community mental health.
- (e) The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing.
- (f) A nominee shall be listed in only one category on the ballot.
- (g) If there is no nomination in one of the registered nurse categories, all registered nurses who have been duly nominated and qualified shall be eligible for an at-large registered nurse position. A plurality of votes for the registered nurse not elected to one of the specified categories shall elect that registered nurse to the at-large position.
- (h) Separate ballots shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in ~~alphabetical~~ random order on the ballot for licensed practical nurse nominees and within the categories for registered nurse nominees. Ballots shall be accompanied by biographical data on nominees. Ballots shall prescribe the method of voting.
- (i) Any nominee may withdraw her/his name at any time by written notice prior to the date and hour fixed by the Board as the latest time for return for ballots. Such nominee shall be eliminated from the contest and any votes cast for that nominee shall be disregarded.
- (j) On or about June 15, the appropriate ballot and a return official envelope shall be mailed to the address on record for each currently licensed nurse on that date, together with a notice designating the latest day and hour for return of ballot which shall not be earlier than the tenth day following the mailing.
- (k) The Board of Nursing may contract with a computer or other service for receipt of envelopes with ballots and the counting of ballots.
- (l) The counting of ballots shall be conducted as follows:
 - (1) The certificate number and name of the voter shall be entered on the perforated section of the ballot sheet.
 - (2) The certificate number and name of the voter shall be matched with the registration list. In the event that there is not a match, the entire ballot sheet shall be set aside for inspection, validation, or invalidation by the Board of Nursing.
 - (3) Those ballots which are not set aside shall have the perforated section completely separated from the ballot portion of the sheet.
 - (4) Only official ballots shall be counted.
 - (5) A ballot marked for more names than there are positions to be filled shall not be counted for that category but shall be counted for all other categories voted correctly.
 - (6) If for any reason it is impossible to determine a voter's choice for a category of nurse, that ballot shall not be counted for that category, but shall be counted for all other categories clearly indicated.
 - (7) Ballots identified in (2), (5) and (6) of this Paragraph shall be set aside for inspection and determination by the Board of Nursing.
 - (m) A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.
 - (n) The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:
 - (1) the number of nurses eligible to vote,
 - (2) the number of return ballots set aside and the disposition of same,
 - (3) the number of ballots cast,
 - (4) the number of ballots declared invalid, and
 - (5) the number of votes cast for each person on the ballot.
 - (o) The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.
 - (p) All petitions to nominate a nurse, signed consents to appear on the ballot, verifications of qualifications, perforated sections of the ballot

sheets containing the certificate number and name of the voter, and the ballots shall be preserved for a period of three months following the close of an election.

Statutory Authority G.S. 90-171.21; 90-171.23 (b).

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

.0301 APPROVAL BODY

The North Carolina Board of Nursing is designated as the legal approval body for nursing programs and associated clinical agencies. The Board is required to evaluate periodically each program and agency in light of requirements of the Law and Standards set forth by the Board. To fulfill this responsibility, the Board's representatives designated representative(s) visit and survey nursing programs and associated agencies. The Board or its designated representatives reviews the report of survey and other records relating to each the program or agency and determines whether or not the program or agency complies with the Law and Standards as required by the Board. The Board expects programs and agencies to be in compliance with Law and Standards at all times. If it comes to the attention of the Board or its designated representatives that a program or agency is not complying with Law and Standards, further action shall be taken.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.23(b)(9); 90-171.23(b)(10); 90-171.38; 90-171.39; 90-171.40.

.0302 ESTABLISHMENT OF A NURSING PROGRAM - INITIAL APPROVAL

(a) At least 12 months prior to the proposed enrollment of students in a nursing program, the administrative officer of the parent An institution desiring to establish considering establishing a nursing program shall submit an application that includes: (1) A feasibility study documenting the following:

- (1) (A) approval of the program by the governing body of the parent institution or written evidence that the approval is in process;
- (2) (B) need for program; evidence of an educational need which cannot be met by existing nursing programs or extensions of those programs;
- (3) (C) proposed student population;
- (4) (D) projected student enrollment;
- (5) potential employment opportunities for graduates;

(6) (E) available clinical resources and maximum numbers of students that can be accommodated in clinical areas;

(7) (F) evidence from existing nursing programs of the potential impact of the proposed program on clinical resources; and

(8) (G) a plan with a specified time frame for availability of:

(A) (i) qualified faculty as specified in Standards;

(B) (ii) adequate financial resources;

(C) (iii) adequate physical facilities in the institution to house the program; and

(D) (iv) support services available to the program from the institution.

(b) The feasibility study will be presented at the next regular Education Committee meeting. If the Education Committee determines there is a need for the program and the plan includes the availability of the necessary resources to establish a program, the Education Committee will recommend to the Board that the institution be approved to proceed with the development of the program. The recommendation to proceed will be contingent upon approval by the governing body.

(c) If the Board determines that a program is approved for development, a minimum of six months prior to the proposed starting date, the institution shall employ a qualified program director and nurse faculty member(s) to develop the proposed program.

(d) The director and faculty shall prepare an application to establish a nursing program, which shall include:

(2) A report prepared by the director of the proposed program and faculty providing:

(1) (A) a narrative description of the organizational structure of the program and its relationship to the controlling institution;

(2) (B) a general overview of the proposed total curriculum that includes:

(A) (i) program philosophy, purposes, and objectives; competencies;

(B) (ii) master plan of curriculum, indicating the sequence of for both nursing and non-nursing courses, indicating as well as prerequisites and corequisites;

(C) (iii) course descriptions and course objectives competencies for all courses; and

(D) (iv) course syllabi as specified in 21 NCAC 36 .0309(h) for all first-year nursing courses;

(3) (C) student policies consistent with Standards for admission, progression, and graduation of students;

(4) (D) curriculum vitae for employed nursing faculty members whose numbers and

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qualifications are consistent with assigned responsibilities in the development of the program; and

- (5) ~~(E)~~ proposed agreements with clinical agencies, including types of units available and number of students that can be accommodated in each area at one time..

(e) ~~(b)~~ The completed application ~~must~~ shall be submitted to the Board not less than 90 days prior to a regular meeting of the Board to allow for:

- (1) survey of the proposed program and ~~facilities; agencies;~~
- (2) preparation of the report of the survey;
- (3) response to the survey report by persons from the proposed program; and
- (4) review by the Education Committee of the Board for recommendations to the Board.

(f) ~~(c)~~ ~~At a meeting, the~~ The Board shall consider all evidence, including the application, survey report, and recommendations of the Education Committee. Representatives of the petitioning institution may speak at the meeting. The Board shall act upon the data available at the meeting. ~~or at a subsequent meeting.~~

(g) ~~(d)~~ If the Board finds, from the evidence presented, that the resources and plans meet all Standards and requirements for establishing a new nursing program and that the petitioning institution is able and willing to maintain support and resources essential to meet the Standards of the Board, and if the first class of students is enrolled within one year after this finding, the Board shall grant initial approval. ~~and place the name of the program on the list of programs with initial approval for a minimum specified period of time.~~ If the Board determines that a proposed program does not comply with all Standards, initial approval will be denied. Following the Initial Approval, if the first class of students is not enrolled within one year, the approval will be rescinded. The period of time a program may retain initial approval status shall be influenced by the length of the time necessary for full implementation of the program. A program shall be considered eligible for removal from ~~the list of initially approved programs and placement on the list of approved programs following a survey during the final semester/quarter.~~ Initial Approval status and placement on Full Approval status following a survey during the final term of total curriculum implementation.

(h) ~~(e)~~ Programs with initial approval shall be surveyed as follows:

- (1) annually during the specified period of initial approval;
- (2) during the final ~~semester/quarter~~ term of complete implementation of the program;

- (3) as directed by the Board when a decision has been made that the program is not complying with Law or Standards.

(i) ~~(f)~~ Following any survey the Board will act upon data from the following:

- (1) a report of the survey;
- (2) response from the program representatives to the survey report; and
- (3) recommendations from the Education Committee.

(j) If at any time it comes to the attention of the Board or its designated representative(s) that the program is not complying with all Standards or the Law, the program shall correct the area of noncompliance and submit written evidence or submit a written plan for correction to the Board for review and action. Failure to respond shall result in further board action.

(k) ~~(g)~~ Upon finding by the Board that the program complies with the Law and Standards, the Board shall direct that the program remain ~~on the list of initially approved programs.~~ Initial Approval status. If, following the survey during the final ~~semester/quarter~~ term for total curriculum implementation, the Board finds that the program is complying with the Law and all Standards, the Board shall direct that the program be placed ~~on the list of approved programs.~~ Full Approval status and resurveyed within three years. Upon a request for deferral of the resurvey, the Board or its designated representative may extend the approval period.

(l) ~~(h)~~ Upon finding by the Board that the program does not comply with the Law or all Standards by the final ~~semester/quarter~~ academic term of initial approval, the Board shall:

- (1) provide the program with written notice of the Board's decision;
- (2) upon written request from the program submitted within ten business days of the Board's written notice, schedule a hearing. Such hearing will be held not less than 20 business days from the date on which the request was received.

(m) ~~(i)~~ Following the hearing and consideration of all evidence provided, the Board shall ~~direct that the name of~~ assign the program Full Approval status ~~be placed on the list of approved programs~~ or shall enter an Order removing the ~~name of the program from the list of initially approved programs.~~ Initial Approval status, which shall constitute discontinuance of the program.

Statutory Authority G.S. 90-171.38.

.0303 EXISTING NURSING PROGRAM

(a) Full Approval/Approval with Stipulations:

- (1) (a) Representatives Designated representatives of the Board will survey approved programs at least every five years as specified in G.S. 90-171.40. Interpretation of and assistance toward meeting these Standards are provided by representatives of the Board through evaluation and consultation services. (4) Surveys of individual programs may be conducted at shorter intervals upon the Board's direction or upon request from the individual institution.
- (2) Through December 31, 1989, surveys shall be done within one year for those programs whose graduates demonstrate a pass rate of less than 70 percent on first writing of the licensure examination at a single examination session by a regular graduating class. If at any time it comes to the attention of the Board or its designated representative(s) that the program is not complying with all Standards or the Law, the program shall correct the area of noncompliance and submit written evidence or submit a written plan for correction to the Board for review and action. Failure to respond shall result in further Board action.
- (3) Effective January 1, 1990, surveys shall be done within one year for those programs whose graduates demonstrate a pass rate of less than 75 percent on first writing of the licensure examination at a single examination session by a regular graduating class.
- (3) (b) The program shall receive a written report of the survey no less more than ten 30 business days prior to a regularly scheduled Education Committee meeting to allow time for the program to respond to the survey in writing. The Education Committee shall consider all evidence, including the survey report and program's response, and make recommendations for the Board's consideration at the next regularly scheduled meeting of the Board, following the completion of the survey visit. Responses from a nursing education program regarding a survey visit report or Board stipulation shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of stipulation.
 - (A) If no materials or documents are received by the specified deadline date, the Board will act upon the findings in the survey report or testimony of the consultant(s).
 - (B) When a nursing education program has responded by the deadline date, additional materials and documents will be received and reviewed up to 10 business days before the Education Committee meeting. No materials or documents will be reviewed during the interval between the Education Committee meeting and the Board meeting.
- (4) (e) If the Board through its designated representative determines that a program has met complied with the Law and all Standards, the Board shall direct that the name of the program shall be placed on the list of approved programs. continued on Full Approval status.
- (5) (d) If the Board Education Committee determines from consideration of all evidence, that a program has substantially complied with the Law and all Standards, the Education Committee shall make a recommendation to the Board that the program be Approved with Stipulations. The Board shall specify stipulations which shall be met by the program within a designated period of time, which shall not exceed 12 months, and shall direct that the name of the program be placed on the list of approved programs. assigned Approved with Stipulations status.
- (b) Provisional Approval:
 - (1) (e) If the Board determines that a program is not complying with the Law, Standards, and/or stipulations following a routine or Board-directed survey, the Board shall direct that the name of assign the program be placed on the list of provisionally approved programs, Provisional Approval status, and shall give written notice by certified or registered mail to the program specifying:
 - (A) (4) the areas in which there is non-compliance noncompliance with Law, Standards and/or stipulations; and
 - (B) (2) a time no later than 12 months from the date of notice by which the program must comply with the Law and all Standards.
 - (2) (4) At the end of the specified time, designated representatives of the Board shall conduct a survey to determine the program's compliance with the Law and all Standards.
 - (3) (e) The program shall receive a written report of the survey no less more than ten 30 business days prior to a regularly scheduled Education Committee meeting following the completion of the survey to

allow time for the program to respond to the survey report in writing.

Program responses shall follow the receipt deadlines as specified in Subparagraph (a)(2) of this Rule. The Education Committee shall consider all evidence including the survey report and program's response, and make recommendations for the Board's consideration at the next regularly scheduled meeting of the Board.

(4) ~~(h)~~ If the Board determines that the program is complying with the Law and all Standards, the Board shall ~~direct that the name of~~ assign the program be placed on the list of approved programs. Full Approval status.

(5) ~~(i)~~ If the Board determines that the program is not complying with the Law and all Standards, the Board shall ~~direct that the name of the program be placed on the list of probationally approved programs.~~ assigned Probational Approval status.

(c) Probational Approval:

(1) ~~(j)~~ When the Board has ~~directed that the name of a assigned the program be placed on the list of probationally approved programs,~~ Probational Approval status the Board shall:

(A) ~~(1)~~ determine if the program may continue to admit students based on evidence that the program can comply with the Law and all Standards before the end of the designated period for probational approval;

(B) ~~(2)~~ provide the program with written notice of the Board's decision regarding probational approval and admission of students;

(C) ~~(3)~~ schedule a hearing if the program submits a written request for such within ten business days of the receipt of the Board's notice. Such hearing shall be held not less than 20 days from the date on which the request was received.

(2) ~~(k)~~ If the program does not request a hearing, the program will remain on ~~the list of probationally approved programs~~ Probational Approval and shall be ~~surveyed~~ resurveyed by the designated representatives of the Board within one year of the Board's initial determination of probational approval.

(3) ~~(l)~~ If the program so requests, a hearing will be scheduled.

(A) ~~(1)~~ If the Board determines from evidence presented at the hearing that the program is complying with the Law and all Standards, the Board shall ~~direct that~~

~~the name of the program be placed on the list of approved programs.~~ assign the program Full Approval status.

(B) ~~(2)~~ If the Board determines from evidence presented at the hearing that the program is not complying with the Law or all Standards, the program shall remain on ~~the list of probationally approved programs~~ Probational Approval for no more than one year from the date that the ~~name of the program was placed on the list of probationally approved programs.~~ Probational Approval. A survey by designated representatives of the Board shall be conducted during that specified time.

(4) ~~(m)~~ The program shall receive a written report of the survey no ~~less more than ten~~ 30 business days prior to a regularly scheduled Education Committee meeting following the completion of the survey visit to allow for the program to respond to the survey report in writing. The Education Committee shall consider all evidence, including the survey report and program's response, and make recommendations for the Board's consideration at the next regularly scheduled meeting of the Board.

