

# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: MAY 1, 1992**

**Volume 7 • Issue 3 • Pages 174-331**



# 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 of 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, not more than 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 into 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 and 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



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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
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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
03/02/92	02/10/92	02/17/92	03/17/92	04/01/92	04/20/92	06/01/92
03/16/92	02/24/92	03/02/92	03/31/92	04/15/92	04/20/92	06/01/92
04/01/92	03/11/92	03/18/92	04/16/92	05/01/92	05/20/92	07/01/92
04/15/92	03/25/92	04/01/92	04/30/92	05/15/92	05/20/92	07/01/92
05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
05/15/92	04/24/92	05/01/92	05/30/92	06/14/92	06/20/92	08/03/92
06/01/92	05/11/92	05/18/92	06/16/92	07/01/92	07/20/92	09/01/92
06/15/92	05/22/92	06/01/92	06/30/92	07/15/92	07/20/92	09/01/92
07/01/92	06/10/92	06/17/92	07/16/92	07/31/92	08/20/92	10/01/92
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11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
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.



*IN ADDITION*

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*[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:LLT:KAL:tlb  
DJ 166-012-3  
92-0426

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

April 3, 1992

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

Dear Mr. Weaver:

This refers to the 1992 redistricting plan for the county commission 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 initial submission on February 3, 1992; supplemental information was received on February 26, 1992.

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:

Steven H. Rosenbaum  
Chief, Voting Section

U.S. Department of Justice  
Civil Rights Division

JRD:GS:SKM:lrj  
DJ 166-012-3  
92-0597

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

April 10, 1992

Michael Crowell, Esq.  
Tharrington, Smith & Hargrove  
P. O. Box 1151  
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the change in method of election to limited voting for the Town of Jamesville in Martin 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 February 11, 1992.

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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

By:

Steven H. Rosenbaum  
Chief, Voting Section

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

## North Carolina Wildlife Resources Commission

512 N. Salisbury Street, Raleigh, North Carolina 27604-1188, 919-733-3391  
Charles R. Fullwood, Executive Director

### PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina Statute § 113-292 (c1) and authority duly delegated by the Wildlife Resources Commission, hereby declares that effective at 12:01 a.m. on 20 April, 1992, the season for harvesting striped bass by hook-and-line is closed in all inland and joint waters of the Roanoke River Striped Bass Management Area.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River, extending from its mouth to Roanoke Rapids Dam and all tributaries of the Roanoke River, including but not limited to, the Cashie, Middle, and Eastmost Rivers and their tributaries.

This Proclamation shall remain in effect until January 1, 1993, or until a new proclamation reopening the described waters or portions thereof for striped bass fishing is issued.

#### NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§ 113-132; 113-134; 113-292; 113-304; and 113-305.
- b) The striped bass harvest quota for the hook and line sport fishery of the Roanoke River Striped Bass Management Area has been met, and the area is closed for striped bass fishing until reopened as prescribed herein.
- c) All striped bass regardless of condition taken subsequent to the effective date and time of this Proclamation shall be immediately returned to the waters where taken and no striped bass may be possessed.
- d) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

by \_\_\_\_\_  
Charles R. Fullwood  
Executive Director

## TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission (Division of Facility Services) intends to adopt rules cited as 10 NCAC 3B .0801 - .0806; 3H .0221; amend rules cited as 10 NCAC 3H .0108, .0315.*

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

*The public hearing will be conducted at 9:30 a.m. on June 12, 1992 at the Room 201, Council Building, 701 Barbour Drive, Raleigh, NC 27603.*

### *Reason for Proposed Action:*

**10 NCAC 3B .0801 - .0806.** *To adopt rules for the implementation of an appeal process required by 1990 OBRA to hear appeals arising from the discharge or transfer of nursing home patients.*

**10 NCAC 3H .0108, .0315.** *To bring the definitions into compliance with the Omnibus Budget Reconciliation Act.*

**10 NCAC 3H .0221.** *To strengthen the administrative penalty process by incorporating it into a rule.*

**Comment Procedures:** *Written comments should be submitted to Jackie Sheppard, 701 Barbour Drive, Raleigh, North Carolina 27603 by June 11, 1992. Oral comments may be given at the hearing.*

## CHAPTER 3 - FACILITY SERVICES

### SUBCHAPTER 3B - PROCEDURAL RULES

#### SECTION .0800 - HEARINGS: TRANSFERS AND DISCHARGES

##### **.0801 DEFINITIONS**

The following definitions will apply throughout this Subchapter:

- (1) "Agency" means the Hearing Officer and his office in the Division of Facility Services, Department of Human Resources.
- (2) "Dismissal" means the dismissal of a request for a hearing if:
  - (a) the applicant withdraws the request in writing; or
  - (b) the applicant fails to appear at a scheduled hearing without good cause.

(3) "Division" means the North Carolina Division of Facility Services of the Department of Human Resources.

(4) "Facility" means a skilled nursing facility (SNF), or a nursing facility (NF) which meets the requirements of sections 1819 and 1919(a), (b), (c), and (d) of the Social Security Act. "Facility" may include a distinct part of an institution specified in 42 CFR 440-40 or 42 CFR 440-150, but does not include an institution for the mentally retarded or persons with related conditions described in 42 CFR 440-150(c).

(5) "Hearing Officer" means the person designated to preside over hearings between residents and nursing facility providers regarding transfers and discharges.

(6) "Notice" means a notification by the facility to the resident of a transfer or discharge. The notice must include:

- (a) reason for the transfer or discharge;
  - (b) the effective date of the transfer or discharge;
  - (c) the location to which the resident is transferred or discharged;
  - (d) statement that the resident has the right to appeal to the Hearing Officer;
  - (e) the name, address, and telephone number of the state Long-Term Care Ombudsman;
  - (f) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
  - (g) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
- (7) "Request for a Hearing" means a clear expression, in writing, by the resident or his authorized representative, that he wants the opportunity to present his case to the hearing officer.
- (8) "Request for Hearing Form" means a form which is to be given to the resident or his designated representative simultaneous with the Notice of Transfer or Discharge. The request for hearing form must include at the least:
- (a) the date of Notice of Transfer or Discharge;



- (b) the date to be transferred or discharged;
- (c) Division of Facility Services' correct mailing address and phone number;
- (d) resident's name, address, telephone number, and social security number;
- (e) the nursing facility's name and address;
- (f) name, address, and telephone number of authorized representative; and
- (g) space to elect the option of a hearing by telephone or in person.
- (9) "Resident" means any person who is receiving treatment or long-term care in a facility, or his authorized representative.
- (10) "Serve" or "Service" means personal delivery, delivery by first class or certified United States Postal Service mail or delivery by licensed overnight express mail, postage prepaid and addressed to the party at his or her last known address. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service. For purposes of service on the Division, the Hearing Officer of the Division shall be the designated agent.

*Authority 42 U.S.C.S. 1396 r (e) (3) and (f) (3); 42 C.F.R. 483.5; 42 C.F.R. 483.12; G.S. 143B-165(10).*

#### .0802 GENERAL

(a) The Division has established an appeal process for nursing facility residents who have been notified of transfer or discharge. All residents who have been advised of the date of transfer or discharge in writing, may request that the Division Hearing Officer set a date for a fair hearing in accordance with and subject to these Rules.

(b) The Rules of Civil Procedure as contained in G.S. 1A-1 and 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 shall not apply in any hearings held by the Division Hearing Officer unless another specific statute or rule provides otherwise. Division hearings are not hearings within the meaning of G.S. Chapter 150B and will not be governed by the provision of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at the hearing.

*Authority 42 U.S.C.S. 1396 r (e) (3) and (f) (3); 42 C.F.R. 483.12; G.S. 143B-165(10).*

#### .0803 INITIATING A HEARING

(a) In order to initiate a hearing with the Hearing Officer, a resident must first have been served by the facility administrator with a written Notice of Transfer or Discharge and must file a Request for Hearing in accordance with the Rules in 10 NCAC 3B .0800. The Request for Hearing must be in writing and must be signed by the resident. A Request for Hearing form shall be provided to the resident by the facility for this purpose.

(b) The hearing is a mechanism for listening to appeals by residents concerning disputes over transfers and discharges. The hearing shall be narrowly focused on discharge and transfer issues between the nursing facility and the resident and shall not involve Medicaid matters such as eligibility, which is the responsibility of the Medicaid hearing officer.

(c) Should an appeal of the Notice of Transfer or Discharge be desired, a Request for a Hearing, accompanied by the Notice of Transfer or Discharge, shall be served to the Hearing Officer and must be received by him no later than 11 days from the date of the facility's Notice of Transfer or Discharge. If the request for hearing has not been received within 11 days, the resident shall waive his right to appeal. The resident must be notified of the option for the hearing to be in person (face-to-face) or by telephone.

(d) The facility administrator must make available to the resident information and records at least five working days prior to the hearing to enable an opportunity for review and preparation. The facility administrator must forward identical information relevant to the transfer or discharge to the agency, to be received at least five working days prior to the hearing.

*Authority 42 U.S.C.S. 1396 r (e) (3) and (f) (3); 42 C.F.R. 483.12; G.S. 143B-165(10).*

#### .0804 NOTICE OF HEARING

Upon receipt of a timely request for a hearing, the Hearing Officer shall promptly notify all parties of receipt of the Request and shall arrange with the parties a time, date, and telephone numbers (if by phone conference). If the hearing is to be conducted in person (face-to-face), hearings will be held in the Council Building, 701 Barbour Drive on the Dorothea Dix Campus in Raleigh, North Carolina, with time and date arranged with the parties by the hearing officer. The resident, facility administrator, and other in-

interested parties will be served notice of the date of hearing.

*Authority 42 U.S.C.S. 1396 r (e) (3) and (f) (3); 42 C.F.R. 483.12; G.S. 143B-165(10).*

#### .0805 DOCUMENTS

All documents required to be filed pursuant to these Rules shall be served on all other parties by the filing party.

*Authority 42 U.S.C.S. 1396 r (e) (3) and (f) (3); 42 C.F.R. 483.12; G.S. 143B-165(10).*

#### .0806 HEARING OFFICER'S FINAL DECISION

The Hearing Officer's final decision will either uphold or reverse the facility's decision. Copies of the final decision shall be served upon the parties.

*Authority 42 U.S.C.S. 1396 r (e) (3) and (f) (3); G.S. 143B-165(10).*

### SUBCHAPTER 3H - RULES FOR THE LICENSING OF NURSING HOMES

#### SECTION .0100 - GENERAL INFORMATION

##### .0108 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Accident" means an unplanned or unwanted event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (2) "Adequate" means, when applied to various ~~areas~~ services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
- (3) "Administrator" means the person who has authority for and is responsible for the overall operation of a facility.
- (4) "Appropriate" means right for the specified use or purpose, suitable or proper when used as an adjective. When used as a transitive verb it means to set aside for some specified exclusive use.
- (5) "Brain injury extended care" is defined as a multi-discipline maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are provided through a medically supervised inter-disciplinary process and are directed toward maintaining the individual at the

optimal level of physical, cognitive and behavioral functions.

- (6) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time. This number shall be determined as follows:
  - (a) Bedrooms shall have minimum square footage of 100 square feet for a single bedroom and 80 square feet per patient or resident in multi-bedded rooms. This minimum square footage shall not include space in toilet rooms, washrooms, closets, vestibules, corridors, and built-in furniture.
  - (b) Dining, recreation and common use areas available shall total no less than 25 square feet per bed for nursing beds and no less than 30 square feet per bed for domiciliary home beds.
- (7) "Combination Facility" means a combination home as defined in G.S. 131E-101.
- (8) "Convalescent Care" means care given for the purpose of assisting the patient or resident to regain health or strength.
- (9) "Department" means the North Carolina Department of Human Resources.
- (10) "Director of Nursing" means the nurse who has authority and direct responsibility for all nursing services and nursing care.
- (11) "Drug" means substances:
  - (a) recognized in the official United States Pharmacopoeia, official National Formulary, or any supplement to any of them;
  - (b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
  - (c) intended to affect the structure or any function of the body of man or other animals, i.e., substances other than food; and
  - (d) intended for use as a component of any article specified in (a), (b), or (c) of this Subparagraph.
- (12) "Duly Licensed" means holding a current and valid license as required under the General Statutes of North Carolina.
- (13) "Existing Facility" means a ~~licensed facility currently licensed or a proposed facility, proposed addition to a licensed facility or proposed remodeled licensed facility that will be built according to plans and specifications which have been approved by the Department. through the preliminary working drawings stage prior to the effective date of this Rule.~~
- (14) "Exit Conference" means the conference held at the end of a survey inspection or in-



- vestigation ~~but prior to finalizing the same,~~ between the Department's representatives ~~who conducted the survey, inspection or investigation~~ and the facility administration representative.
- (15) "Incident" means an unplanned or unwanted event which has not caused a wound or injury to any individual but which has the potential for such should the event be repeated.
- (16) "Interdisciplinary" means an integrated process involving a representative from each discipline of the health care team.
- (17) ~~(16)~~ "Licensed Practical Nurse" means a nurse who is duly licensed as a practical nurse under G.S. 90, Article 9A.
- (18) ~~(17)~~ "Licensee" means the person, firm, partnership, association, corporation or organization to whom a license has been issued.
- (18) ~~"Life Care Center" means an institution, firm, association, organization, corporation, partnership, individual or other business which advertises to the public or provides continuing care to individuals for life including retirement, domiciliary, and nursing care facilities, from the time of admission to the time of death. Such continuing care is furnished pursuant to a continuing care agreement and to individuals not related by consanguinity or affinity to the provider.~~
- (19) "Medication" means drug as defined in (11) of this Rule.
- (20) "New Facility" means a proposed facility, a proposed addition to an existing facility or a proposed remodeled portion of an existing facility that is constructed according to plans and specifications approved by the Department subsequent to the effective date of this Rule. If determined by the Department that more than half of an existing facility is remodeled, the entire existing facility shall be considered a new facility.
- (21) ~~"Nurse Aide" means any person regardless of working title who is qualified to provide nursing care under the supervision of a licensed nurse and is registered as a nurse aide~~ any individual providing nursing or nursing-related services to patients in a facility who is not a licensed health professional, a registered dietitian or someone who volunteers to provide such services without pay, and listed in a nurse aide registry approved by the Department. and is listed with the Board of Nursing Central Registry.
- (22) "Nurse Aide Trainee" means an individual ~~in training to become a nurse aide. who has not completed an approved nurse aide~~ training course and competency evaluation and is providing limited direct patient care services under nursing supervision. The term does not apply to volunteers.
- (23) "Nursing Facility" means that portion of a nursing home certified under Title XIX of the Social Security Act (Medicaid) as in compliance with federal program standards for nursing facilities. It is often used as synonymous with the term "nursing home" which is the usual prerequisite level of state licensure for nursing facility (NF) certification and Medicare skilled nursing facility (SNF) certification.
- (24) "Nurse in Charge" means the nurse to whom duties for a specified number of patients and staff for a specified period of time have been delegated, such as for Unit A on the 7-3 or 3-11 shift.
- (25) "On Duty" means personnel who are awake, dressed, responsive to patient needs and physically present in the facility performing assigned duties.
- (26) "Operator" means the owner of the nursing home business.
- (27) ~~"Patient" means any person admitted for nursing care. "Person" means an individual, trust, estate, partnership or corporation including associations, joint-stock companies and insurance companies.~~
- (28) "Proposal" means a Negative Action Proposal containing documentation of findings that may ultimately be classified as violations and penalized accordingly.
- (29) ~~(28)~~ "Provisional License" means an amended license recognizing significantly less than full compliance with the licensure rules. ~~It is applicable to new licensees who are not yet fully operable under the licensee's control or to licensees with serious compliance problems.~~
- (30) ~~(29)~~ "Physician" means a person licensed under G.S. Chapter 90, Article 1 to practice medicine in North Carolina.
- (31) ~~(30)~~ "Qualified Dietitian" means a person who meets the standards and qualification established by the Commission on Dietetic Registration of the American Dietetic Association.
- (32) "Qualified Activities Director" means a person who has the authority and responsibility for the direction of all therapeutic activities in the nursing facility and who meets the qualifications set forth under 10 NCAC 3H .1204.
- (33) "Qualified Pharmacist" means a person who is licensed to practice pharmacy in