(5) ~~(n)~~ If the Board determines that the program is complying with the Law and all Standards, the Board shall ~~direct that the name of~~ assign the program be placed on the list of approved programs. Full Approval status.

(6) ~~(o)~~ If the Board determines that the program is not complying with the Law or all Standards, the Board shall cause notice to be served on the program and shall specify a date for a hearing to be held not less than 20 days from the date on which notice is given.

(7) ~~(p)~~ If the Board determines from evidence presented at the hearing that the program is complying with the Law and all Standards, the Board shall ~~direct that the name of~~ assign the program be placed on the list of approved programs. Full Approval status.

(8) ~~(q)~~ If the Board, ~~determines from evidence presented at the following a hearing, finds that the a nursing program on Probational Approval is not complying with the Law and all Standards,~~ the Board shall ~~enter an Order removing the name of the program from the list of programs on probational approval.~~ withdraw approval.

(A) This action constitutes discontinuance of the program.

(B) The parent institution shall present a plan to the Board for transfer of students to approved programs. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board.

(C) The parent institution shall notify the Board of the arrangement for storage of permanent records.

Statutory Authority G.S. 90-171.39; 90-171.40.

.0304 ADMINISTRATION

(a) The controlling institution must give evidence of a continuing commitment to provide those human, physical, and financial resources and services essential to maintain Standards prescribed by the Board.

(b) Delineation of authority, responsibility and accountability at all levels in the institution, as they affect the nursing program, must be stated.

(c) Authority for direction of the program must be delegated to a registered nurse qualified to serve as director. This authority must encompass responsibilities for maintaining Standards and other legal requirements in all areas of the program.

(d) Evidence must exist that established policies and practices are implemented.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0309 PROCESS FOR CLOSURE OF A PROGRAM

(a) When the parent institution makes the decision to close a nursing program, the Administration shall advise the Board and submit a written plan for the discontinuation of the program.

(b) Educational standards shall be maintained until the last student has transferred or completed the program.

(c) The Board shall be notified of the arrangement for storage of permanent records.

Statutory Authority G.S. 90-171.39; 90-171.40.

.0310 AGENCY APPROVAL PROCESS - INITIAL SURVEY

(a) At least 30 days prior to planned use, a program or agency representative shall submit an Application for a New Clinical Resource to the designated representative of the Board. The application shall include:

(1) Organizational Chart;

(2) Position descriptions for nursing personnel;

(3) Census and staffing report;

(4) Impact statement(s);

(5) Contractual agreement, if appropriate.

(b) A survey of the agency is conducted. The agency shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow time for the agency to respond to the survey report in writing. Agency responses shall follow the receipt deadlines as specified under PROGRAM APPROVAL/APPROVAL WITH STIPULATIONS, page 8, number 2.

(c) At its meeting, the Board shall consider all evidence, including the survey report, response from the agency and recommendations of the Education Committee.

(d) If the Board finds that the agency complies with the Law and Standards, the Board shall assign the agency Full Approval status and approve for student use.

(e) If the Board finds that the agency substantially complies with Law and Standards, the Board shall assign the agency Approval with Stipulations status and approve for student use.

Statutory Authority G.S. 90-171.39.

.0315 FULL APPROVAL/APPROVAL WITH STIPULATIONS

(a) Designated representatives of the Board will survey approved agencies at least every five years. Surveys may be conducted at shorter intervals upon the Board's direction or upon request from the agency.

(b) The agency shall receive a written report of the survey no more than 30 business days following the completion of the survey visit to allow time for the agency to respond to the survey report in writing. Agency responses shall follow the receipt deadlines as specified in Rule .0303(3)(A)(B) of this Section.

(c) If the Board through its designated representative determines that an agency has complied with the Law and all Standards, the agency shall be continued on Full Approval status.

(d) If the Education Committee determines from consideration of all evidence, that an agency has substantially complied with the Law and all Standards, the Education Committee shall make a recommendation to the Board that the agency be Approved with Stipulations. The Board shall specify stipulations which shall be met by the agency within a designated period of time, which shall not exceed 12 months and shall direct that the agency be assigned Approval with Stipulations status.

Statutory Authority G.S. 90-171.39.

.0317 ADMINISTRATION

(a) The controlling institution shall give evidence of a continuing commitment to provide those human, physical, and financial resources and services essential to maintain Standards prescribed by the Board.

(b) Delineation of authority, responsibility and accountability at all levels in the institution, as they affect the nursing program, shall be stated.

(c) Authority for direction of the program shall be delegated to a full-time registered nurse qualified to serve as director. This authority must encompass responsibilities for maintaining Standards and other legal requirements in all areas of the program.

(d) Evidence shall exist that administration supports the implementation of established policies.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0318 ~~.0309~~ FACULTY

(a) Both full-time and part-time members shall be considered nursing program faculty. When part-time faculty are utilized, evidence shall exist of their participation in curriculum implementation and evaluation.

(b) Policies for nursing program faculty members shall reflect those of the institution; however, variations in these policies may be necessary because of the nature of the nursing curriculum.

(c) Qualifications for nurse faculty members ~~must~~ shall be stated and reflect knowledge and experiences in clinical nursing and teaching which are appropriate for assigned responsibilities.

(d) Faculty members who teach non-nursing courses required in the nursing curriculum ~~must~~ shall have appropriate academic and experiential qualifications for the program areas in which they participate.

(e) Each nurse faculty member ~~must be currently licensed~~ shall hold a current unrestricted license as a registered nurse in North Carolina. The program director is held accountable for validating and documenting current registered nurse licensure in North Carolina.

(f) Each nurse faculty member ~~must~~ shall hold a baccalaureate ~~degree~~ in nursing or a baccalaureate ~~degree~~ with a major in nursing. Exceptions are:

- (1) the individual who holds a master's degree in nursing and a baccalaureate ~~degree~~ in another discipline;
- (2) the individual employed as a faculty member prior to January 1, 1984, who holds a baccalaureate ~~degree~~ in another

discipline. This exception applies to continuing employment in the current setting.

~~The individual currently employed who does not hold a baccalaureate degree must achieve this degree by January 1, 1990.~~

(g) Each nurse faculty member employed after January 1, 1984, shall have had a minimum of two years prior employment in direct patient care. Each nurse faculty member employed after January 1, 1989, shall have had a minimum of two year's prior employment in direct patient care as a registered nurse. Each nurse faculty member employed after July 1, 1992, shall have had a minimum of two calendar year's prior full-time employment or the equivalent in clinical nursing practice as a registered nurse.

(h) In addition to all qualifications for nurse faculty members, as ~~specified in (e), (f), and (g) of this Rule,~~ the nurse director of a practical nurse education program employed as such after January 1, 1984, ~~must~~ shall have had at least two year's experience teaching in nursing program(s).

(i) In addition to all qualifications for nurse faculty members, as ~~specified in (e), (f), and (g) of this Rule,~~ the nurse director of a program preparing individuals for registered nurse practice ~~who was employed: (1) prior to January 1, 1984, and does not shall hold earned a baccalaureate and a master's degrees, must hold both degrees by January 1, 1990, degree, one of which shall be in nursing; or (2) and if employed after January 1, 1984, must hold earned baccalaureate and master's degrees, one of which shall be in nursing, and shall have had at least two year's experience teaching at or above the academic level of the program. For purposes of this Standard, associate degree and diploma nursing program levels are considered comparable.~~

(j) In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for registered nurse practice who has primary responsibility, designated by the program, for coordinating the planning, implementing, implementation, and evaluating evaluation, of each major clinical nursing course shall hold an earned a master's degree. or achieve the degree by January 1, 1990. This nurse faculty member shall also have had a minimum of one academic year of full-time teaching experience in a nursing program.

(k) In addition to all qualifications for nurse faculty members, the nurse faculty member in a program preparing individuals for practical nurse licensure who has primary responsibility, designated by the program, for coordinating the planning, implementation and evaluation of each major clinical nursing course, shall have had a

minimum of one academic year of full-time teaching experience in a nursing program.

(l) ~~(4)~~ The nurse faculty members must shall have the appropriate authority and responsibility for:

- (1) student admission, progression, and graduation requirements; and
- (2) the development, implementation, and evaluation of the curriculum.

(m) ~~(4)~~ The nurse faculty members must shall be sufficient in number to implement the curriculum as demanded by the course objectives, ~~competencies~~, the levels of the students, and the nature of the learning environment. The faculty-student ratio in clinical areas shall depend upon the level of students, the acuity of patients, and the average daily census in the unit. This The ratio shall be 1:10 or less. Request to exceed the 1:10 ratio shall be submitted ~~for~~ to the Board or its' designated representatives for approval prior to implementation. Request may be approved for one academic term only.

(n) ~~(m)~~ There shall be written evidence of annual evaluation of the effectiveness of each nurse faculty member by the program director or his/her a designee; and evidence of written annual evaluation of the program director by an immediate supervisor.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0320 .0240 STUDENTS

(a) Students in nursing programs must shall meet requirements established by the controlling institution. Additional requirements may be needed stipulated for nursing students because of the nature and legal responsibilities of nursing education and nursing practice.

(b) Admission requirements and practices must shall be clearly stated and published by the controlling institution and must include assessment of:

- (1) physical and emotional health that would provide evidence that is indicative of the applicant's ability to provide safe nursing care to the public; and
- (2) achievement potential through the use of previous academic records and pre-entrance examination cut-off scores that are consistent with curriculum demands and scholastic expectations; and
- (3) record of high school graduation, or high school equivalent, or earned credits from an approved post-secondary institution.

(c) The number of students enrolled must in nursing courses shall not exceed a level commensurate with the total resources available to

the program. the maximum number approved by the Board.

(d) Published policies and practices must shall exist that provide for identification and dismissal of students who:

- (1) present physical ~~and/~~ or emotional problems that do not respond to appropriate treatment ~~and/~~ or counseling within a reasonable period of time; or
- (2) demonstrate behavior which conflicts with safety essential to nursing practice.

(e) Criteria for progression through a program must shall clearly define the level of performance required to pass each course in the curriculum, the level at which failure of the course is determined, and the level of performance in prerequisite courses required for progression to subsequent courses or levels. These criteria shall apply to both theoretical and clinical components of nursing courses. Criteria for performance in clinical nursing courses shall include competencies in components of basic nursing practice as legally defined for the licensure level.

(f) Criteria for graduation must be in accord with outcomes expected of an individual in Program objectives shall be consistent with components of basic nursing practice as legally defined for the licensure level.

(g) Implementation of the nursing program shall result in no less than 70 an annual 75 percent pass rate on first writing of the licensure examination at a single examination session by a regular graduating class. Effective January 1, 1990, this required pass rate shall be 75 percent for the calendar year ending December 31.

(h) Policies for transfer of credits ~~and/~~ or for admission to advanced placement must shall be stated and must provide that:

- (1) general admission, progression, and graduation requirements of the nursing program shall apply to the applicant; and
- (2) the nursing program shall determine the total number of nursing courses and/or credits allowed for advanced placement.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0321 .0315 CURRICULUM

(a) The curriculum shall:

- (1) be planned by nursing program faculty; and shall be in keeping with
- (2) reflect the stated program philosophy, purposes, and objectives; ~~competencies~~; and
- (3) shall be consistent with the Law and administrative rules governing the practice of nursing.

PROPOSED RULES

(b) The curriculum shall include, but not necessarily be limited to, instruction in:

- (1) biological, physical, and social science principles;
- (2) components of basic nursing practice as legally defined for the licensure level; and
- (3) ~~(2)~~ utilization of the nursing process in the care of individuals and families throughout the life cycle and including the following areas:
 - (A) maternal and child health;
 - (B) ~~(3) nursing care of persons with~~ common medical and surgical conditions; and
 - (C) aging populations.

Instruction in nursing care in all areas named shall include both theory and clinical learning experiences.

(c) The curriculum for a nursing program designed to prepare persons for registered nurse licensure shall also include instruction in the nursing care of persons with mental/emotional/psychiatric mental, emotional, or psychiatric disorders. Instruction shall include both theory and clinical learning experiences.

(d) The curriculum for a baccalaureate nursing program shall also include public ~~community~~ health nursing. Instruction shall include both theory and clinical learning experiences.

(e) The curriculum for a nursing program designed to prepare persons for practical nurse licensure shall include basic mental health principles and therapeutic communication.

(f) Learning opportunities must shall be planned in logical sequence so that prerequisite knowledge is provided prior to the experience to which that knowledge is basic. Corequisites must be placed concurrently with the experience(s) [course(s)] to which they relate.

(g) Objectives ~~competencies~~ for each course must shall indicate the knowledge and skills expected of the students. These objectives ~~competencies~~ must be stated to:

- (1) indicate the relationship between the classroom learning and the application of this learning in the clinical laboratory experience; and
- (2) serve as criteria for the selection of the types of and settings for learning experiences; and
- (3) serve as the basis for evaluating student performance.

(h) ~~Course~~ Student course syllabi must shall include, in addition to the objectives ~~competencies~~ described in Paragraph (g) of this Rule, a description and outline of content, learning environments and activities, course placement, allocation of time, and methods of evaluation of student performance, including clinical evalu-

ation tools. ~~These items must be clearly stated in order to relate to the objectives/competencies for each course.~~

(i) There ~~must shall~~ be evidence that each course is implemented in accordance with the student course syllabus.

(j) Nurse faculty must shall demonstrate that they have authority and responsibility for:

- (1) teaching and evaluating all classroom and clinical ~~experience; experiences, including~~ precepted experiences;
- (2) planning and implementing learning experiences so that objectives ~~competencies~~ for each course are met; and
- (3) providing placement and logical sequencing of clinical learning experiences to support application of theory and attainment of knowledge and skills.

(k) There ~~must shall~~ be a written plan for total program evaluation and documentation of ongoing implementation of the plan. The evaluation components shall include administration, faculty, students, curriculum, facilities, and records and reports. The process of evaluation shall include faculty, student, and graduate involvement.

(l) Requests for approval of changes in, or expansion of, the program ~~must accompanied by~~ all required documentation shall be submitted prior to implementation and at least 30 days prior to a scheduled implementation for approval by the Board meeting for action by the Education Committee, through its designated representatives. ~~The request shall be accompanied by documentation of available resources.~~ Approval is required for:

- (1) increase in enrollment which may exceed the maximum approved by the Board. Requests for expansion are considered only for programs with Full Approval status;
- (2) major changes in curriculum related to philosophy, purpose, ~~and/~~ or focus of the program; ~~or changes in the curriculum master plan;~~
- (3) alternative/additional alternative or additional program schedules; and
- (4) addition of clinical resources.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0322 .0347 FACILITIES

(a) Campus facilities ~~must shall~~ be appropriate in type, number, and accessibility for the total needs of the program.

- (1) Classrooms, practice laboratories, audio/video/tutorial audio and video tutorial laboratories, and conference rooms

- ~~must~~ shall be sufficient in size, number, and types for the number of students and purposes for which the rooms are to be used. Lighting, ventilation, location, and equipment must be suitable.
- (2) Office and conference space for nursing program faculty members shall be appropriate and available for uninterrupted work and privacy including conferences with students.
 - (3) The library facilities ~~must~~ shall be readily accessible to students and faculty, and must offer adequate resources and services.
 - (A) Active library services ~~must~~ shall include a librarian and a system of cataloging.
 - (B) A system ~~must~~ of acquisition and deletion shall exist that ensures ~~currency appropriateness~~ currency and appropriateness of holdings including ~~audio-video tutorial~~ audio and video tutorial resources that support implementation of the nursing curriculum.
 - (C) Library space for use by students and faculty ~~must~~ shall be adequate to accommodate the program.
 - (D) Library hours ~~must~~ shall meet the needs of the students in the program.
 - (b) Other facilities ~~must~~ shall support the program.
 - (1) Clinical ~~resources~~ must agencies shall include:
 - (A) hospital(s) that provide inpatient ~~services~~ care in medicine, surgery, obstetrics, and pediatrics, and geriatrics;
 - (B) agencies serving patients of all ages across the lifespan who present problems arising from common pathological or maturational conditions;
 - (C) patient census in hospitals and agencies with sufficient numbers and varieties of conditions, including varying degrees of acuity, to accommodate the number of students and provide learning experiences mandated by the curriculum.
 - (2) Clinical ~~resources~~ agencies for programs leading to registered nurse licensure ~~must~~ shall include ~~psychiatric-mental~~ psychiatric and mental health services with sufficient patient census in community sites and/or inpatient facilities ~~services~~ at which psychiatric-mental psychiatric or mental health care is a primary focus. Patient census must be representative of the range of DSM III diagnoses.
 - (3) Clinical ~~resources~~ agencies for baccalaureate nursing programs shall include ~~public/community~~ public or community health services within voluntary or official ~~nursing~~ agencies.
 - (4) Each clinical ~~resource~~ must agency shall:
 - (A) have approval of the Board;
 - (B) have a registered nurse with authority and responsibility for administration of nursing within the ~~resource~~ agency;
 - (C) have staffing and written operational policies and procedures designed to ensure the legal practice of nursing, as defined in ~~Article 9, Articles 9A and 9C, Chapter 90 of the General Statutes (Nursing Practice Act) and Administrative Code, Title 21, Chapter 36, and to ensure effective learning;~~ demonstrates compliance with agency policies at a rate of no less than 85 percent;
 - (D) make records of those served available for use by faculty and students;
 - (E) have equipment and supplies that are suitable in quantity and quality, properly maintained, and available for use; and
 - (F) have a current contractual agreement with the program ~~which must~~ if the clinical resource is not a constituent of the parent institution.
 - (i) ~~be current~~;
 - (ii) ~~include faculty/student ratio of 1:10 or less~~;
 - (iii) ~~reflect the responsibility of faculty in the clinical learning situation~~;
 - (iv) ~~give the date and process for review; and~~
 - (v) ~~include provision for conference space~~.
 - (5) The clinical agencies shall file with the Board such records, data, and reports as may be required in order to furnish information regarding policies, position descriptions, and census and staffing reports to ensure the legal practice of nursing and that are reflective of opportunities for effective learning.
 - (6) ~~(5)~~ Schedules for use by one or more nursing programs ~~must~~ shall demonstrate feasibility for such use and reflect cooperative planning by the programs and the ~~resource~~ agency.
- Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.
- .0323 .0348 RECORDS AND REPORTS**
- (a) The controlling institution's publications shall be current and accurately describe the nursing program.

(b) ~~(a)~~ ~~An~~ There shall be evidence of an accurate and complete records system shall be maintained for maintaining official records. Current and permanent student records shall be stored in a way manner that prevents damage and unauthorized use.

(c) ~~(b)~~ Both permanent and current records must shall be available for review by representatives of the Board. ~~The Board makes use of the facts supplied in evaluating nursing programs and in approving applications of graduates for the licensure examination.~~

(d) ~~(c)~~ The official permanent record for each graduate shall include documentation of admission criteria met by the individual graduation from the program and a transcript of the individual's achievement in the program.

(e) ~~(d)~~ The record for each enrolled student shall contain up-to-date and complete information, including:

- (1) documentation of admission criteria met by the student;
- (2) evidence of graduation from an accredited high school, high school equivalent, or earned college level credits from an accredited university or college, approved post-secondary institution; and
- (3) transcript of credit hours achieved in the classroom, laboratory, and clinical instruction for each course that reflects progression consistent with program policies.

(f) ~~(e)~~ The nursing program shall file with the Board such records, data, and reports as may be required in order to furnish information concerning operation of the program as prescribed in the Standards and concerning any student or graduate of the program. These records, data and reports include but are not necessarily limited to:

- (1) an Annual Report giving all data requested on the form provided by the Board for the period beginning fall term through summer term and submitted to the Board office by October 15 November 1 of each year.
- (2) a Supplementary Program Descriptive Report giving all data requested on the form provided by and submitted to the Board for fall term through March 31 and submitted to the Board office by April 15 of each year, office at least 30 days prior to a scheduled survey visit.
- (3) notification by institution administration of any change of the registered nurse responsible for the nursing program. This notification must include a vitae for the new individual and must be submitted

within ten business days of the effective date of the change.

(4) a curriculum vitae for new faculty shall be submitted by the program director within 10 business days from the time of employment.

(g) ~~(f)~~ The Board may require additional records and reports for review at any time to provide evidence and substantiate compliance with Standards and law by a program and its associated agencies.

(h) ~~(g)~~ The Application for Licensure by Examination shall be submitted on forms provided by the Board.

(1) The part of the application to be submitted by the nursing program shall include, but is not necessarily limited to, a statement indicating verifying satisfactory completion of all requirements for graduation and the date of completion.

(2) The application is to be submitted as soon as possible following completion of the program; or in any event, by the published deadline date applicable to the examination. In instances where the published deadline cannot be met, special consideration may be granted upon written request from the director of the program no less than 60 days prior to the deadline date.

(i) ~~(h)~~ When a nursing program closes, the Board shall be notified of the arrangements for storage of permanent records. Storage method shall prevent damage ~~and~~ or unauthorized use.

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

.0324 .0320 EXPERIMENTAL APPROACHES

(a) In the interest of promoting innovations in nursing programs, the Board will consider proposals for experimental approaches in nursing education by existing nursing programs with Full Approval status.

(b) Proposals ~~must~~ shall be submitted 60 days prior to the next scheduled Board meeting to allow time for review by the Education Committee for recommendations to the Board. The proposal shall include the following:

- (1) description of the experimental approach and rationale;
- (2) purposes and objectives; and
- (3) strategies for implementation including:
 - (A) anticipated date of implementation;
 - (B) methodologies;
 - (C) course(s) involved;
 - (D) resources available;

- (E) numbers of students and faculty members involved;
 - (F) ~~responsibilities, activities~~ responsibilities and activities of the faculty members;
 - (G) ~~responsibilities, activities~~ responsibilities and activities of the students;
 - (H) relationship to existing curriculum;
 - (I) effect on admission and progression of students; and
 - (J) proposed length.
- (4) strategies for evaluation of the experimental approach including:
- (A) evaluation process to be used;
 - (B) anticipated outcome(s); and
 - (C) implications of the outcome(s).

(e) Program representatives will be notified of the time and date that the Education Committee and the Board will consider the proposal. Program representatives shall attend these meetings.

(d) When approved by the Board, experimental approaches are to be implemented for one time only.

(e) When a nursing program utilizes an experimental approach, the program shall have sole responsibility for determining the criteria for student participation. Students must be informed that they will be participating in an experimental approach.

(f) Nurse faculty members have the final responsibility for evaluation of the outcomes. The program director may be required to submit periodic evaluation reports. A report of outcomes resulting from the experimental experience must be submitted within 90 days of its completion.

(g) If, at any time during the implementation of the approach, the nursing program faculty members become aware that student learning or patient care is being jeopardized, they shall immediately take corrective action. The program director shall notify the Board.

(h) Request from the program for the experimental approach to become a permanent part of the program must be submitted ~~60~~ 30 days prior to a regularly scheduled Board meeting. No request will be considered until the final evaluation of the project has been completed and submitted. ~~to the Board.~~

Statutory Authority G.S. 90-171.23(b)(8); 90-171.38.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Examiners for Speech and Language Pathologists

and Audiologists intends to adopt rule(s) cited as 21 NCAC 64 .0208.

The proposed effective date of this action is June 1, 1992.

The public hearing will be conducted at 11:00 a.m. on April 1, 1992 at the Wilmington Hilton, Garden Room, 301 N. Water Street, Wilmington, N.C.

Reason for Proposed Action: To adopt new rule interpreting required supervision for student practicum to insure adequacy of supervision.

Comment Procedures: Persons may appear orally in person at the hearing or submit written material at the hearing or within five days prior to the hearing at the Board of Examiners for Speech and Language Pathologists, P.O. Box 5545, Greensboro, North Carolina 27435-0545.

CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

SECTION .0200 - INTERPRETATIVE RULES

.0208 SUPERVISION OF CLINICAL PRACTICUM

The Board interprets the word "supervision" used in G.S. 90-295(3) to require that the supervision must be performed by a person who holds either a valid license under this Article or a Certificate of Clinical Competence of the American Speech-Language-Hearing Association, in the area for which supervised credit is sought, who must be physically present in the same facility and accessible to the student during the performance of the practicum.

Statutory Authority G.S. 90-294(c)(2); 90-304(3); 150B-40(b).

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel intends to adopt rule(s) cited as 25 NCAC 01J .1001 - .1011; amend rule(s) cited as 25 NCAC 1D .0510 - .0512, .0515; 1E .1301 - .1306; 1H .0602 - .0605, .0621, .0626, .0628; 1L .0203 and repeal rule(s) cited as 25 NCAC 1E .1307.

The proposed effective date of this action is June 1, 1992.

PROPOSED RULES

The public hearing will be conducted at 9:00 a.m. on April 7, 1992 at the Personnel Development Center, 101 W. Peace Street, Raleigh, NC.

Reason for Proposed Action:

Rule 25 NCAC 1D .0510 - To provide guidance and clarification to the agencies in implementing the RIF policies and procedures.

Rule 25 NCAC 1D .0511 - To provide guidance and clarification to agencies and universities in implementing the policies on Reduction In Force (RIF) priority consideration.

Rule 25 NCAC 1D .0512 - To provide guidance and clarification to agencies and universities in implementing the policies and procedures concerning priority reemployment consideration.

Rule 25 NCAC 1D .0515 - To provide guidance and clarification to agencies and universities in implementing the policies and procedures concerning RIF. These proposed changes clarify agency responsibilities.

Rule 25 NCAC 1E .1301 - To provide clarification and guidance to agencies in implementing the program. This change clarifies that it applies to prolonged illnesses and does not permit "banking" of leave.

Rule 25 NCAC 1E .1302 - To provide guidance and clarification to agencies and universities in implementing the program, this proposed amendment indicates that participation is limited to long term or prolonged illnesses and specifies the relationship of this program to Disability benefits. Clarifies familial relationships regarding recipient participation.

Rule 25 NCAC 1E .1303 - This proposed amendment provides that leave may be shared between subject and exempt employees if an agency adopts a parallel policy for employees exempt from the State Personnel Act.

Rule 25 NCAC 1E .1304 - To provide guidance and clarification to agencies in implementing this program, this proposed change indicates the requirements for application to the program including the filing of a doctor's statement. Further indicates the confidential nature of such information.

Rule 25 NCAC 1E .1305 - To provide clarification and guidance to agencies and universities in implementing this policy. This proposed amendment

clarifies the amount of leave that may be transferred and clarifies familial relationships in leave transfers.

Rule 25 NCAC 1E .1306 - This provision proposed for amendment to provide clarification and guidance to universities and agencies in their leave accounting procedures.

Rule 25 NCAC 1E .1307 - This provision proposed for repeal due to current inapplicability.

Rule 25 NCAC 1H .0602 - These proposed changes provide guidance and clarification to agencies and universities on the posting requirements for vacant positions.

Rule 25 NCAC 1H .0603 - This proposed change provides guidance and clarification to agencies and universities on the special recruiting programs.

Rule 25 NCAC 1H .0604 - This proposed change provides clarification and guidance to agencies and universities on application information.

Rule 25 NCAC 1H .0605 - Clarifies agency responsibilities in special applicant considerations.

Rule 25 NCAC 1H .0621 - Clarifies policy on agency certification indicating PD-107 to be submitted to the Office of State Personnel.

Rule 25 NCAC 1H .0626 - Clarifies policies regarding employment priority considerations and their relationship to other employment priorities.

Rule 25 NCAC 1H .0628 - Provides guidance and clarification to agencies in implementing the various priority consideration policies.

Rule 25 NCAC 1J .1001 - Clarifies the purpose and function of the Employee Assistance Program.

Rule 25 NCAC 1J .1002 - Outlines the intent and purpose of the Employee Assistance Program.

Rule 25 NCAC 1J .1003 - Indicates the organizational structure of the Employee Assistance Program as being a component of the Office of State Personnel and establishes the existence of field offices across the State of North Carolina.

Rule 25 NCAC 1J .1004 - To provide guidance and clarification to agencies and universities. This proposed adoption establishes the EAPS two primary functions as being 1) Management Consultation and 2) Assessment and Referral.

Rule 25 NCAC 1J .1005 - *This provision establishes eligibility for services indicating that EAP Services available to full time, part-time permanent and temporary employees subject to the State Personnel Act.*

Rule 25 NCAC 1J .1006 - *To provide guidance and clarification to agencies in implementing this policy, this provision establishes and defines self-referral as a referral made in the absence of disciplinary action.*

Rule 25 NCAC 1J .1007 - *To provide guidance and clarification to the agencies and universities, this provision establishes and defines a supervisory referral as a referral made within the context of disciplinary action.*

Rule 25 NCAC 1J .1008 - *To provide clarification and guidance to the agencies and universities, this provision defines a management directed referral as a referral which addresses an extraordinary situation considered to be potentially volatile by management.*

Rule 25 NCAC 1J .1009 - *To provide guidance and clarification to agencies and universities in implementing the policy. This provision outlines the requirements regarding the confidentiality of personnel records.*

Rule 25 NCAC 1J .1010 - *Establishes the responsibilities of the EAP to agencies and universities.*

Rule 25 NCAC 1J .1011 - *Establishes the responsibilities of the universities and agencies in administering the provisions of this policy.*

Rule 25 NCAC 1L .0203 - *To provide clarification and guidance to agencies and universities. This proposed amendment indicates that employees requiring advanced training must receive training at the time of initial assignment and at least annually thereafter.*

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 Barbara Coward, Office of State Personnel, 116 W. Jones St., Raleigh, N.C. 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1D - COMPENSATION

SECTION .0500 - SEPARATION

.0510 PRIORITY REEMPLOYMENT

CONSIDERATION

(a) Priority reemployment consideration shall be provided to:

(1) Employees who have met the minimum service requirements of G.S. 126-5(c)(1), and who occupy or accept and are subsequently separated, for reasons other than just cause, from positions designated exempt as confidential or policy-making pursuant to G.S. 126-5(c)(2) and G.S. 126-5(d)(1).