- North Carolina and who meets the qualifications set forth under 10 NCAC 3H .0903.
- (34) "Qualified Social Services Director" means a person who has the authority and responsibility for the provision of social services in the nursing home and who meets the qualifications set forth under 10 NCAC 3H .1306.
- (35) "Registered Nurse" means a nurse who is duly licensed as a registered nurse under G.S. 90, Article 9A.
- (36) "Resident" means any person admitted for care to a domiciliary home part of a combination home as defined in G.S. 131E-101.
- (37) "Sitter" means an individual employed to provide companionship and social interaction to a particular patient, usually on a private duty basis.
- (38) "Supervisor-in-Charge (domiciliary home)" means any employee to whom supervisory duties for the domiciliary home portion of a combination home have been delegated by either the Administrator or Director of Nursing.
- (39) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117 and applicable state and federal laws, rules and regulations.
- (40) "Ventilator dependence" is defined as physiological dependency by a patient on the use of a ventilator for more than eight hours a day.
- (41) "Violation" means a finding which directly relates to a patient's health, safety or welfare or which creates a substantial risk that death or serious physical harm will occur and is determined to be an infraction of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable state and federal laws, rules and regulations.

Authority G.S. 131E-104; 42 U.S.C. 1396 r (a).

## SECTION .0200 - LICENSURE

### .0221 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

(a) The surveyor shall identify areas of non-compliance resulting from an investigation or survey which may be violations of patients' rights contained in G.S. 131E-117 or rules contained in this Subchapter. The areas of non-compliance shall be documented by the surveyor and a Negative Action Proposal submitted to the Internal Review Committee.

(b) The Internal Review Committee shall be comprised of three members:

- (1) The assistant chief of the Licensure Section, who shall serve as chairman;
- (2) The head of the Complaints Investigation Branch, if the proposal is the result of a health care survey; or the head of the Health Care Facilities Branch, if the proposal is the result of a complaint investigation; and
- (3) A third party selected by the chief of the Licensure Section.

(c) The Department shall notify the licensee by certified mail within 10 working days from the time the proposal is received by the Internal Review Committee that an administrative penalty is being considered.

(d) The licensee shall have 10 working days from receipt of the notification to provide the Department any additional written information relating to the proposed administrative penalty. The licensee shall have five working days from receipt of the notification to advise the Department as to whether the licensee, an authorized representative or both plan to meet with the Internal Review Committee.

(e) If the licensee chooses to attend the meeting as provided in Paragraph (d) of this Rule, a surveyor or a representative of the branch which conducted the investigation or survey shall attend the Internal Review Committee meeting when survey schedules permit. The Department shall notify the Division of Aging of the licensee's plans to meet with the Committee or any change in the date or time of the meeting. The agency that conducted the survey or investigation shall be responsible for notifying the complainant, if any. The complainant, if any, may attend the meeting relating to his or her complaint.

(f) The Internal Review Committee shall review all Negative Action Proposals, any supporting evidence, and any additional information provided by the licensee that may have a bearing on the proposal such as documentation not available during the investigation or survey, action taken to correct the violation and plans to prevent the violation from recurring.

(g) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of Internal Review Committee meetings.

(h) Time shall be allowed during the Internal Review Committee meetings for individual presentations, the total for which shall normally be one hour for each facility where the violations took place, but shall not exceed two hours. The amount of time allowed, up to two hours, shall be at the discretion of the Internal Review Committee chair. The order in which presenters



shall speak and length of presentations shall also be at the discretion of the chair.

(i) If it is determined that the licensee has violated applicable rules or statutes, the Internal Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131E-129. The Department shall notify the licensee by certified mail of the Committee's decision within five working days following the Internal Review Committee meeting.

(j) If the recommended penalty is classified as Type B but is not a repeat violation (as defined by G.S. 131E-129), the licensee may accept the recommendation and notify the Department by certified mail within five working days following receipt of the recommendation. If the penalty is accepted, the licensee has 60 days from receipt of the recommendation to pay the penalty.

(k) If the recommended penalty is a Type A violation; is a Type B violation for which a monetary or non-monetary penalty was assessed during the previous 12 months or within the time period of the previous licensure inspection, which ever time period is longer; or is a Type B violation as provided in Paragraph (j) of this Rule but is not accepted by the licensee, the Internal Review Committee shall forward to the Penalty Review Committee the penalty recommendation, the rationale for the recommendation and all information reviewed by the Internal Review Committee.

(l) The Penalty Review Committee meets monthly, if there are administrative penalty recommendations from the Internal Review Committee. The Penalty Review Committee may agree with or recommend changes to the Internal Review Committee's recommendations. If the recommendations are different from those of the Internal Review Committee, the Department shall notify the licensee the day of the Penalty Review Committee meeting.

(m) Recommendations by the Penalty Review Committee shall be documented and forwarded to the Chief of Licensure who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation as provided by G.S. 131E-129 and notify the licensee by certified mail.

(n) The licensee shall have 60 days from receipt of the notification to pay the assessment as provided by G.S. 131E-129 or 30 days to appeal the decision as provided by G.S. 150B-22. The Department shall notify the Attorney General's Office of any outstanding assessments.

Statutory Authority G.S. 131D-34; 131E-104; 143B-165.

#### SECTION .0300 - GENERAL STANDARDS OF ADMINISTRATION

##### .0315 NURSING HOME PATIENT OR RESIDENT RIGHTS

(a) Written policies and procedures shall be developed and enforced to implement requirements in G.S. 131E-115 et seq. (Nursing Home Patients' Bill of Rights) concerning the rights of patients and residents. The Administrator shall make these policies and procedures known to the staff, patients and residents, and families of patients and residents and shall ensure their availability to the public by placing them in a conspicuous place.

(b) Any violations of patient rights contained in G.S. 131E-117 shall be determined by representatives of the Department by investigation or survey.

(c) If a licensed facility is found to be in violation of any of the rights contained in G.S. 131E-117, the Department shall impose penalties for each violation as provided by G.S. 131E-129.

(d) When the Department has been notified that corrective action has been taken for each violation, verification of same shall be made by one or more representatives of the Department.