(2) Employees with permanent appointments, employees and apprentices with trainee appointments who have completed six months of service, and employees who attained permanent status prior to entering a trainee appointment, who are separated have received notification of imminent separation due to shortage of funds or work, abolishment of a position or other material changes in duties or organization by the process commonly known as reduction-in-force. An employee who is separated at the end of a time-limited appointment is not eligible for priority consideration.

(b) ~~In affording priority reemployment consideration,~~ Employees separated from policy-making/confidential exempt positions for reasons other than cause ~~shall receive first priority over employees separated by reduction in force, and employees with priority status due to reduction in force have equal priority.~~

(c) The intent of priority consideration for employees separated from exempt positions is to enable a return to the career service at a salary grade equal to that held in the most recent subject position. For employees receiving notification of separation ~~separated~~ through reduction in force, the intent is to continue or restore employment at a salary grade equal to that held prior to separation at the time of notification. In either instance, the salary grade and not the salary rate is the controlling factor.

(d) A person with priority status who has reason to believe priority consideration was denied in a selection decision may appeal directly to the State Personnel Commission through the established contested hearing process.

Statutory Authority G.S. 126-5(c)(1); 126-5(c)(2); 126-5(d)(1).

.0511 REDUCTION IN FORCE PRIORITY CONSIDERATION

Employees separated Upon notification of imminent separation through reduction in force, an employee shall receive priority reemployment

consideration for a period of 12 months pursuant to G.S. 126-7.1(c1). The following conditions apply:

(1) Within the agency or institution where the notification of separation occurred (parent agency), an employee scheduled to be separated through reduction in force shall be offered any available vacant position of a salary grade level equal or below that held before separation, at the time of notification, provided the employee meets the qualifications for the position and could perform the job in a reasonable length of time, including normal orientation and training given any new employee. ~~The only exception preventing an offer in this instance would be the preexistence of an "understudy" who had been groomed by the agency to fill the vacant position, within a formally understood, written arrangement and structured plan of development.~~

(2) Within all other state agencies and institutions, ~~the employee shall be interviewed, and where qualified for the vacant position, shall be an employee with priority status and qualified for the vacant position, shall be interviewed and~~ offered the position prior to employing anyone who is not a permanent state employee.

(3) ~~An employee separated through reduction in force must claim priority reemployment consideration at the time of separation through notification to the parent agency or institution personnel office or the priority is forfeited.~~

(4) (3) For employees separated receiving notification of separation from trainee or flat-rate positions, who are eligible for priority reemployment consideration, the salary grade for which priority is to be afforded shall be determined as follows. For employees in flat rate positions, the salary grade level shall be the salary grade which has as its mid-point, a rate nearest the flat rate salary of the eligible employee. For employees in trainee status the salary grade level shall be the salary grade of the full class.

(5) (4) An employee separated notified of imminent separation through reduction-in-force while actively possessing priority reemployment consideration shall retain the current initial priority for the remainder of the twelve month priority period. A new priority period shall then be afforded at the salary grade and status of the position held at the most recent notification of separation. The length of this additional priority period shall be equal to the time between the expi-

ration dates of the old and the new priority, assuming that the second twelve month period started on the date of the most recent ~~separation.~~ notification.

(6) (5) Priority reemployment consideration will not be afforded to an employee who, after receiving formal notice of impending reduction-in-force, retires or applies for retirement prior to the separation date. An employee who applies for retirement after being separated through reduction-in-force may exercise priority reemployment consideration.

(7) (6) Priority reemployment consideration is intended to provide employment at an equal employment status to that held at the time of notification. Acceptance of a position at a lower appointment status will not affect priority. Employees separated notified of separation from permanent full-time positions shall have priority to permanent full-time and permanent part-time positions. Employees separated notified of separation from permanent part-time positions shall have priority to permanent part-time positions only.

(8) (7) Employees who have priority reemployment status at the time of application for a vacant position, and who apply during the designated agency recruitment period, will be continued as priority applicants until the selection process is complete.

(9) ~~An employee scheduled to be separated through reduction in force may decline a position at a lower level and retain his priority.~~

(10) (8) An employee scheduled to be separated through reduction in force, or with priority status, may not decline interviews or offers for positions within 35 miles of the employee's original work station without losing his priority, if the position is at an appointment status and salary grade equal to or greater than that held at the time of notification. ~~separation.~~

(11) ~~An employee with priority reemployment consideration may accept, in accordance with his priority, a permanent full-time or permanent part-time state position at a salary grade lower than that held at the time of separation, or a temporary position at any level, and retain such consideration for the remainder of the twelve months priority period.~~

(9) An employee with priority status may accept a temporary position at any level and retain his/her priority consideration.

- (10) When priority has been granted for a lower salary grade than held at the time of notification, the employee retains priority for higher salary grades between that of his current position and that held at the time of his notification of separation.
- (12) (11) An employee with priority reemployment consideration may accept employment outside state government or in a state position not subject to the State Personnel Act and retain such consideration through the twelve months priority period.
- (13) (12) Priority reemployment consideration is considered to be satisfied and is terminated when an eligible employee:
- (a) refuses an interview or offer for a position within 35 miles of the employee's original work station if the position is at an appointment status and salary grade equal to or greater than that held at the time notification;
 - (b) accepts a position equal to or greater than the salary grade level and employment status of the position held at the time of notification; or
 - (c) has received 12 months priority reemployment consideration, employee separated or scheduled to be separated accepts a position equal to or greater than the salary grade level and employment status of the position from which separated or an employee's period of twelve months priority reemployment consideration ends.
- (14) Priority reemployment consideration for employees notified of or separated through reduction-in-force does not include priority to any policy-making confidential exempt position.
- (15) When an employee with priority status accepts a position at a lower salary grade and is subsequently terminated by disciplinary action, any remaining priority consideration ceases.

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

.0512 POLICY-MAKING/CONFIDENTIAL EXEMPT PRIORITY CONSIDERATION

(a) Employees removed from policy-making/confidential exempt positions, for reasons other than cause, shall receive priority reemployment consideration as follows:

- (1) An eligible employee with 10 or more years cumulative service in subject positions, including the immediately preceding 12 months prior to placement in an exempt position, shall be reassigned to a subject position within the same depart-

ment or agency, or if necessary within another agency, at the same salary grade and at a salary rate which bears a step relationship with the midpoint of the salary range comparable to that of as his most recent subject position. The reassignment must be within a 35 mile radius of the exempt position from which separated. If an employee is offered a reassignment which meets these criteria and refuses to accept, the priority is terminated.

- (2) An eligible employee who has the minimum service requirements for permanent status but less than 10 years cumulative service in subject positions prior to placement in an exempt position, shall be permitted a one-time reemployment priority, to be exercised by the employee within one year following the effective date of his separation. Upon notice to the agency that priority is being requested, the employee shall be offered any available, non-exempt position for which he has formally applied and is qualified for, when the position applied for is equal to or below the salary grade of the most recent subject position held prior to separation; provided, however, that a prior offer may be made to a person qualified under Section 1 above, or to a current state an employee from the same agency in which the vacancy occurs with greater cumulative state service, priority status due to reduction in force. If there is not a priority applicant from the same agency in the applicant pool, an offer can be made to a current state employee with greater cumulative state service.

(b) As exercised by the employee, this priority consideration shall expire when a formal offer is extended for employment in the position being applied for. A vacant position will not be considered available, for purposes of this policy, if an "understudy" has been groomed by the agency to fill it, under a pre-existing, formally understood, written arrangement, within a structured plan of development.

(c) If an eligible policy-making exempt employee applies for and accepts a position through the regular, non priority selection process, which is at a salary grade below that held in his most recent subject position, that person shall retain the one-time priority for higher level positions for the remainder of the twelve month period.

(d) If an eligible person accepts employment outside State Government, the one-time priority shall be continued through the one-year maximum at the person's request.

Statutory Authority G.S. 126-5.

.0515 AGENCY RESPONSIBILITIES

(a) It is the employing agency's responsibility to ~~inform~~ notify the employee of impending separation as soon as possible and to inform the employee of the priority reemployment consideration to be afforded. If the employee does not want assistance in finding another State job, the agency should get a written statement to that effect, and file a copy with the Office of State Personnel. For employees wishing to ~~claim priority reemployment consideration~~, be advantaged by the automated priority referral system operated by the Office of State Personnel, the separating agency must submit an application to the Office of State Personnel ~~requesting priority consideration~~ simultaneous with employee notification. The application ~~may be submitted as soon as the separation is known~~, and should be designated as "reduction-in-force" or "policy-making exempt".

(b) It is also an agency responsibility to notify the Office of State Personnel in writing when:

- (1) An eligible person accepts a position which satisfied his priority reemployment consideration.
- (2) A person ~~separated by~~ with priority status due to reduction-in-force is offered a lateral transfer or promotion and refuses, unless the position offered is more than thirty-five miles from the employee's original work station.
- (3) An eligible employee separated from a policy-making or confidential exempt position exercises his priority and then refuses an employment offer.
- (4) Other conditions which would satisfy or terminate an eligible employee's priority reemployment consideration are discovered.

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

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

.1301 PURPOSE

There are occurrences brought about by serious and prolonged medical conditions that cause employees to exhaust all available leave and therefore be placed on leave without pay. It is recognized that such employees forced to go on leave without pay could be without income at the most critical point in their work life. It is also recognized that fellow employees may wish to

donate voluntarily some of their vacation leave so as to provide assistance to a fellow state employee. This policy provides an opportunity for employees to assist another employee on a one to one basis, when a medical condition requires absence from duty for a prolonged period of time, resulting in a possible loss of income due to a lack of accumulated leave. ~~It does not permit "banking" of leave.~~

Statutory Authority G.S. 126-4.

.1302 POLICY

(a) In ~~these~~ cases of a serious and prolonged medical condition an employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another employee within their agency or from the sick leave or vacation account of an immediate family member in any agency. For purposes of this policy, medical condition means medical condition of an employee or a family member [spouse, parents, children (including step relationships) or other dependents living in the employee's household] of such employee that is likely to require an employee's absence from duty for a prolonged period of at least 20 workdays, ~~time and to result in a substantial loss of income to the employee due to limited leave in the employee's leave account~~. The intent of this policy is to allow one employee to assist another in cases of a crisis involving a serious or prolonged medical condition. It is not the intent of this policy to apply to incidental, normal short-term medical conditions. The transfer and use of vacation or sick leave from one individual to another is specifically prohibited unless allowable within this policy, on a shared basis for any purpose other than specified by this policy is prohibited.

(b) An employee who has a medical condition and who receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program. Shared leave, however, may be used during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

(c) Participation in this program is limited to 1,040 hours, either continuously or, if for the same condition, on a recurring basis. However, management may grant employees continuation in the program, month by month, for a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

(d) Subject to the maximum of 1,040 hours, the number of hours of leave an employee can receive is equal to the projected recovery or

treatment period, less the employee's combined vacation and sick leave balance as of the beginning of the recovery or treatment period. The employee must exhaust all available leave before using donated leave.

(e) ~~(d)~~ An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate in this program. Use of donated leave under the workers' compensation program would be limited to use during the required waiting period and to the supplemental leave schedule published by the Office of State Personnel.

(f) This leave does not apply to short-term or sporadic conditions or illnesses that are common, expected, or anticipated. This would include such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; minor or elective surgery; short-term, recurring medical or therapeutic treatments; or normal pregnancy, including delivery by Caesarean section. These examples are illustrative, not all inclusive. Each case shall be examined and decided based on its conformity to policy intent and must be applied consistently and equitably.

Statutory Authority G.S. 126-4.

.1303 ADMINISTRATION

All departments and universities shall develop policies and procedures to implement this program. If an agency adopts a parallel policy for employees exempt from the State Personnel Act who are in leave earning and reporting positions, leave may be shared between subject and exempt employees. When implemented by a department or university, this program shall be administered by and within the parent department or university of the recipient employee subject to the availability of funds and under the conditions set out in 25 NCAC 1E .1304, .1305, .1306 and .1307.

Statutory Authority G.S. 126-4.

.1304 QUALIFYING TO PARTICIPATE IN VOLUNTARY SHARED LEAVE PROGRAM

In order to participate in the Voluntary Shared Leave Program, an employee must meet the following conditions:

- (1) Employee must be in permanent, probationary, or trainee appointment status.
- (2) By letter of application to the agency head, recipient shall apply, or be nominated by a fellow employee to participate in the program. A prospective recipient may make

application for voluntary shared leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave. The agency may establish internal guidelines to facilitate the administration of this process.

- (3) Application for participation would include name, social security number, classification, parent agency, jurisdiction from which donations of leave would be requested, description of the medical condition and estimated length of time needed to participate in the program. A doctor's statement must be attached to the application. The Privacy Act makes medical information confidential; therefore, prior to making the employee's status public for purpose of receiving shared leave, employees must sign a release to allow the status to be known.
- (4) The parent department or university shall review the merits of the request and approve or disapprove. Agency heads may choose to delegate the responsibility for reviewing the validity of requests to an existing peer group or establish a committee for this purpose. Such a committee may also be used in an advisory capacity to the agency head.
- (5) Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave must be donated on a one-to-one personal basis.
- (6) An agency with less than 200 employees may, with concurrence of another agency and with prior approval of the State Personnel Director, establish agreements with another small agency(ies) to be treated as one agency for purposes of this policy.
- ~~(7) For program evaluation purposes during the trial period, each agency shall forward a copy of each application received for recipients, indicating approval or disapproval, to the Office of State Personnel. Other summary information, including number of requests, approvals, disapprovals, amount of leave donated and used will be requested to develop recommendations for the future of this program.~~

Statutory Authority G.S. 126-4.

.1305 DONOR GUIDELINES

- (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 may also be transferred to an immediate family member in any department or university if the family member is a immediate family member is defined as spouse, parents, parent, children child (including step relationships) and any or other dependents dependent 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.

(b) Minimum amount to be donated is four hours. An employee may have no more than 80 hours of combined vacation and sick leave in his account to become eligible to use donated leave. An employee family member donating sick leave to a qualified family member under this program may donate up to a maximum of 1040 hours but may not reduce his or her the sick leave account below 40 hours.

(c) The maximum amount of vacation leave allowed to be donated by one individual is to be no more than the amount of the individual's annual accrual rate. However, the amount donated is not to reduce the donor's vacation leave balance below one-half of the annual vacation leave accrual rate.

(d) Leave donated to a recipient's leave account is exempt from the maximum accumulation carry-over restrictions at calendar year end.