(e) The Department shall calculate a total of all fines levied against a facility based on the number and severity of violations and the number of days and patients and/or residents involved in each violation.

(f) The Department shall mail a statement to the facility showing a total fine for each violation and a total of fines due to be paid for all violations. The facility shall pay the penalty within 60 days unless a hearing is requested under G.S. Chapter 150B and 10 NCAC 1B .0200.

(g) When it is found that a violations of G.S. 131E-117 has occurred but corrective action was taken prior to the date of discovery, fines shall be calculated and assessed in accordance with (e) and (f) of this Rule.

(b) (h) In matters of patient abuse, neglect or misappropriation the definitions shall have the meaning defined for abuse, neglect and exploitation respectively as contained in the North Carolina PROTECTION OF THE ABUSED, NEGLECTED OR EXPLOITED DISABLED ADULT ACT, Protection of the Abused, Neglected or Exploited Disabled Adult Act, G.S. 108A-99 et seq.

Authority G.S. 131E-104; 131E-124; 131E-129; 42 U.S.C. 1396 r (e) (2) (B).

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission/Division of Social Services intends to amend rule cited as 10 NCAC 25 .0102.*

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

*The public hearing will be conducted at 10:00 a.m. on June 3, 1992 at the Albemarle Bldg., Room 864, 325 N. Salisbury St., Raleigh, NC.*

*Reason for Proposed Action: This rule is being amended in response to recent legislation requiring that each agency maintain a mailing list of notice of rulemaking and giving the agency the authority to charge a fee.*

*Comment Procedures: Comments may be presented anytime in writing before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of this rule by calling or writing to Donna Creech, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, (919) 733-3055.*

## CHAPTER 25 - SOCIAL SERVICES: PROCEDURE

### SECTION .0100 - PROCEDURES: COMMISSION

#### .0102 NOTICE

(a) Upon a determination to hold a rulemaking proceeding, either in response to a petition or otherwise, the commission or its designee shall give ~~30~~ at least 15 days notice to all interested parties of a public hearing on the proposed rule.

(b) Any person or agency desiring to be placed on the mailing list for commission rulemaking notices ~~may~~ must file a request in writing, furnishing its name and mailing address, with:

Special Assistant to the Director  
Division of Social Services  
Department of Human Resources  
325 North Salisbury Street

Raleigh, North Carolina ~~27611~~ 27603

Persons or agencies on this mailing list will be billed annually. Names will be deleted from the mailing list if payment is not received by June 30 each year. The request must state the subject areas within the authority of the commission for which notice is requested.

(c) ~~The commission or its designee shall review its mailing list periodically and may write to any~~

~~person on the list to inquire whether that person wishes to remain on the list. If no response is received, that person may be removed from the list.~~

~~(d) If practicable and appropriate, public notice of rulemaking proceedings shall be sent to community, special interest, government, trade, or professional organizations for publication.~~

~~(e) When the agency intends to adopt a rule by reference, the rulemaking notice shall include, in addition to the requirements stated in G.S. 150B-12(a):~~

~~(1) the name and address of the agency or organization which previously adopted the material,~~

~~(2) the title and identifying number of previously adopted material, and~~

~~(3) the date and edition of previously adopted material.~~

~~(c) (f) Any person desiring information in addition to that provided in a particular rulemaking notice may contact:~~

Special Assistant to the Director  
Division of Social Services  
Department of Human Resources  
325 North Salisbury Street  
Raleigh, North Carolina ~~27611~~ 27603

Statutory Authority G.S. 143B-153; 150B-21.2.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission (Division of Facility Services) intends to amend rules cited as 10 NCAC 42C .2303 - .2304 and adopt rule cited as 10 NCAC 42C .3601.*

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

*The public hearing will be conducted at 10:00 a.m. on June 3, 1992 at the Albemarle Bldg., Room 864, 325 North Salisbury St., Raleigh, NC 27603.*

*Reason for Proposed Action: 10 NCAC 42C .2303 - .2304. These rules were recommendations of the DFS HIV Disease Rules Workgroups because residents in HIV designated domiciliary facilities have special needs not accommodated by existing rules.*

*10 NCAC 42C .3601. To strengthen the administrative penalty process by incorporating it into a rule.*



*Comment Procedures: Comments may be presented in writing any time before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these rules by calling or writing to Donna Creech, Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27611, (919) 733-3055.*

**CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT**

**SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES**

**SECTION .2300 - SERVICES**

**.2303 FOOD SERVICE**

- (a) Preparation and Serving of Food:
  - (1) Sufficient staff, space, and equipment must be provided for safe, sanitary food preparation and service, including individual assistance to residents as needed;
  - (2) The kitchen, dining, and food storage areas must be clean, orderly, and protected from possible contamination;
  - (3) All meat processing must occur at a North Carolina Department of Agriculture approved processing plant;
  - (4) Table service, which means the place where the resident is served food, must include an appropriate place setting. Typically, the place setting is to include a minimum of a knife, fork, teaspoon, glass, napkin and a plate;
  - (5) Hot food shall be served hot and cold food served cold and in a consistency to meet individual needs. If residents require assistance in eating, food shall be maintained at serving temperature until assistance is provided.
- (b) Storage of Food:
  - (1) All food being stored, prepared, and served must be protected from contamination;
  - (2) Any home canning of fruits or vegetables must be processed using the pressure method; and
  - (3) At least one week's supply of food must be in the home.
- (c) Menu Planning:
  - (1) Menus must be planned in accordance with the requirements cited in Paragraph (d) of this Rule regarding daily service. Menus must be in writing with serving quantities specified. The menus are to be prepared at least one week in advance;
  - (2) Menus must be dated and posted in the kitchen for the guidance of the food service staff;
  - (3) Any substitutions made in the menu must be of equal nutritional value and must be recorded before being served to indicate the foods actually served to residents;
  - (4) Meals shall be planned taking into account the food preferences and customs of the residents. Meat substitutes must be provided to residents who choose to be vegetarians or who by religious or cultural preferences do not eat meat. However, an administrator may not impose vegetarian practices, or other religious or cultural food practices on a resident;
  - (5) A copy of the NCDA Diet Manual must be in the home for use in its food service. Where there is a cluster of homes, one diet manual may be shared by the homes;
  - (6) Menus as served and invoices or other appropriate receipts of purchases must be kept on file by the month for a year and are subject to periodic review by the monitoring and licensing agencies.
- (d) Daily Service:
  - (1) Each resident is to be served a minimum of three nutritionally adequate, palatable meals a day at regular hours with at least 10 hours between the breakfast and the evening meal. Variations from the required three meals, menus and specified time intervals to meet individualized needs of residents in an HIV designated facility shall be planned or reviewed by a physician and registered dietitian and documented;
  - (2) Suitable foods or liquids (e.g., fruit, milk, juices) must be offered between meals and shown on the menu as a snack;
  - (3) Daily menus must include the following:
    - (A) Homogenized or low fat milk or buttermilk. One cup (8 ounces) must be offered to each resident at least twice a day. Because milk is an important source of calcium and vitamin D, the resident must be encouraged to consume two cups (16 ounces) of milk daily as a beverage or as part of a meal (e.g., with dry cereal). Reconstituted dry milk or diluted evaporated milk may be used only in cooking and not for drinking purposes due to the risk of bacterial contamination during mixing and the lower nutritional value of the product if too much water is used;
    - (B) Fruit. Two one-half cup servings (8 ounces). A one-half cup (4 ounces) of citrus fruit or juice, and a one-half cup (4

ounces) of another variety of fresh, dried, or canned fruit must be served. Citrus fruits include oranges and grapefruits. One orange or one-half grapefruit is considered a serving. One cup of tomato juice or tomatoes may be used instead of citrus. Single strength canned or frozen fruit juices which are vitamin C fortified may be substituted for a citrus fruit or juice if it is noted on the label that there is 100 percent of the recommended dietary allowance of vitamin C in each six ounces of juice;

(C) Vegetables. Two one-half cup servings (8 ounces). One of these must be a dark green leafy or deep yellow vegetable every other day or three times a week;

(D) Eggs. At least three times a week unless limited by physician's orders;

(E) Fats. Include butter, oil, or margarine. Restrict the use of seasoning with meat fats when there are older residents since older people find these difficult to digest;

(F) Protein. At least two ounces of cooked meat must be served at both the noon and evening meal except a meat substitute equal to two ounces of cooked meat may be served three times a week but not more than once a day. Examples of adequate meat substitutes are two eggs, two ounces of pure cheese, and one cup of dry beans or peas;

**Note:** Bacon is considered a fat instead of a meat.

(G) Cereals and Breads. At least four servings, whole grain or enriched (such as oatmeal, enriched rice, corn meal, enriched prepared cereals or bread). Examples of one serving of bread are one slice, one biscuit, one roll, and one square of corn bread. One serving of cereal equals one-half cup cooked or three-fourths cup dry cereal. Cereal for the evening meal is not, by itself, acceptable due to the lack of variety and lack of needed nutrients; and

(H) Water and Other Beverages. Water must be offered at each meal in addition to other beverages. Six to eight cups of liquids are needed daily to keep the body functioning properly;

(4) Sandwiches shall not be served alone for any meal; and

(5) Generally the energy intake for persons aged 51-75 should be 2400 calories for males and 1800 calories for females according to the 1980 recommended dietary

allowances of the National Research Council, National Academy of Sciences.

(e) Modified Diets:

(1) All modified diet orders must be in writing from the resident's physician. Modified diet orders must be calorie or gram specific unless standing orders, which include the definition of any modified diets, have been obtained from the physician and are on file in the home.

(2) Menus for these modified diets must be planned or reviewed and signed (including registration number) by a registered dietitian;

(3) The administrator is responsible for maintaining an accurate and current listing of residents for whom modified diets have been prescribed and the modified diet ordered, for use by food service personnel;

(4) The administrator shall ask a physician or registered dietitian for answers to questions about the diets of residents; and

(5) The administrator is responsible for assisting residents who need modified diets in understanding and accepting these diets.

*Statutory Authority G.S. 131D-2; 143B-153.*

#### **.2304 ACTIVITIES PROGRAM**

(a) Each home must develop a program of activities designed to promote the residents' active involvement with each other, their families, and the community. The program is to provide social, physical, intellectual, and recreational activities in a planned, coordinated, and structured manner, using the Activities Coordinator's Guide, a copy of which each facility is required to have. When there is a cluster of homes, one Activities Coordinator's Guide may be shared by the homes.

(b) The program must be designed to promote active involvement by all residents but is not to require any individual to participate in any activity against his will.

(c) Each home must assign a person to be the activities coordinator, who meets the qualifications specified in Rule .2006 of this Subchapter. The activities coordinator is responsible for responding to the residents' need and desire for meaningful activities, by:

(1) Reviewing upon admission personal information about each resident's interests and capabilities recorded on an individualized index card or the equivalent. This card is to be completed from, at least, the information recorded on the Resident



Register, Form DSS-1865. It must be maintained for use by the activities coordinator for developing activities and is to be updated as needed;

- (2) Using the information on the residents' interests and capabilities to arrange for and provide planned individual and group activities for the residents. In addition to individual activities, there must be a minimum of 10 hours of planned group activities per week. Homes designated for residents with HIV disease are exempt from the 10-hour requirement as long as the facility can demonstrate each resident's involvement in a structured volunteer program that provides the required range of activities;
  - (3) Preparing a monthly calendar of planned group activities which is to be in easily readable, large print, posted in a prominent location on the first day of each month, and updated when there are any changes;
  - (4) Involving community resources, such as recreational, volunteer, religious, aging and developmentally disabled-associated agencies, to enhance the activities available to residents. The coordinator may use the home's aides in carrying out some activities with residents; and
  - (5) Evaluating and documenting the overall effectiveness of the activities program at least every six months with input from the residents to determine what have been the most valued activities and to elicit suggestions of ways to enhance the program.
- (d) A variety of group and individual activities must be provided. The program is to include, at least, the following types of activities:
- (1) Social and Recreational Activities:
    - (A) Opportunity must be available for both individual and group social and recreational activities sufficiently diverse to accommodate the residents' varied interests and capabilities. These activities emphasize increasing self-confidence and stimulating interest and friendships;
    - (B) Individual activity includes one to one interaction in mutually enjoyable activity, such as buddy walks, card playing and horseshoes as well as activity by oneself, such as bird-watching, nature walks, and card playing;
    - (C) Each resident must have the opportunity to participate in at least one planned group social or recreational activity weekly. A group activity is one which involves a number of residents in physical

and mental interaction. Each resident shall be encouraged to participate in an activity which best matches his physical, mental and emotional capability. Such activities may include group singing, dancing, bingo, and exercise classes;

- (D) Each resident must have the opportunity to participate in at least one outing every other month. A resident interested in involving himself in the community more frequently shall be encouraged and helped to do so. The coordinator is to contact volunteers and residents' families to assist in the effort to get residents involved in activities outside the home;
  - (E) If a resident cannot participate actively in community events, arrangements shall be made so that the more active residents can still participate in such outings. If there is a question about a resident's ability to participate in an activity, the resident's physician must be consulted to obtain a statement regarding the resident's capabilities; and
  - (F) The activities planned and offered must take into account possible cultural differences of the residents;
- (2) Diversional and Intellectual Activities:
- (A) Opportunity for both individual and group diversional and intellectual activities sufficiently diverse to accommodate the residents' varied interests and capabilities must be available. There must be adequate supplies and supervision provided to enable each resident to participate;
  - (B) Individual activities emphasize individual accomplishments, creative expression, increased knowledge and the learning of new skills. Such activities may include sewing, crafts, painting, reading, creative writing, and wood carving;
  - (C) Each resident must have the opportunity to participate in at least one planned group activity weekly that emphasizes group accomplishment, creative expression, increased knowledge, and the learning of new skills. Such activities may include discussion groups, drama, resident council meetings, book reviews, music appreciation, review of current events, and spelling bees; and
  - (D) The activities planned and offered must take into account possible cultural differences of the residents.
- (3) Work-Type and Volunteer Service Activities:
- Each resident must have the opportunity to participate in meaningful work-type

and volunteer service activities in the home or in the community, but participation must be on an entirely voluntary basis. Under no circumstances shall this activity be forced upon a resident. Residents shall not be assigned these tasks in place of staff. Examples of work-type and volunteer services activities range from bedmaking, personal ironing, and assisting another resident, to more structured activities such as general ironing, making or repairing toys for children, telephone reassurance, and gardening.

*Statutory Authority G.S. 131D-2; 143B-153.*

## SECTION .3600 - ADMINISTRATIVE PENALTY DETERMINATION PROCESS

### .3601 ADMINISTRATIVE PENALTY DETERMINATION PROCESS

(a) The county department of social services shall identify areas of non-compliance resulting from an investigation or monitoring visit which may be violations of residents' rights contained in G.S. 131D-21 or rules contained in this Subchapter. The areas of non-compliance shall be documented by the adult homes specialist and the Negative Action Proposal submitted to the Group Care Facilities Branch. The branch shall review the proposal and forward it to the Internal Review Committee. Prior to recommending a penalty, the county department of social services shall provide the administrator written notice of the recommendation. The notice shall include copies of all documentation to be submitted to the Division of Facility Services and extend to the administrator an opportunity to request a local conference with the county department, allowing the administrator 10 days to respond. The conference, if requested, shall include county department management staff.