(e) An employee may not directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this program. Such action by an employee shall be grounds for disciplinary action up to and including dismissal on the basis of personal conduct. Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating leave cannot receive remuneration for the leave donated.

Statutory Authority G.S. 126-4.

.1306 LEAVE ACCOUNTING PROCEDURES

The following conditions shall control the accounting and usage procedures for leave donations in this program:

- (1) To facilitate the administration of the program, the agency may establish a specific

time period during which leave can be donated.

- (2) ~~(4)~~ Each agency shall establish a system of leave accountability which will accurately record leave donations and recipients' use. Such accounts shall provide a clear and accurate record for financial and management audit purposes.

- (3) ~~(2)~~ Withdrawals from recipient's leave account will be charged to the recipient's account according to usual leave policies.

- (4) ~~(3)~~ On the date of implementation in any agency, Leave transferred under this program will be available for use on a current basis or may be retroactive for up to 30 calendar days to substitute for leave without pay or advanced vacation or sick leave already granted to the leave recipient. Retroactivity is limited to 30 calendar days, from the implementation date of the policy in the agency.

- (5) ~~(4)~~ At the expiration of the medical condition, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows:

- (a) The vacation and sick leave account balance shall may not exceed a combined total of 40 80 hours.

- (b) ~~In case of the death of the employee, leave would be administered in accordance with 25 NCAC 1E .0210.~~

- (c) ~~(e)~~ Any additional unused donated leave beyond 80 hours will be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fraction Fraction(s) of one hour shall not be returned to an individual donor.

- (c) ~~(d)~~ Each approved emergency medical condition shall stand alone and donated leave not used for each approved incident in accordance with the provisions of this Rule shall be considered as having served its purpose, shall lose its identity, and shall be deleted and the account closed. shall be returned to the donor(s). Employees who donate "excess" leave (any amount above the 240 maximum allowable carryover) at the end of December may not have it returned. Their prorated share will be lost the same as it would have been at the end of December.

- (6) If a recipient separates from state government, participation in the program ends. Donated leave shall be returned to the donor(s) on a pro rata basis.

Statutory Authority G.S. 126-4.

.1307 DURATION OF PROGRAM

This program is for a two year period beginning at its effective date and expiring two years from that date. This program will be evaluated by the State Personnel Director during the two year period to determine if it meets its purpose. The Director shall recommend continuing, amending, or discontinuing the program for action by the State Personnel Commission.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

.0602 POSTING AND ANNOUNCEMENT OF VACANCIES

(a) Vacant positions to be filled in state government shall be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply. The term "agency" as used in this Subsection includes all state departments, institutions, commissions, and boards.

(b) If the decision is made, initially or at any time a vacancy remains open, to receive applicants from within the overall state government workforce, that vacancy shall be listed with the Office of State Personnel for the purpose of informing current state employees of the opening. Such vacancies shall have an application period of not less than seven work days from the time the listing is received by the Office of State Personnel. Each vacancy for internal posting or listing with the Office of State Personnel will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum education and experience standard, the application period and the appropriate contact person. Posting requirements shall not apply to:

- (1) Vacancies which must be used to meet management necessity, for which an agency will not openly recruit. Examples include vacancies committed to a budget reduction, vacancies used for disciplinary transfers or demotions, use of an existing vacancy to avoid reduction in force, transfer of an employee to an existing opening to avoid the threat of bodily harm, and the promotion of an employee into an opening under a formal, pre-existing "understudy arrangement".
- (2) Vacancies for positions which have been designated policy-making exempt under G.S. 126-5(d).

- (3) Vacancies which must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security.
- (4) Vacancies which are not filled by open recruitment, but rather by specific and targeted recruitment of special groups for the ~~Careers in Government~~, Model Co-operative Education and state government intern programs.
- (5) Vacancies for positions to be filled by chief deputies and chief administrative assistants to elected or appointed department heads; and vacancies for positions to be filled by confidential assistants and confidential secretaries to elected or appointed department heads, chief deputies, or chief administrative assistants.

The decision to exercise a vacancy posting exception based upon Paragraphs (b)(1) and (3) of this Rule shall be the responsibility of the agency head. The Office of State Personnel is available upon request to provide counsel and guidance in instances of uncertainty.

(c) If the decision is made, initially or at any time a vacancy remains open, to receive applicants from within the overall state government workforce, that vacancy shall be listed with the Office of State Personnel for the purpose of informing current state employees of the opening. Such vacancies shall have an application period of not less than seven work days from the time the listing is received by the Office of State Personnel. Each vacancy for internal posting or listing with the Office of State Personnel will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum education and experience standard, the application period and the appropriate contact person. The foregoing posting requirements shall not apply to:

- (1) Vacancies which must be used to meet management necessity, for which an agency will not openly recruit. Examples include vacancies committed to a budget reduction, vacancies used for disciplinary transfers or demotions, use of an existing vacancy to avoid reduction in force, transfer of an employee to an existing opening to avoid the threat of bodily harm, and the promotion of an employee into an opening under a formal, pre-existing "understudy arrangement".
- (2) Vacancies for positions which have been designated policy-making exempt under G.S. 126-5(d).

(3) Vacancies which must be filled immediately to prevent work stoppage in constant demand situations, or to protect the public health, safety, or security.

(4) Vacancies which are not filled by open recruitment, but rather by specific and targeted recruitment of special groups for the Careers in Government, Model Co-operative Education and state government intern programs.

(d) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the state government work force shall be listed simultaneously with the appropriate Employment Security Commission office, as required by G.S. 96-29, and with the Counseling and Career Support Unit Employment Practices and Priorities Division of the Office of State Personnel. Listings will include the appropriate announcement information and vacancies so listed shall have an application period of not less than seven work days.

(e) If an agency makes an initial effort to fill a vacancy from within the state government work force only, and is unsuccessful, the listing with the Employment Security Commission would take place when a decision is made to recruit outside. A vacancy which an agency will not fill for any reason should not be listed; if conditions change, it should then be treated as a new vacancy.

(f) The Office of State Personnel may withhold approval for an agency to fill a job vacancy if the agency cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. If any agency hires any person in violation of these posting requirements, and it is determined by the Office of State Personnel that the employment of the person hired must be discontinued as a result of the posting violation, the agency shall pay such person for the work performed during the period of time between his/her initial employment and separation.

(g) When a vacancy is listed with the Employment Security Commission, the listing agency may not fill the job opening for at least 21 days after the listing has been filed and the local office with which the listing is made shall be notified by the agency within 15 days after the vacancy is filled. Upon agency request the Employment Security Commission may waive the waiting period for filling listed vacancies in job classifications for which the State Personnel Commission has recognized candidates are in short supply if it hinders the agency in providing essential services.

Statutory Authority G.S. 96-29; 126-4(4); 126-5(d); 126-7.1.

.0603 SPECIAL RECRUITING PROGRAMS

Examples of special recruiting programs are internships encouraging minority careers and the Careers in Government Program for college graduates in occupational areas of need. The Office of State Personnel operates certain, specially designed recruiting programs from the viewpoint of State Government as a total employer, which are targeted toward persons with skills or attributes important to workforce composition objectives. Within the context of these programs, normal posting and announcement requirements may be modified to target the desired objective.

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

.0604 APPLICANT INFORMATION AND APPLICATION

(a) The primary source of public information and referral for vacancies in state government is the Employment Security Commission. Interested persons should contact their local ESC Job Service Office.

(b) Applicants applying for a state vacancy must complete and submit a State Application Form (Form PD-107 or its equivalent) to the hiring authority. In completing an Application Form, persons subject to registration under the Military Selective Service Act (50 United States Code, Appx Section 453) must certify compliance with such registration requirements to be eligible for State employment, as required by G.S. 143B-421.1. The knowing and willful failure of a subject person to certify compliance when submitting an Application application for formal consideration, or to falsely certify compliance, may be grounds for dismissal from employment. It is not necessary for agencies to accept a State Application Form in the absence of an actual vacancy under active recruitment. Agencies may accept resumes, adopt an interest card system, or develop some other method of recording public interest in vacancies which may develop in the future.

(c) Each agency shall be responsible for investigating the accuracy of statements and the data contained in each individual's application, including the verification of academic and professional credentials. The agency shall inform the applicant in writing that credentials must be verified within 90 days and prior to the granting of permanent status.

(d) When a vacancy is listed with the Employment Security Commission, the local office with

which the listing is made shall be notified by the agency within 15 days after the vacancy is filled.

Statutory Authority G.S. 96-29; 126-4(4).

.0605 SPECIAL APPLICANT CONSIDERATIONS: AGENCY RESPONSIBILITIES

(a) Priority Reemployment Consideration. ~~Former~~ State employees who have ~~been separated~~ received notification of imminent separation due to reduction in force or ~~removal~~ who have been removed from a policy-making confidential exempt position, for reasons other than cause, are afforded priority reemployment consideration under the State Personnel Act. ~~and State Personnel Commission Policy.~~ A list of all classes having applicants with priority status will be sent to all agencies by the Office of State Personnel and will be updated frequently. When a vacancy occurs, the appointing authority must review the latest list before initiating any recruiting efforts. If the classification of the vacancy appears, a priority certificate must be requested and the appropriate priority afforded. While in most instances priority applicants will be on a priority certificate for classes of their principal qualification, these applicants are free to apply for any vacancy of their choice. If determined qualified, regardless of whether they are currently on a priority certificate for the class of the vacancy, the priority must be afforded.

(b) Veteran's Preference. State law requires that employment preference be given to veterans, widows of veterans, and wives of disabled veterans. Persons entitled to such preference must so indicate on any application filed. Verifying documentation may be required by the agency if desirable.

(c) Age Limitations.

(1) Minimum Age - The minimum employment age is eighteen. Exceptions are provided under the law if the employing agency procures an Employment Certificate from the County Social Services Department.

(2) Law Enforcement Officers - Law enforcement officers must be at least twenty-one years of age.

(3) Maximum Age - There is no maximum age for employment. ~~An applicant must not be rejected on age alone.~~

(d) Employment of Relatives. Members of an immediate family shall not be employed within the same agency if such employment will result in one member supervising another member of his immediate family, or if one member will occupy a position which requires influence over

another member's employment, promotion, salary administration and other related management or personnel considerations. The intent of this provision is to avoid an employment relationship which would create problems within a work unit or offend the public sense of equal opportunity. The term immediate family includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included are the step-, half- and in-law relationships based on the listing in this Paragraph. It might also include others living within the same household or otherwise so closely identified with each other as to suggest difficulty.

Statutory Authority G.S. 126-4(4); 128-15.

.0621 AGENCY CERTIFICATION

Each agency must certify on the Form PD-107 submitted to the Office of State Personnel for the certification of a new employee that academic and professional credentials have been or will be verified in accordance with statutes, policies, and procedures. Lack of such certification will require that the forms implementing the hiring process be placed in suspense until the proper certification is supplied.

Statutory Authority G.S. 126-4; 126-30.

.0626 RELATIONSHIP TO OTHER EMPLOYMENT PRIORITY CONSIDERATIONS

(a) Policy-making exempt employees, employees ~~separated by reduction in force,~~ with priority status, employees disabled on the job state employees separated from policy-making exempt jobs for reasons other than cause, state employees notified of or separated by reduction in force and on active priority reemployment status, and employees returning to state employment following a disability due to on-the-job injury are not considered outside applicants for the purpose of the promotional priority policy. Existing policy and statutory priorities which apply to these employees shall be afforded before the promotional priority for current state employees.

(b) Affirmative Action Considerations - Affirmative action policy requires that hiring authorities act affirmatively in minimizing or eliminating underrepresentations of women, minorities and handicapped persons throughout all levels of the state's workforce. Therefore, when promotional opportunities exist in occupational categories where there is an established underrepresentation of minorities, women, and handicapped persons, and the selection decision will be made from

among applicants in the existing state workforce, hiring authorities shall consider and support these affirmative action needs as usual. The promotional priority for current employees only applies when the applicants being considered include persons from outside state government. When the selection consideration involves outside applicants in addition to current state employees, and a current state employee has substantially equivalent qualifications as those of the highest ranking outside applicant who happens to be a member of the underrepresented group, the state employee shall receive the job offer. However, affirmative recruitment efforts shall be taken, both internally and externally, to optimize the presence of well qualified persons from the underrepresented categories in the applicant pool.

Statutory Authority G.S. 126-4; 126-7.1; 126-16.

.0628 RESOLUTION OF CONFLICT BETWEEN EMPLOYMENT PRIORITIES

In the event that the applicant group includes both a qualified non-state employee veteran and a qualified current state employee with permanent status as defined by G.S. 126-39 who is seeking a promotional opportunity, the current state employee shall be offered the position if the appointing authority determines, consistent with the promotional priority policy, that the qualifications of the veteran and the current state employee are substantially equal. The same priority over any non-state employee applicant shall apply to state employees separated from policy making exempt positions for reasons other than cause, state employees notified and/or separated by reduction in force and on active priority re-employment status, and employees returning to state employment following a disability due to on the job injury.

Statutory Authority G.S. 126-4; 126-7.1; 126-39.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .1000 - STATE EMPLOYEES' ASSISTANCE PROGRAM

.1001 PURPOSE

The purpose of the Employee Assistance Program is to combine sound management principles with a humanitarian approach to assist troubled employees in handling personal problems that adversely affect job performance. Such problems as alcohol and drug abuse, emotional illness, financial, legal and other personal matters can lead to deterioration in both performance and behavior. Early identification and referral for

help often results in restoring the employee's productivity, which benefits both the employee and management.

Statutory Authority G.S. 126-4(10).

.1002 POLICY

(a) It is a policy of the State to maintain an Employee Assistance Program as a benefit to assist employees with personal problems that may adversely affect their job performance. Since family problems also impact on job performance, the immediate family may also be assisted when necessary.

(b) Employees shall have the right to access this program in addressing personal problems. Employing Agencies shall ensure that employees are aware of the program and that employees shall have equal knowledge of and access to the program.

Statutory Authority G.S. 126-4(10).

.1003 ORGANIZATION OF PROGRAM

The EAP shall operate as a component of the Office of State Personnel. To increase the accessibility to the State EAP by all state employees, field offices will be provided in strategic locations throughout the state.

Statutory Authority G.S. 126-4(10).

.1004 SERVICES OFFERED TO AGENCIES, UNIVERSITIES AND EMPLOYEES

The program has two primary functions:

(1) Management Consultation. Provision of expert consultation to management in the identification and referral of employees who face personal problems that may adversely affect job performance.

(a) In assisting management, the Employees' Assistance Program is expected to become incorporated into existing management structure, and to guide management in developing plans for corrective action.

(b) The goal of the EAP is to impact on the return of employees to full work capacity at levels of satisfactory job performance.

(2) Assessment and Referral. A confidential and professional evaluation of the personal problem with the employee, including an organized approach for both problem resolution and linkage with professional resources: The personal problems addressed by the EAP include, but are not limited to alcoholism, drug abuse, emotional disorders, family problems, marital discord, legal and financial difficulties. The Employees' As-

sistance Program will serve both employees and the immediate family in these problem areas.