(b) The Internal Review Committee shall be comprised of three members:

- (1) The assistant chief of the Licensure Section, who shall serve as chairman;
- (2) The head of the Group Care Facilities Branch; and
- (3) A third party selected by the chief of the Licensure Section.

(c) The Division of Facility Services shall notify the administrator by certified mail within 10 working days from the time the proposal is received by the Internal Review Committee that an administrative penalty is being considered.

(d) The administrator shall have 10 working days from receipt of the notification to provide the Division any additional written information

relating to the proposed administrative penalty. Such information shall be made available to the department of social services in the county where the facility is located. The administrator shall have five working days from receipt of the notification to advise the Division as to whether the administrator, and authorized representative or both plan to meet with the Internal Review Committee.

(e) If the administrator chooses to attend the meeting as provided in Paragraph (d) of this Rule, the Division shall notify representatives of the county department of social services and the Division of Aging of the administrator's plans to meet with the Committee or any change in the date or time of the meeting. The agency that conducted the investigation shall be responsible for notifying the complainant, if any.

(f) The Internal Review Committee shall review all Negative Action Proposals, any supporting evidence, and any additional information provided by the administrator that may have a bearing on the proposal such as documentation not available during the investigation or monitoring visit, action taken to correct the violation and plans to prevent the violation from recurring.

(g) There shall be no taking of sworn testimony nor cross-examination of anyone during the course of Internal Review Committee meetings.

(h) Time shall be allowed during the Internal Review Committee meetings for individual presentations, the total for which shall normally be one hour for each facility where the violations took place, but shall not exceed two hours. The amount of time allowed, up to two hours, shall be at the discretion of the Internal Review Committee chair. The order in which presenters shall speak and length of presentations shall be at the discretion of the chair.

(i) If it is determined that the administrator has violated applicable rules or statutes, the Internal Review Committee shall recommend an administrative penalty type and amount for each violation pursuant to G.S. 131D-34. The Division shall notify the administrator by certified mail of the Committee's decision within five working days following the Internal Review Committee meeting. Copies of the letter to the administrator shall be forwarded by the Division to all parties involved with the penalty recommendation. The agency that conducted the investigation shall be responsible for notifying the complainant, if any.

(j) If the recommended penalty is classified as Type B but is not a repeat violation (as defined by G.S. 131D-34), the administrator may accept the recommendation and notify the Division by certified mail within five working days following receipt of the recommendation. If the penalty is



accepted, the administrator has 60 days from receipt of the recommendation to pay the penalty.

(k) If the recommended penalty is a Type A violation; is a Type B violation for which a monetary or non-monetary penalty was assessed during the previous 12 months or within the time period of the previous licensure inspection, which ever time period is longer; or is a Type B violation as provided in Paragraph (i) of this Rule but is not accepted by the administrator, the Internal Review Committee shall forward to the Penalty Review Committee the penalty recommendation, the rationale for the recommendation and all information reviewed by the Internal Review Committee.

(l) The Penalty Review Committee meets monthly, if there are administrative penalty recommendations from the Internal Review Committee. The Penalty Review Committee may agree with or recommend changes to the Internal Review Committee's recommendations. If the recommendations are different from those of the Internal Review Committee, the Division shall notify the administrator the day of the Penalty Review Committee meeting.

(m) Recommendations by the Penalty Review Committee shall be forwarded to the Chief of Licensure who shall have five working days from the date of the Penalty Review Committee meeting to determine and impose administrative penalties for each violation as provided by G.S. 131D-34 and notify the administrator by certified mail.

(n) The administrator shall have 60 days from receipt of the notification to pay the assessment as provided by G.S. 131D-34 or 30 days to appeal the decision as provided by G.S. 150B-22. The Division shall notify the Attorney General's Office of any outstanding assessments.

Statutory Authority G.S. 131D-2; 131D-34; 143B-153.

## TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Justice, State Bureau of Investigation, Division of Criminal Information intends to amend rule(s) cited as 12 NCAC 4F .0601; and adopt rule(s) cited as 12 NCAC 4F .0602 - .0604.

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

The public hearing will be conducted at 9:00 a.m. on May 19, 1992 at the Division of Criminal

Information, 407 North Blount Street, Raleigh, North Carolina 27601.

### Reasons for Proposed Actions:

12 NCAC 4F .0601 - To add the acronym of "AFIS" for the Automated Fingerprint Identification System.

12 NCAC 4F .0602 - To state the procedural steps necessary for an agency to obtain an AFIS terminal.

12 NCAC 4F .0603 - To state the necessity of each eligible agency signing an AFIS User Agreement, and abiding by the terms thereof.

12 NCAC 4F .0604 - To state the data that is available from the AFIS System.

**Comment Procedures:** Comments may be submitted in writing, or may be presented orally at the public hearing. Written comments should be submitted to E. K. Best, Division of Criminal Information, 407 N. Blount Street, Raleigh, North Carolina 27601. The comment period is open until May 31, 1992.

## CHAPTER 4 - DIVISION OF CRIMINAL INFORMATION

### SUBCHAPTER 4F - SECURITY AND PRIVACY

#### SECTION .0600 - AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

##### .0601 AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

(a) Agencies which meet the requirements of Subchapter 4E Rule .0201(a) of this Chapter have the capability to access the SBI's Automated Fingerprint Identification System for criminal justice purposes.

(b) Direct access may be obtained by submitting a letter of request to the SBI Assistant Director for DCI.

(c) The following data is available and may be used to make comparisons and/or obtain CCH data:

- (1) fingerprint classification;
- (2) fingerprint minutiae;
- (3) fingerprint images; and
- (4) state identification number.

(d) When the state identification number is used to obtain CCH data, dissemination requirements outlined in Rule .0401 Paragraphs (c) and (d) of this Subchapter must be followed.

(e) The acronym used for the SBI's Automated Fingerprint Identification System shall be the AFIS.

Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.

**.0602 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE AFIS NETWORK**

(a) Agencies which meet the requirements of Subchapter 4E Rule .0201(a) of this Chapter shall be eligible to access the AFIS for criminal justice purposes.

(b) A request for direct access shall be submitted in writing to the SBI Assistant Director for DCI.

(c) Any request for an AFIS terminal and access must be approved by the SBI DCI Advisory Policy Board.

Statutory Authority G.S. 114-10; 114-10.1.

**.0603 USER AGREEMENT**

(a) Each eligible agency under Rule .0201 of this Subchapter requesting an AFIS terminal shall sign an AFIS User Agreement certifying that the agency head has read, and understands the requirements for security within DCI, and that the agency head will uphold the agreement, and abide by the standards and guidelines outlined in the User Agreement.

(b) A current copy of the User Agreement may be reviewed at 407 North Blount Street, Raleigh, North Carolina.

(c) Upon determination that a violation of the User Agreement has occurred, requirements outlined in Rule .0201 Paragraphs (a) and (b) of this Subchapter must be followed.

Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.

**.0604 AVAILABLE DATA**

(a) The following data is available and may be used to make comparisons and or obtain CCH data:

- (1) fingerprint classification;
- (2) fingerprint minutiae;
- (3) fingerprint images; and
- (4) state identification number.