Statutory Authority G.S. 126-4(10).

.1005 ELIGIBILITY FOR SERVICES

(a) All full time, part-time permanent, and temporary employees governed by the State Personnel Act, are eligible for this service. To the extent that resources are available, employees not under the State Personnel Act shall also be allowed to utilize the program.

(b) Formal and contractual relationships with predominantly non SPA agencies to utilize the State EAP as a resource shall be at the discretion of those agencies, unless otherwise required by law. To the extent that resources are available, the EAP may choose to enter into such relationships with non SPA agencies.

Statutory Authority G.S. 126-4(10).

.1006 SELF REFERRAL

(a) A Self Referral is defined as any referral made in the absence of disciplinary action. The employee and or family member may call the EAP office directly, or may request assistance from the supervisor or Program Administrator in scheduling an appointment.

(b) For the supervisor, this only results in the need to know of scheduled absences from work. If an appointment is scheduled during working hours, the employee must coordinate the absence with his/her supervisor:

(1) If, in order to ensure complete confidentiality, the employee chooses not to notify the supervisor of the intention to use EAP, then vacation or sick leave should be used to cover the absence from work.

(2) If the employee does notify the supervisor of an EAP appointment, the supervisor, after considering requirements for coverage of the workplace, will authorize the absence from the work station. When the supervisor is aware of appointments for EAP assessment, the use of vacation or sick leave is not required. Follow-up appointments with resources recommended by EAP do involve the use of vacation or sick leave as appropriate. The employee is responsible for coordinating absences from the workstation in advance of the absence.

(c) When personal problems surface at the work place, but disciplinary action is not indicated, supervisors may encourage the use of

EAP. This will still be regarded as a Self Referral.

Statutory Authority G.S. 126-4(10).

.1007 SUPERVISORY REFERRAL

(a) A Supervisory Referral shall be defined as an EAP referral that is made within the context of disciplinary action. In this case, the employee has brought a personal problem to the work place in the form of deteriorating job performance and work habits and disciplinary action is indicated.

(b) It is essential that the EAP be notified in advance of a Supervisory Referral. In their official professional capacity, the EAP counselors will need background information about the employee and details of the job performance and work habits that are of concern. Depending on the urgency or difficulty of the situation the EAP counselor will coordinate with the supervisor any reports or ongoing communication that may be needed.

(c) The action on the part of the employee to seek help for personal problems shall be viewed as a responsible action, and shall be supported by management.

(d) Management has an affirmative duty to deal appropriately with employee performance or conduct deficiencies and as appropriate, to promptly utilize the disciplinary process. EAP shall not be used as a substitute for such prudent management decisions. Consideration of a referral to EAP shall be made when documentation warrants such action.

(e) EAP and the resources of EAP shall not be viewed as a part of the disciplinary process. As such they are not to be used in a punitive manner. Rather, the EAP is to serve in addressing the personal problem(s) that may be the primary source of the performance or behavior issue. In this manner EAP is a complement to the disciplinary process.

(f) The EAP shall retain the right to refuse a supervisory/management referral when:

(1) The referral is being made in the absence of prudent management decisions.

(2) The EAP is being utilized in a punitive manner.

(3) There is action by management or the supervisor to either ignore or to knowingly cover up situations where an employee's personal problem is having a negative impact on the work place.

(g) Disciplinary action may be initiated or continued regardless of the employee's active involvement in EAP. However, supervisors are encouraged to provide for a reasonable length of

time after referral to EAP before taking additional disciplinary action.

Statutory Authority G.S. 126-4(10).

.1008 MANAGEMENT DIRECTED REFERRAL.

(a) A Management Directed referral shall be defined as an EAP referral which is intended to address an extraordinary situation that is considered by management to be potentially volatile. It may be needed when an employee has demonstrated:

- (1) that they cannot conduct themselves according to the rules of the workplace;
- (2) a potential or present health/safety danger to self and/or others;
- (3) that they may not be fit to carry out the required duties and responsibilities;
- (4) a problem that, rather than interfering with the employee's performance, actually prevents the employee from performing the duties of the job in question.

(b) The goals of a Management Directed referral are to protect the worksetting from disruption and/or to develop a plan of action to resolve the extraordinary situation. To accomplish such goals, management may either institute an Investigatory Suspension (as provided in 25 NCAC 1J .0610 of these Rules) and make a referral to the EAP, or may obtain a Medical Evaluation of the employee (as provided in 25 NCAC 1C .0207 of these Rules) and make a referral to the EAP in order to obtain the evaluation.

(c) In a Management Directed referral, management may give the employee a choice between accepting EAP services prior to returning to work, or relying on the disciplinary and grievance process to resolve the matter. In this situation management may temporarily defer a decision on disciplinary action, or implement a necessary decision as to the appropriate disciplinary action. In order for management to be able to require the employee to make this choice, disciplinary action must be an option that is being actively considered.

(d) In the case of a Management Directed referral, the employee's decision to accept the option of EAP can result in an added option to resolve the situation. The employee who agrees to accept EAP services must obtain clearance by the EAP prior to return to work. In agreeing to accept EAP services the employee must:

- (1) Keep EAP appointments;
- (2) Complete the recommended course of professional care;
- (3) Demonstrate an improvement in the specific problem areas (either job perform-

ance or conduct) identified by management.

(e) Failure to carry out all of the responsibilities in Paragraphs (a) through (d) of this Rule, in conjunction with continued poor performance, may serve as the basis for a decision to implement disciplinary action based on the original behavior or conduct.

(f) The employee always has the right to accept or refuse the EAP service. However, in maintaining that right, refusal by the employee to participate in the EAP shall not be grounds for disciplinary action. A decision not to participate in EAP shall be viewed as a decision to rely on the disciplinary and grievance process to resolve the situation. The employee shall be advised that this can lead to disciplinary action. Any disciplinary action subsequently taken, shall be unrelated to the employee's decision regarding participation in EAP and shall be based solely on the employee's performance and/or conduct related to the job.

(g) In providing EAP as an option to employees under a management directed referral, management has the discretion to temporarily stay pending disciplinary action, and or to impose a lesser level of discipline. This reconsideration is contingent on the employee's demonstration of action through EAP in requesting assistance and in properly following through with the recommendations of EAP staff.

(h) Questions about the agency's policy and procedure regarding Management Directed referrals should be directed to the agency's EAP Program Administrator, the agency's Personnel Office or with the State EAP Office.

Statutory Authority G.S. 126-4(10).

.1009 CONFIDENTIALITY

(a) Personnel Records. All personnel information concerning employees shall be confidential. The EAP will comply with the law concerning such records while involved in communications regarding a referral.

(b) Personal/Clinical Records. The EAP will follow clinical guidelines with regard to the confidentiality of records. Such guidelines prohibit EAP from sharing identifying information about an employee without the prior written consent of the employee. The EAP will obtain such written consent in supervisory referrals in order to inform management that an employee is following through on recommendations. Exceptions occur as follows:

- (1) When the employee may be harmful to self or others. In these cases the protection and safety of the work place will

be an overriding concern. Laws on confidentiality permit the EAP to notify the work place that the employee may present a threat, but such laws still require restraint in the information that is released. In these cases, information will be limited and will be provided only on a "need to know" basis.

(2) Where the employee communicates threats. If, in the presence of the EAP Professional, a person communicates plans to injure another individual, the EAP has a "duty to warn" the person who is named in such threats.

(3) Where child abuse is occurring. In such a case where the proper authorities have not already become involved, the EAP has a "duty to notify" the proper authorities in regards to the welfare of the child.

(c) Confidentiality must exist within the EAP. Managers and supervisors are to be sensitive to the issue of confidentiality as they carry out their responsibilities regarding the EAP.

Statutory Authority G.S. 126-4(10).

.1010 RESPONSIBILITIES OF THE EMPLOYEE ASSISTANCE PROGRAM

Upon request by the agency/university, the EAP shall provide the following:

- (1) guidance to Management in the development of EAP Policy;
- (2) training of supervisors;
- (3) orientation of employees;
- (4) consultation to Supervisors/Managers;
- (5) assessment of Employees/Family members;
- (6) assistance in developing a system for periodically reporting on the impact of the EAP effort within the organization.

Statutory Authority G.S. 126-4(10).

.1011 RESPONSIBILITIES OF AGENCIES/ UNIVERSITIES

(a) As part of the development and support of EAP within the organization the state agencies shall:

- (1) Develop an agency level policy and procedures that demonstrates both compliance with State Personnel Rules and addresses any necessary modifications of the EAP approach in order to meet agency/university level needs.
- (2) Provide for training of supervisors about the EAP effort and their expected role.
- (3) Provide for orientation and ongoing awareness among employees concerning the availability of the EAP services.

(4) Make recommendations and changes that are needed to provide for an effective utilization of the service.

(b) Departments and Agencies will designate a Program Administrator whose primary EAP function will be as follows:

(1) Serving as the Department/Agency liaison to the EAP, meeting periodically with the EAP to discuss concerns, and plan efforts of the EAP within the organization.

(2) Scheduling and coordinating supervisory training sessions, employee orientations, and where necessary follow-up training regarding the EAP.

(3) Discussing the benefits of an EAP with both supervisor and employee, pointing out available options to the employee, and encouraging referrals to the EAP.

(4) Developing and maintaining a positive working relationship with the EAP Office.

(5) Creating and maintaining a level of awareness of the EAP among supervisors and employees. Taking steps to create and maintain the visibility of the program.

(6) Collecting information about the impact of the program and, as necessary, communicating with management of the Department/Agency concerning the program.

Statutory Authority G.S. 126-4(10).

SUBCHAPTER II - AFFIRMATIVE ACTION

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

.0203 ADVANCED EDUCATION AND TRAINING COMPONENT

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

(b) Each agency with employees requiring specialized advanced training will provide such training in accordance with the Center for Disease Control (CDC) requirements, at the time of initial assignment and at least annually thereafter. Appropriate documentation of training shall be maintained by the agency for at least the duration of employment plus 30 years.

Statutory Authority G.S. 126-4.

**TITLE 26 - OFFICE OF ADMINISTRATIVE
HEARINGS**

SECTION .0100 - PUBLICATION

**.0103 SUBMISSION AND PUBLICATION
SCHEDULE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of Administrative Hearings intends to amend rule(s) cited as 26 NCAC 2A .0211; 2B .0103 and 26 NCAC 3 .0001.

The proposed effective date of this action is July 1, 1992.

The public hearing will be conducted at 12:00 Noon on May 11, 1992 at the Hearing Room #1, Lee House, 422 North Blount Street, Raleigh, NC.

Reason for Proposed Action:

Rule 26 NCAC 2A .0211 - To allow sufficient time for an agency to proof the final computer copy of a rule.

Rule 26 NCAC 2B .0103 - To provide for the filing of submission by facsimile transmission for publication in the North Carolina Register.

Rule 26 NCAC 3 .0001 - To provide for the filing of contested case documents and other pleadings by facsimile transmission.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to May 11, 1992 to Elaine R. Steinbeck, APA Coordinator, P.O. Drawer 27447, Raleigh, NC 27611-7447.

CHAPTER 2 - RULES DIVISION

SUBCHAPTER 2A - NCAC

**SECTION .0200 - GENERAL FILING
REQUIREMENTS**

.0211 AGENCY FINAL COPY

Each agency shall be responsible for proofing the final computer copy of its rules. Within 30 days of the date appearing on the final computer copy, an agency shall notify the Office of Administrative Hearings of any typographical errors made by OAH in entering the rule into the NCAC. Any typographical errors found by the agency after the 30 days shall be corrected by an amendment pursuant to G.S. 150B-21.5.

Statutory Authority G.S. 150B-21.5.

**SUBCHAPTER 2B - NORTH CAROLINA
REGISTER**

(a) In order to be acceptable for publication, submissions for proposed administrative rules and executive orders shall be submitted to the Office of Administrative Hearings by the closing date for the issue as determined under Paragraph ~~(b)~~ (c) of this Rule.

(b) An agency may file submissions by facsimile (fax) transmission by 5:30 p.m. on the closing date for the issue as determined under Paragraph (c) of this Rule. In order to be acceptable for publication, the original submission must be received by the Office of Administrative Hearings within five business days following the faxed transmission.

~~(c)~~ (b) The North Carolina Register will be published on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday or holiday for State employees. The last day for filing for any issue of the North Carolina Register is 15 days before the issue date excluding Saturdays, Sundays and holidays for State employees, except that the last date for electronic filing is ten days before the issue date excluding Saturdays, Sundays and holidays for State employees. In computing the time prescribed or allowed by this Rule, the day of publication of the North Carolina Register is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday or State holiday. A half holiday shall be considered as other days and not as a holiday. A table of publication deadlines and schedules to include the issue date, last day for filing, last day for electronic filing, earliest date for public hearing, earliest date for adoption by the agency, and earliest effective date for at least the next 12 issues will be published in each issue of the North Carolina Register.

Statutory Authority G.S. 150B-21.17.

CHAPTER 3 - HEARINGS DIVISION

.0001 GENERAL

Governed by the principles of fairness, uniformity, and punctuality, the following general rules apply:

- (1) The Rules of Civil Procedure as contained in G.S. 1A-1, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes and Canons 1, 2 and 3 of the Code of Judicial Conduct adopted in accordance with G.S. 7A-10.1 shall apply in contested cases in the Office of Administrative Hearings (OAH) unless another specific statute or rule of the Office of Administrative Hearings provides otherwise.
- (2) The Office of Administrative Hearings may supply, at the cost of reproduction, forms for use in contested cases. These forms will conform to the format of the Administrative Office of the Courts' Judicial Department Forms Manual.
- (3) Every pleading and other document filed with the Office of Administrative Hearings shall be signed by the attorney who prepared the document, if it was prepared by an at-

torney, and shall contain his name, address, telephone number, and North Carolina State Bar number. An original and one copy of each document shall be filed.

- (4) The Office of Administrative Hearings will permit the filing of contested case documents and other pleadings by facsimile (fax) transmission during regular business hours. The faxed documents will be deemed a "filing" within the meaning of 26 NCAC 3 .0002(a)(2) provided the original document is received by OAH within five business days following the faxed transmission.
- (5) (4) Except as otherwise provided by statutes or by rules promulgated under G.S. 150B-38(h), the rules contained in this Chapter shall govern the conduct of contested case hearings under G.S. 150B-40 when an Administrative Law Judge has been assigned to preside in the contested case.

Statutory Authority G.S. 7A-750; 150B-11; 150B-40(c).

FINAL RULES

Adopted rules filed by the Department of Revenue are published in this section. This department is not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.

Effective October 1, 1991, the Departments of Correction and Revenue are subject to G.S. 150B, Article 2A.