(b) When the state identification number is used to obtain CCH data, dissemination requirements outlined in Rule .0401 Paragraphs (c) and (d) of this Subchapter must be followed.

Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to amend rule(s) cited as 12 NCAC 11 .0201.*

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

*The public hearing will be conducted at 11:00 a.m. on June 5, 1992 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, NC 27626-0500.*

*Reason for Proposed Action: To extend length of criminal record search from 24 months to 48 months.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until the hearing. Written comments must be delivered to or mailed to: Mr. James F. Kirk, NC Alarm Systems Licensing Board, 3320 Old Garner Rd., P.O. Box 29500, Raleigh, NC 27626-0500.*

**CHAPTER 11 - N.C. ALARM SYSTEMS LICENSING BOARD**

**SECTION .0200 - PROVISIONS FOR LICENSEES**

**.0201 APPLICATION FOR LICENSE**

(a) Each applicant for a license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant card provided by the Board;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification one inch by one inch in size;
- (3) statements of the results of a local criminal history records search by the city-county identification bureau or clerk of superior court in each county where the applicant has resided within the immediate preceding 24 48 months; and
- (4) the applicant's application fee.

(b) Each applicant must provide evidence of high school graduation either by diploma, G.E.D. certificate, or other acceptable proof.



(c) Each applicant for a branch office license shall complete an application form provided by the Board. This form and one additional copy shall be submitted to the administrator and shall be accompanied by the branch office application fee.

Statutory Authority G.S. 74D-2; 74D-3; 74D-5; 74D-7.

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

*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Division of Environmental Management intends to amend rules cited as 15A NCAC 2C .0101 - .0103, .0105, .0107 - .0114, .0116, .0118 - .0119; 2L .0107.*

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

*The public hearings will be conducted at the following locations, dates and times:*

**NEW BERN**

*May 18, 1992*

*7:00 p.m.*

*Superior Court, 2nd Floor  
Craven County Courthouse*

**RALEIGH**

*May 26, 1992*

*7:00 p.m.*

*Ground Floor Hearing Room  
Archdale Building  
512 N. Salisbury Street*

**HICKORY**

*May 28, 1992*

*7:00 p.m.*

*Auditorium  
Catawba Valley Community College*

*Reason for Proposed Action: 15A NCAC 2C .0101 - .0103, .0105, .0107 - .0114, .0116, .0118 - .0119. The proposed amendments to 15A NCAC 2C will amend the Well Construction Rules regarding permit requirements, variances, casing installation and grouting, and reporting; and will establish fees for well driller registration.*

*15A NCAC 2L .0107. Modify compliance boundary requirements so that permittees can maintain fixed boundary after subdivision/conveyance of property.*

*Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted through May 31, 1992. Please submit comments to Mr. David Hance, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-3221. Please notify Mr. Hance prior to the public hearing if you desire to speak. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing.*

**IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE DEPARTMENT THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES.**

**CHAPTER 2 - ENVIRONMENTAL  
MANAGEMENT**

**SUBCHAPTER 2C - WELL CONSTRUCTION  
STANDARDS**

**SECTION .0100 - CRITERIA AND STANDARDS  
APPLICABLE TO WATER-SUPPLY AND  
CERTAIN OTHER TYPE WELLS**

**.0101 GENERAL PROVISIONS**

(a) Authorization. The North Carolina Environmental Management Commission is required, under the provisions of Chapter 87, Article 7, Section 87, General Statutes of North Carolina (short title: North Carolina Well Construction Act) to adopt appropriate rules ~~and regulations~~ governing the location, construction, repair, and abandonment of wells, and the installation and repair of pumps and pumping equipment.

(b) Purpose. Consistent with the duty to safeguard the public welfare, safety, health, and to protect and beneficially develop the ground water resources of the state, it is declared to be the policy of this state to require that the location, construction, repair and abandonment of wells, and the installation of pumps and pumping equipment conform to such reasonable standards and requirements as may be necessary to protect the public welfare, safety, health, and ground water resources.

Statutory Authority G.S. 87-87.

**.0102 DEFINITIONS**

As used herein, unless the context otherwise requires:

- (1) "Abandon" means to discontinue the use of and to seal the well according to the requirements of Rule .0113 of this Section.
- (2) "Access port" means an opening in the well casing or well head installed for the primary purpose of determining the position of the water level in the well.
- (3) "Agent" means any person who by mutual and legal agreement with a well owner has authority to act in his behalf in executing applications for permits. The agent may be either general agent or a limited agent authorized to do one particular act.
- (4) "ASTM" means the American Society for Testing and Materials.
- (5) ~~(4)~~ "Casing" means pipe or tubing constructed of specified materials and having specified dimensions and weights, that is installed in a borehole, during or after completion of the borehole, to support the side of the hole and thereby prevent caving, to allow completion of a well, to prevent formation material from entering the well, to prevent the loss of drilling fluids into permeable formations, and to prevent entry of undesirable water.
- (6) ~~(5)~~ "Commission" means the North Carolina Environmental Management Commission or its successor, unless otherwise indicated.
- (7) ~~(6)~~ "Consolidated rock" means rock that is firm and coherent, solidified or cemented, such as granite, gneiss, limestone, slate or sandstone, that has not been decomposed by weathering.
- (8) ~~(7)~~ "Contamination" means ~~the act of introducing into water~~ foreign materials of such nature, quality, and quantity as to cause degradation of the quality of the water.
- (9) "Department" means the Department of Environment, Health, and Natural Resources.
- (10) ~~(8)~~ "Designed capacity" shall mean that capacity that is equal to the rate of discharge or yield that is specified prior to construction of the well.
- (11) ~~(24)~~ "Director" means the Director of the Division of Environmental Management.
- (12) ~~(25)~~ "Division" means the Division of Environmental Management.
- (13) ~~(9)~~ "Domestic use" means water used for drinking, bathing, household purposes, livestock or gardens.
- (14) "GPM" and "GPD" mean gallons per minute and gallons per day, respectively.
- (15) ~~(10)~~ "Grout" shall mean and include the following:
  - (a) "Neat cement grout" means a mixture of not more than six gallons of clear, non-polluted water to one 94 pound bag of portland cement. Up to five percent, by weight, of bentonite clay may be used to improve flow and reduce shrinkage.
  - (b) "Sand cement grout" means a mixture of not more than two parts sand and one part cement and not more than six gallons of clear, non-polluted water per 94 pound bag of portland cement.
  - (c) "Concrete grout" means a mixture of not more than two parts gravel to one part cement and not more than six gallons of clear, non-polluted water per 94 pound bag of portland cement. One hundred percent of the gravel must pass through a one-half inch mesh screen.
  - (d) "Gravel cement grout, sand cement grout or rock cutting cement grout" means a mixture of not more than two parts gravel and sand or rock cuttings to one part cement and not more than six gallons of clear, non-polluted water per 94 pound bag of portland cement.
  - (e) "Bentonite grout" means the mixture of no less than one and one-half pounds of commercial granulated bentonite with sufficient clear, non-polluted water to produce a grout weighing no less than eleven (11) pounds per gallon of mixture. Non-organic, non-toxic substances may be added to improve particle distribution and pumpability. Bentonite grout may only be used in those instances where specifically approved in this Section.
  - (f) "Specialty grout" means a mixture of non-organic, non-toxic materials with characteristics of expansion, chemical-resistance, rate or heat of hydration, viscosity, density or temperature-sensitivity applicable to specific grouting requirements. Specialty grouts may not be used without prior approval by the Director.
- (16) ~~(11)~~ "Liner pipe" means pipe that is installed inside a completed and cased well for the purpose of sealing off undesirable water or for repairing ruptured or punctured casing or screens.
- (17) ~~(12)~~ "Monitoring well" means any well constructed for the primary ~~or incidental~~ purpose of obtaining ~~subsurface~~ samples of groundwater water or other liquids for examination or testing, or for the observation or measurement of groundwater levels. This



definition excludes lysimeters, tensiometers, and other devices used to investigate the characteristics of the unsaturated zone.