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

TITLE 17 DEPARTMENT OF REVENUE

CHAPTER 6 - INDIVIDUAL INCOME TAX DIVISION

SUBCHAPTER 6B - INDIVIDUAL INCOME TAX

SECTION .0100 - FILING INDIVIDUAL INCOME TAX RETURNS

.0107 EXTENSIONS

(a) If an income tax return cannot be filed by the due date, an individual may apply for an automatic four-month extension of time to file the return. To receive the extension, an individual must file Form D-410, Application for Automatic Extension of Time to File State Income Tax Return, and pay the full amount of tax he expects to owe by the original due date of the return. In lieu of filing Form D-410, an automatic four-month extension of time to file a North Carolina income tax return will be granted if an individual files Federal Form 4868, Application for Automatic Extension of Time, with the Internal Revenue Service, provided he submits a copy of the completed Form 4868 and full payment of the tax by the original due date of the return. When filing a copy of the Form 4868 in lieu of Form D-410, an individual must clearly state that the form is for North Carolina; mark through the federal amounts shown on the form; enter the applicable amounts for North Carolina; and pay the tax due.

(b) A ten percent late payment penalty will apply on the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due, including interest, must be paid with the income tax return before the expiration of the extension period to avoid the late payment penalty. If the application for extension is determined to be invalid, both the late filing and the late payment penalties will apply. An application for extension is considered invalid if the amount entered on the extension form as the tax expected to be due is not properly estimated. In determining whether the amount reflected as tax due on the application is properly estimated, all facts and circumstances, including the amount of tax due in prior years, whether substantial underpayments have been made in other years, and whether an individual made a bona fide and reasonable attempt to locate, gather, and consult information, must be considered.

(c) An individual can apply for an additional extension beyond the automatic four-month extension by filing Form D-410A, Application for Additional Extension of Time to File State Income Tax Return, in duplicate. Extensions of time beyond the automatic four-month extension of time to file are granted only for very good reasons. In lieu of filing Form D-410A, an additional extension of time will be granted if an individual files Federal Form 2688 with the Internal Revenue Service and includes a copy of the approved Form 2688 with his North Carolina return.

(d) A return may be filed at any time within the extension period but it must be filed before the end of the extension period to avoid the late filing penalty.

(e) This Rule applies to taxable years beginning on or after January 1, 1990.

History Note: Statutory Authority G.S. 105-155; 105-157; 105-236(4); 105-160.6; 105-160.7; 105-262; 105-263;

Eff. February 1, 1976;

Amended Eff. February 3, 1992; October 1, 1991; February 1, 1991; June 1, 1990.

SECTION .3500 - PARTNERSHIPS**.3513 NONRESIDENT PARTNERS**

(a) When an established business in North Carolina is owned by a partnership having one or more nonresident members, the managing partner is responsible for reporting the distributive share of the income of each nonresident partner and is required to compute and pay the tax due for each nonresident partner. The tax rate is the same as the tax rate for single individuals. The manager is authorized by statute to withhold the tax due from each nonresident partner's share of the partnership net income. Payment of the tax on behalf of nonresident corporate partners does not relieve the corporation from filing corporate income tax and franchise tax returns; however, credit for the tax paid by the managing partner may be claimed on the corporate returns. Although a partnership may treat guaranteed payments to a partner for services or for use of capital as if they were paid to a person who is not a partner, such treatment is only for purposes of determining its gross income and deductible business expenses. For other tax purposes, such guaranteed payments are treated as a partner's distributive share of ordinary income. In determining the allowable North Carolina deductions from federal taxable income, do not include a partner's salary, interest on a partner's capital account, partner relocation and mortgage interest differential payments, or payments to a retired partner regardless of whether they were determined without regard to current profits. These types of payments are treated as part of the partner's share of the partnership income. A nonresident partner is not required to file a North Carolina individual income tax return when the only income from North Carolina sources is the nonresident's share of income from a partnership doing business in North Carolina and the manager of the partnership has reported the income of the nonresident partners and paid the tax due. A nonresident partner may file an individual income tax return and claim credit for the tax paid by the manager of the partnership if the payment is properly identified on the individual income tax return.

(b) In determining the tax due for nonresident partners, a partnership must apportion to North Carolina the income derived from its business activities carried on within and outside North Carolina that are not segregated from its other business activities. A partnership's business activities are not segregated if it does not employ a method of accounting that clearly reflects the income or loss of its separate activities. A partnership must allocate to North Carolina the income derived from its business activities in North Carolina that are segregated from its other business activities. Income derived from a partnership's business activities outside of North Carolina that are segregated from its other business activities are not includable in determining the tax due for nonresident partners. This allocation of income does not affect the reporting of partnership income by the resident partner because he is taxed on his share of the net income of the partnership whether or not any portion of it is attributable to another state or country.

History Note: Statutory Authority G.S. 105-134.5(d); 105-154; 105-262;

Eff. February 1, 1976;

Amended Eff. February 3, 1992; October 1, 1991; April 1, 1991; February 1, 1991.

.3529 INTEREST INCOME PASSED THROUGH TO PARTNERS

Although the interest income passed through to a partner in a partnership retains its same character as when received by the partnership, the expenses incurred in earning such income are deductible by the partnership and net interest income after expenses is reflected in the partner's pro rata share of the income of the partnership. For interest income subject to federal income tax, the partner's federal gross income reflects the net interest income after expenses incurred in earning the income. Interest income not subject to federal income tax is not reflected in the partner's federal taxable income. In these cases, a partner must adjust his federal taxable income as required by G.S. 105-134.6(b) or G.S. 105-134.6(c), for the net amount of interest attributable to the partnership.

History Note: Statutory Authority G.S. 105-134.6(b); 105-134.6(c); 105-154; 105-262;

Eff. February 3, 1992.

SUBCHAPTER 6C - WITHHOLDING**SECTION .0200 - REPORTING AND PAYING TAX WITHHELD****.0202 REPORTS AND PAYMENTS**

Withheld taxes are paid quarterly, monthly, or on an accelerated basis. Employers who withhold an average of less than five hundred dollars (\$500.00) from wages each month must file a quarterly report and pay the withheld taxes on a quarterly basis. The quarterly report and payment are due by the last day of the month following the end of the calendar quarter.

Employers who withhold an average of at least five hundred dollars (\$500.00) but less than two thousand dollars (\$2,000.00) from wages each month must file a monthly report and pay the withheld taxes on a monthly basis. All monthly reports and payments are due by the fifteenth day of the month following the month in which the tax was withheld; except the report and payment for the month of December are due by the thirty-first day of January.

Employers who withhold an average of at least two thousand dollars (\$2,000.00) from wages each month must file reports and pay the withheld taxes at the same times they are required to file reports and pay the tax withheld on the same wages for federal income tax purposes. The due dates for reporting and paying North Carolina income tax withheld is determined by the due dates for depositing federal employment taxes (income tax withheld and FICA). Each time an employer is required to deposit federal employment taxes, he must remit the North Carolina income tax withheld on those same wages, regardless of the amount of State tax withheld.

EXCEPTION: For federal tax purposes, if an employer withholds one hundred thousand dollars (\$100,000.00) or more, the deposit is required on the next banking day. North Carolina law does not adopt this provision of federal law, and the State income tax withholding on the same wages is due on or before the third banking day after the end of the eighth-monthly period in which the payroll is made. The employer must mail or deliver payment of the North Carolina income tax withheld within three banking days after the end of the same eighth-monthly period that required the federal deposit.

The North Carolina Quarterly Income Tax Withholding Return, Form NC-5Q, reconciles the tax paid for the quarter with the tax withheld for the quarter. The due dates for Form NC-5Q are the same as for the federal quarterly return (Federal Form 941); on or before the last day of the month following the close of the quarter. An employer has 10 additional days to file the return if all required payments were made during the quarter and no additional tax is due.

*History Note: Statutory Authority G.S. 105-163.6; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. February 3, 1992; February 1, 1991; February 1, 1988;
February 21, 1979.*

.0203 ANNUAL REPORTS

(a) At the end of each calendar year employers are required to furnish wage and tax statements, Form NC-2, to employees. Two copies must be furnished to the employee and one copy must be furnished to the Department. The Internal Revenue Service supplies a six part Form W-2 which will produce the required federal and North Carolina statements in one packet.

(b) The copies of the wage and tax statements for the Department of Revenue must be filed with the Annual Reconciliation of North Carolina Income Tax Withheld.

(c) Reports of payments of income, interest, rents, premiums, dividends, annuities, remunerations, emoluments, fees, gains, profits, taxable meal reimbursements, and other determinable annual or periodic gains during a calendar year must be made on Information at the Source Reports, Form NC-1099, if the payments have not otherwise been reported. Effective for payments made on or after January 1, 1992, the Form NC-1099 reports are not required to be filed unless the payments have not been reported to the Internal Revenue Service under the provisions of Section 6041 of the Code or have not otherwise been reported to the Department. Notwithstanding the above, any person required to file Form NC-1099NRS under the provisions of Rule 17 NCAC 6B .3804(j) shall do so regardless of any requirement to report the sale to the Internal Revenue Service.

*History Note: Statutory Authority G.S. 105-154; 105-163.7; 105-163.18; 105-262;
Eff. February 1, 1976;
Amended Eff. February 3, 1992; October 1, 1991; February 1, 1991; June 1, 1990.*

LIST OF RULES CODIFIED

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

Citation = Title, Chapter, Subchapter and Rule(s)
 AD = Adopt
 AM = Amend
 RP = Repeal
 With Chgs = Final text differs from proposed text
 Eff. Date = Date rule becomes effective
 Temp. Expires = Rule was filed as a temporary rule and expires on this date

NORTH CAROLINA ADMINISTRATIVE CODE

JANUARY 1991

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	16	Public Education
4	Economic and Community Development	17	Revenue
7	Cultural Resources	20	State Treasurer
10	Human Resources	21	Occupational Licensing Boards
11	Insurance	8 -	CPA Examiners
12	Justice	42 -	Optometry
13	Labor	46 -	Pharmacy
15A	Environment, Health, and Natural Resources	24	Independent Agencies
		3 -	Safety and Health Review Board
		25	State Personnel

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
1 NCAC 35 .0103		•		•	02/03/92	
.0202		•		•	02/03/92	
.0301 - .0302		•		•	02/03/92	
.0303		•			02/03/92	
.0403		•			02/03/92	
4 NCAC 16A .0103 - .0104		•			02/15/92	
.0105		•		•	02/15/92	
16C .0101		•			02/15/92	
.0103 - .0105		•			02/15/92	
.0201		•		•	02/15/92	
.0202		•			02/15/92	
.0203		•		•	02/15/92	

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Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
4	NCAC	16C	.0303			•		02/15/92	
			.0305		•		•	02/15/92	
			.0401		•			02/15/92	
			.0402 - .0403		•		•	02/15/92	
			.0404 - .0405		•			02/15/92	
			.0501 - .0503		•			02/15/92	
	16D		.0101		•		•	02/15/92	
			.0301		•		•	02/15/92	
			.0402 - .0403		•			02/15/92	
			.0404			•		02/15/92	
			.0407		•			02/15/92	
			.0506			•		02/15/92	
			.0902		•			02/15/92	
	16E		.0103	•			•	02/15/92	
			.0104	•				02/15/92	
			.0105	•			•	02/15/92	
			.0201 - .0204	•				02/15/92	
			.0301	•			•	02/15/92	
			.0302	•				02/15/92	
			.0303	•			•	02/15/92	
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			.0501 - .0502	•			•	02/15/92	
			.0601 - .0602	•				02/15/92	
			.0701 - .0702	•			•	02/15/92	
	16G		.0103	•			•	02/15/92	
			.0104	•				02/15/92	
			.0105 - .0106	•			•	02/15/92	
			.0311 - .0312	•			•	02/15/92	
			.0313	•				02/15/92	
			.0314 - .0315	•			•	02/15/92	
			.0316	•				02/15/92	
			.0404 - .0405	•			•	02/15/92	
			.0509	•				02/15/92	
			.0510	•			•	02/15/92	
			.0511	•				02/15/92	
			.0512 - .0513	•			•	02/15/92	
			.0514 - .0516	•				02/15/92	

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Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires		
4	NCAC	16G	.0606 - .0608	•				02 15 92			
			.0712	•				02 15 92			
			.0713 - .0714	•			•	02 15 92			
			.0715 - .0717	•				02 15 92			
			.0718	•			•	02 15 92			
			.0719	•				02 15 92			
			.0720	•			•	02 15 92			
			.0721	•				02 15 92			
			.0722	•			•	02 15 92			
			.0822 - .0823	•			•	02 15 92			
			.0824	•				02 15 92			
			.0825	•			•	02 15 92			
			.0826	•				02 15 92			
			.0827	•			•	02 15 92			
			.0828	•				02 15 92			
			.0829	•			•	02 15 92			
			.0830 - .0833	•				02 15 92			
			.0908	•			•	02 15 92			
			.0909 - .0912	•				02 15 92			
			.1203 - .1204	•			•	02 15 92			
			16H	.0001		•		•	02 15 92		
				.0002			•		02 15 92		
				.0003		•		•	02 15 92		
				.0005		•		•	02 15 92		
				.0006 - .0007		•			02 15 92		
				.0008		•		•	02 15 92		
				16I	.0702 - .0703		•		•	02 15 92	
					.0704		•			02 15 92	
					.0801		•			02 15 92	
					.0803		•			02 15 92	
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					.1001 - .1002		•			02 15 92	
			.1003			•		•	02 15 92		
			.1101 - .1102			•			02 15 92		
			.1104			•			02 15 92		
			.1105			•		•	02 15 92		

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Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
4	NCAC	16I	.1106		•			02/15/92	
			.1201		•			02/15/92	
			.1202		•		•	02/15/92	
			.1203		•			02/15/92	
			.1301		•			02/15/92	
	16J		.0001 - .0002		•			02/15/92	
			.0003		•		•	02/15/92	
	16K		.0001 - .0002		•		•	02/15/92	
			.0003 - .0008		•			02/15/92	
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	16K		.0011 - .0013		•		•	02/15/92	
			.0014 - .0017		•			02/15/92	
	16L		.0002 - .0003		•			02/15/92	
			.0004		•		•	02/15/92	
7	NCAC	4P	.0016	•				02/03/92	
10	NCAC	3J	.2904		•		•	03/01/92	
		3W	.0101	•			•	03/01/92	
			.0201	•			•	03/01/92	
	24A		.0606		•		•	03/01/92	
	29C		.0003		•			03/01/92	
	41M		.0001		•			07/01/92	
			.0002		•		•	07/01/92	
			.0003 - .0004		•			07/01/92	
			.0005		•		•	07/01/92	
			.0006 - .0007	•				07/01/92	
	41P		.0006		•		•	03/01/92	
			.0007		•			03/01/92	
			.0008		•		•	03/01/92	
	42E		.0903		•		•	03/01/92	
			.1102		•		•	03/01/92	
			.1105 - .1106		•		•	03/01/92	
			.1107		•			03/01/92	
			.1108		•		•	03/01/92	
			.1406		•			03/01/92	
	42S		.0401		•			03/01/92	
	42Z		.0802		•			03/01/92	
			.0803		•		•	03/01/92	

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Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC	42Z	.0902 - .0909	•				03 01 92	
11	NCAC	6A	.0232		•			03 01 92	
			.0234		•		•	03 01 92	
			.0238	•			•	03 01 92	
			.0239	•				03 01 92	
			.0240	•			•	03 01 92	
			.0401		•			03 01 92	
			.0404 - .0405		•			03 01 92	
			.0415			•		03 01 92	
			.0416	•			•	03 01 92	
			.0508	•				03 01 92	
			.0802		•			03 01 92	
			.0804		•			03 01 92	
8			.0801 - .0802		•			03 03 92	08 21 92
			.0805		•			03 03 92	08 21 92
			.0815		•			03 03 92	08 21 92
			.0819 - .0836	•				03 03 92	08 21 92
12			.0507			•		03 01 92	
			.0815 - .0816		•			03 01 92	
			.0818 - .0819		•			03 01 92	
			.0820		•		•	03 01 92	
			.0821		•			03 01 92	
			.0822		•		•	03 01 92	
			.0823			•		03 01 92	
			.0824		•			03 01 92	
			.0825 - .0827		•		•	03 01 92	
			.0828 - .0830		•			03 01 92	
			.0831 - .0833			•		03 01 92	
			.0834 - .0835		•		•	03 01 92	
			.0836	•				03 01 92	
			.0837	•			•	03 01 92	
			.0838	•				03 01 92	
			.1201 - .1207	•			•	03 01 92	
			.1208	•				03 01 92	
			.1209 - .1211	•			•	03 01 92	
16			.0201	•				03 01 92	
			.0202	•			•	03 01 92	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
11	NCAC	16	.0203	•				03 01 92	
			.0204	•			•	03 01 92	
12	NCAC	9A	.0204		•			03 01 92	
		9B	.0201		•		•	03 01 92	
			.0203		•		•	03 01 92	
			.0225		•		•	03 01 92	
			.0401 - .0403		•			03 01 92	
		9C	.0303		•			03 01 92	
			.0308		•			03 01 92	
		9E	.0106		•		•	03 01 92	
			.0107		•			03 01 92	
13	NCAC	7C	.0102		•			02 01 92	
15A	NCAC	2D	.1104		•			03 01 92	
		2H	.0610		•		•	03 01 92	
		4A	.0005		•			01 14 92	07 11 92
		4B	.0018		•			01 14 92	07 11 92
		4C	.0007		•			01 14 92	07 11 92
		7H	.0306		•		•	03 01 92	
		7M	.0201 - .0202		•		•	03 01 92	
			.0303		•			03 01 92	
			.0901		•			03 01 92	
		10B	.0104			•		03 01 92	
			.0115		•			03 01 92	
		10F	.0323		•			03 01 92	
			.0339		•			03 01 92	
			.0342		•			03 01 92	
		12C	.0306		•			03 01 92	
		18C	.2101 - .2105	•				01 22 92	07 19 92
		19A	.0102		•			02 03 92	
			.0205	•				03 01 92	
			.0302		•			02 03 92	
		19C	.0206	•				01 08 92	07 05 92
		19D	.0105			•		02 03 92	
16	NCAC	6D	.0102		•			03 01 92	
		6E	.0301 - .0303	•			•	03 01 92	
17	NCAC	1C	.0402		•			02 03 92	
		6B	.0107		•			02 03 92	

LIST OF RULES CODIFIED

	Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
17	NCAC 6B .3513		•			02 03 92	
	.3529	•				02 03 92	
	6C .0202 - .0203		•			02 03 92	
20	NCAC 2A .0504	•				03 01 92	
	2B .0404	•				03 01 92	
	2C .0404	•				03 01 92	
21	NCAC 8G .0306		•		•	03 01 92	
	42J .0001		•			03 01 92	
	46 .2502		•		•	03 01 92	
24	NCAC 3 .0101 - .0102	•			•	02 03 92	
	.0103	•				02 03 92	
	.0104	•			•	02 03 92	
	.0105 - .0106	•				02 03 92	
	.0107 - .0108	•			•	02 03 92	
	.0109 - .0110	•				02 03 92	
	.0111	•			•	02 03 92	
	.0201 - .0202	•				02 03 92	
	.0203	•			•	02 03 92	
	.0301 - .0302	•				02 03 92	
	.0303 - .0305	•			•	02 03 92	
	.0306 - .0307	•				02 03 92	
	.0308 - .0309	•			•	02 03 92	
	.0401	•			•	02 03 92	
	.0402 - .0403	•				02 03 92	
	.0404 - .0405	•			•	02 03 92	
	.0406	•				02 03 92	
	.0501 - .0502	•				02 03 92	
	.0503	•			•	02 03 92	
	.0504	•				02 03 92	
	.0505 - .0507	•			•	02 03 92	
	.0508	•				02 03 92	
	.0509	•			•	02 03 92	
	.0510 - .0511	•				02 03 92	
	.0512	•			•	02 03 92	
	.0513 - .0516	•				02 03 92	
	.0601	•				02 03 92	
	.0602	•			•	02 03 92	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
24	NCAC	3	.0603	•				02 03/92	
			.0604	•			•	02 03 92	
			.0605	•				02 03/92	
			.0701	•			•	02 03 92	
			.0702 - .0707	•				02 03/92	
			.0708 - .0710	•			•	02 03/92	
25	NCAC	1D	.0303		•			03 01/92	
			.0308		•			03 01/92	
			.1001		•			03 01/92	
			.1004			•		03 01 92	
			.1006		•			03 01/92	
			.1007			•		03 01/92	
			.1010	•				03 01/92	
	1L		.0201 - .0202		•			03 01/92	
			.0203		•		•	03 01 92	

RRC OBJECTIONS

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

Temporary Rules are noted by "". These Rules have already gone into effect.*

ADMINISTRATION

State Construction

<i>1 NCAC 30F .0101 - Authority</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0103 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0202 - Pre-Bid Conferences and Site Reviews</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0301 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0302 - Overall Job Performance</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0303 - Interim Contractor Evaluation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0305 - Report Compilation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0401 - Post-Occupancy Evaluation</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>
<i>1 NCAC 30F .0403 - Appeals of Assigned Eval or Disqual from Bidding</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/21/91</i>

State Employees Combined Campaign

<i>1 NCAC 35 .0103 - Organization of the Campaign</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>1 NCAC 35 .0202 - Criteria for Acceptance</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>1 NCAC 35 .0302 - Response</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>

AGRICULTURE

Plant Industry

<i>2 NCAC 48E .0101 - Definitions</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol

<i>14A NCAC 9H .0304 - Notifying Registered Owner</i>	<i>RRC Objection</i>	<i>12/19/91</i>
<i>No Response from Agency</i>	<i>No Action</i>	<i>01/24/92</i>

ECONOMIC AND COMMUNITY DEVELOPMENT**Credit Union Division**

4 NCAC 6C .0311 - Surety Bond and Insurance Coverage Agency Revised Rule	RRC Objection 11/21/91 Obj. Removed 12/19/91
4 NCAC 6C .0401 - Delinquent Loans and Loan Losses	RRC Objection 11/21/91 Obj. Removed 12/19/91
4 NCAC 6C .0402 - Charge-Off of Uncollectible Loans Agency Revised Rule	RRC Objection 11/21/91 Obj. Removed 12/19/91
4 NCAC 6C .0403 - Real Estate Loans Agency Revised Rule	RRC Objection 11/21/91 Obj. Removed 12/19/91
4 NCAC 6C .0407 - Business Loans	RRC Objection 01/24/92
4 NCAC 6C .1301 - Liquidity Reserves Agency Revised Rule	RRC Objection 11/21/91 Obj. Removed 12/19/91

Savings Institutions Division: Savings Institutions Commission

4 NCAC 16A .0105 - Restrictions: Payment/Dividends/Repurchase/Stock Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16C .0402 - Application: Guidelines/Approval/Administrator Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16C .0403 - General Policies	RRC Objection 01/24/92
4 NCAC 16D .0301 - General Policies Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16E .0103 - Composition of Board of Directors Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16E .0105 - Amendment of Converted Savings Bank's Charter Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16E .0301 - General Policies Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16E .0303 - Required Policies Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16E .0502 - Holding of Certificate or Passbook Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0404 - Information Prior To Approval/Plan/Conversion Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0510 - Use of Proxy Soliciting Material to be Authorized Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0513 - Material Required to be Filed Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0714 - Estimated Price Information: Proxy Statements Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0720 - Period for Completion of Sale Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0722 - Extensions of Time to Complete Offerings Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16G .0825 - Requirements as to Paper and Printing Agency Revised Rules	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16H .0002 - Grounds Agency Repealed Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92
4 NCAC 16H .0008 - Waiver Agency Revised Rule	RRC Objection 01/24/92 Obj. Removed 01/24/92

RRC OBJECTIONS

4 NCAC 16I .0702 - Definitions and Other Terms	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0703 - Stds for Approval of Acquisition: Duties/Conduct	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .0902 - Acquisition Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .1003 - Acquisition Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16I .1202 - Conversion Procedure	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16J .0003 - Waiver	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0001 - Definitions	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0005 - Books and Accounts	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0009 - Self-Dealing	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16K .0010 - Custody of Investments	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92
4 NCAC 16L .0004 - Waiver	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	01/24/92

EDUCATION

Elementary and Secondary Education

16 NCAC 6D .0103 - Graduation Requirements	ARRC Objection	9/19/91
No Response from Agency		10/17/91
Agency Revised Rule	Obj. Removed	12/19/91

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	RRC Objection	01/24/92
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications	RRC Objection	10/17/91
15A NCAC 7M .0201 - Declaration of General Policy	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7M .0202 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7M .0303 - Policy Statements	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Responded	No Action	01/24/92
Rule Returned to Agency		01/24/92
Agency Filed Rule with OAH	Eff.	03/01/92
15A NCAC 7M .0403 - Policy Statements	RRC Objection	10/17/91

RRC OBJECTIONS

<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>15A NCAC 7M .0901 - Declaration of General Policy</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>Rule Returned to Agency</i>		<i>01/24/92</i>
<i>Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>03/01/92</i>

Health: Epidemiology

<i>15A NCAC 19A .0202 - Control Measures - HIV</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>15A NCAC 19H .0702 - Research Requests</i>	<i>RRC Objection</i>	<i>11/21/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>12/19/91</i>

Sedimentation Control

<i>15A NCAC 4A .0005 - Definitions</i>	<i>RRC Objection</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>
<i>15A NCAC 4C .0007 - Procedures: Notices</i>	<i>RRC Objection</i>	<i>12/19/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>01/24/92</i>

HUMAN RESOURCES

Facility Services

<i>10 NCAC 3J .2905 - Personal Hygiene Items</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>10 NCAC 3W .0101 - State Cert for Labs Conducting Pap Smears</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>10 NCAC 3W .0201 - State Cert of Screening Mammography Svcs</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>

Individual and Family Support

<i>10 NCAC 42E .0905 - Personnel: Centers: Homes with Operator/Staff</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>10 NCAC 42E .0906 - Personnel: Day Care Homes: /Staff Person/Op</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>10 NCAC 42E .1108 - Records</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>10 NCAC 42E .1207 - Procedure</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>10 NCAC 42Z .0604 - Staff Requirements</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>10 NCAC 42Z .0901 - Procedure</i>	<i>RRC Objection</i>	<i>01/24/92</i>

Mental Health: General

<i>10 NCAC 14S .0102 - Communication Rights</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Responded</i>		<i>10/17/91</i>
<i>10 NCAC 14S .0103 - Living Environment</i>	<i>ARRC Objection</i>	<i>9/19/91</i>
<i>Agency Responded</i>		<i>10/17/91</i>

INSURANCE

Life and Health Division

<i>11 NCAC 12 .0507 - Fraternal Orders: Societies and Associations</i>	<i>RRC Objection</i>	<i>12/19/91</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>11 NCAC 12 .0826 - Filing Requirements for Advertising</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/24/92</i>
<i>11 NCAC 12 .1202 - Definitions</i>	<i>RRC Objection</i>	<i>12/19/91</i>

RRC OBJECTIONS

Agency Revised Rule
11 NCAC 12 .1209 - Discrimination
Agency Revised Rule

Obj. Removed 01/24/92
RRC Objection 12/19/91
Obj. Removed 01/24/92

LICENSING BOARDS AND COMMISSIONS

Certified Public Accountant Examiners

* *21 NCAC 8G .0313 - Firm Name*
Agency Responded

RRC Objection 10/17/91
No Action 12/19/91

Electrolysis Examiners

* *21 NCAC 19 .0202 - App Licensure/[Electrologist Practicing/1/1/92*
Agency Revised Rule

RRC Objection 11/21/91
Obj. Removed 12/19/91

STATE PERSONNEL

Office of State Personnel

25 NCAC 1L .0301 - Purpose
Agency Withdrew Rule

RRC Objection 11/21/91
12/19/91

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.

15A NCAC 7J .0301 - WHO IS ENTITLED TO A CONTESTED CASE HEARING

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 7J .0301(b) void as applied in *Lucy R. Hanson, Stanley P. and Jean C. Szwed, Petitioners v. N.C. Department of Environment, Health, and Natural Resources, Division of Coastal Management, Respondent* (91 EHR 0551, 91 EHR 0557).

15A NCAC 21D .0802(b)(2) - AVAILABILITY

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0802(b)(2) void as applied in *Wilson's Supermarket #12, Petitioner v. Department of Environment, Health, and Natural Resources, Respondent* (91 EHR 0795).

15A NCAC 21D .0805 - DECISION

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 21D .0805 void as applied in *Glenn E. Davis/Davis Grocery, Petitioner v. N.C. Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, WIC Section, Respondent* (91 EHR 0694).

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Architecture	2
2	Agriculture	Auctioneers	4
3	Auditor	Barber Examiners	6
4	Economic and Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Electrical Contractors	18
10	Human Resources	Electrologists	19
11	Insurance	Foresters	20
12	Justice	Geologists	21
13	Labor	Hearing Aid Dealers and Fitters	22
14A	Crime Control and Public Safety	Landscape Architects	26
15A	Environment, Health, and Natural Resources	Landscape Contractors	28
16	Public Education	Marital & Family Therapy	31
17	Revenue	Medical Examiners	32
18	Secretary of State	Midwifery Joint Committee	33
19A	Transportation	Mortuary Science	34
20	Treasurer	Nursing	36
*21	Occupational Licensing Boards	Nursing Home Administrators	37
22	Administrative Procedures	Occupational Therapists	38
23	Community Colleges	Opticians	40
24	Independent Agencies	Optometry	42
25	State Personnel	Osteopathic Examination and Registration (Repealed)	44
26	Administrative Hearings	Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating and Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers and Land Surveyors	56
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work	63
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		Veterinary Medical Board	66

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

CUMULATIVE INDEX

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