(13) ~~"Observation well" means any well constructed for the purpose of obtaining groundwater level information only.~~

(18) (14) "Owner" means any person who holds the fee or other property rights in the well being constructed. A well is real property and its construction on land rests ownership in the land owner in the absence of contrary agreement in writing.

(19) (23) ~~"Pitless adapter unit is a device adapters" or "pitless units" are devices specifically manufactured to the standards specified under Rule .0107(i) (4) (5) of this Section for the purpose of allowing a subsurface lateral connection between a well and plumbing appurtenances.~~

(20) (15) "Public water system"

(a) ~~"Public water system" means a water system as defined in 15A NCAC 18C .0702 (Rules Governing Public Water Supplies), for the provision, to the public, of piped water for human consumption if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:~~

(i) ~~any collection, treatment, storage, and distribution facility under control of the operator of such system and used primarily in connection with such system; and~~

(ii) ~~any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.~~

(b) ~~A public water system is either a "community water system" or a "non-community water system":~~

(i) ~~"Community water system" means a public water system which serves at least 15 service connections used by year round residents or regularly serves at least 25 year round residents.~~

(ii) ~~"Non community water system" means a public water system which is not a community water system.~~

(21) (16) "Recovery well" means any well constructed for the purpose of removing contaminated groundwater or other liquids from the subsurface.

(22) ~~"Settleable solids" means the volume of solid particles in a well-mixed one liter sample which will settle out of suspension, in the bottom of an Imhoff Cone, after one hour.~~

(23) (17) "Site" means the land or water area where any facility, activity or situation is

physically located, including adjacent or nearby land used in connection with the facility, activity or situation.

(24) (18) "Specific capacity" means the yield of the well expressed in gallons per minute per foot of draw-down of the water level (gpm/ft.-dd).

(25) (19) "Static water level" means the level at which the water stands in the well when the well is not being pumped and is expressed as the distance from a fixed reference point to the water level in the well.

(26) ~~"Suspended solids" means the weight of those solid particles in a sample which are retained by a standard glass microfiber filter, with pore openings of one and one-half microns, when dried at a temperature of 103 to 105 degrees Fahrenheit.~~

(27) ~~"Temporary well" means a monitor well, or a well that is constructed to determine aquifer characteristics, and which will be properly abandoned or converted to a permanent well within five days (120 hours) of completion of drilling of the borehole.~~

(28) ~~"Turbidity" means the cloudiness in water, due to the presence of suspended particles such as clay and silt, that may create esthetic problems or analytical difficulties for contamination. Turbidity measured in Nephelometric Turbidity Units (NTU) is based on a comparison of the cloudiness in the water with that in a specially prepared standard.~~

(29) ~~"Well" means any excavation that is cored, bored, drilled, jetted, dug or otherwise constructed for the purpose of locating, testing, developing, draining or recharging any groundwater reservoirs or aquifer, or that may control, divert, or otherwise cause the movement of water from or into any aquifer. Provided, however, this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use (including household purposes, farm livestock or gardens).~~

(30) (20) "Well capacity" shall mean the maximum quantity of water that a well will yield continuously.

(31) (21) "Well head" means the upper terminal of the well including adapters, ports, valves, seals, and other attachments.

(32) (22) "Well system" means two or more wells serving the same facility.

- Statutory Authority G.S. 87-85; 87-87; 143-214.2; 143-215.3.



.0103 REGISTRATION

(a) Well Driller Registration:

- (1) Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in the state shall register annually with the department.
- (2) Registration shall be accomplished, during the period from January 1 to January 31 of each year, by completing and submitting to the department a registration application form provided by the department for this purpose.

- (3) A non-refundable processing fee, in the form of a check or money order made payable to N.C. Department of Environment, Health, and Natural Resources, shall be submitted with each registration application form. Fees, for the year in which the registration will be valid, are as follows:

- (A) For renewal of registration by any person, firm or corporation having registered at any time during the five calendar years prior to the date of application:

- (i) fifty dollars (\$50.00) for applications postmarked prior to February 1; and
- (ii) sixty dollars (\$60.00) for application postmarked after January 31.

- (B) For registration by any person, firm or corporation that did not register at any time during the five calendar years prior to the date of application:

- (i) fifty dollars (\$50.00) for applications postmarked prior to February 1; or
- (ii) for each succeeding calendar month after January, the fee shall be reduced by three dollars (\$3.00) from that due in the proceeding month. As examples, the fee for applications postmarked February 1 through 29 would be forty-seven dollars (\$47.00), while the fee for applications postmarked November 1 through 30 would be twenty dollars (\$20.00).

- (4) An application is incomplete until the required processing fee has been received. Incorrect or incomplete applications may be returned to the applicant.

- (5) ~~(3)~~ Upon receipt of a properly completed application form, the applicant will be issued a certificate of registration.

(b) Pump Installer Registration:

- (1) All persons, firms, or corporations engaged in the business of installing or repairing pumps or other equipment in wells shall register bi-annually with the department.

- (2) Registration shall be accomplished, during the period from April 1 to April 30 of every odd-numbered year, by completing and submitting to the department a registration form provided by the department for this purpose.

- (3) Upon receipt of a properly completed application form, the applicant will be issued a certificate of registration.

*Statutory Authority G.S. 87-87; 143-21.3 (a) (1a); 143-355 (e).*

.0105 PERMITS

(a) It is the finding of the Commission that the entire geographical area of the state is vulnerable to groundwater pollution from improperly located, constructed, operated, altered, or abandoned non-water supply wells and water supply wells not constructed in accordance with the standards set forth in Rule .0107 of this Section. Therefore, in order to insure reasonable protection of the groundwater resources, prior permission from the Division must be obtained for the construction of the types of wells enumerated in Paragraph (b) of this Rule.

(b) No person shall locate or construct any of the following wells until a permit has been issued by the Director:

- (1) any water-well or well system with a design capacity of 100,000 gallons per day (gpd) or greater;
- (2) any well added to an existing system where the total design capacity of such existing well system and added well will equal or exceed 100,000 gpd;
- (3) ~~any test well if the design capacity of the production well or well system will be 100,000 gpd or greater;~~
- (3) ~~(4)~~ any monitoring well, constructed to assess the impact of an activity not permitted by the state, when installed on property other than that on which the unpermitted activity took place;
- (4) ~~(5)~~ any recovery well;
- (5) ~~(6)~~ any well intended for the recovery of minerals or ores;
- (7) ~~any geophysical exploration well;~~
- (6) ~~(8)~~ any oil or gas exploration or recovery well;
- (7) ~~(9)~~ any well for recharge or injection purposes;
- (10) ~~any cathodic protection well;~~
- (8) ~~(11)~~ any well with a design deviation from the standards specified under the rules of this Subchapter.

(c) ~~Monitoring wells associated with a wastewater treatment and disposal facility for~~

which a permit must be obtained from the department may be permitted as part of that facility; provided, however, that the permit applicant comply with all provisions of this Subchapter including construction standards and reporting requirements.

(c) ~~(d)~~ The Commission Director may delegate, through a Memorandum of Agreement, to another state governmental agency, the authority to permit wells that are an integral part of a facility requiring a permit from the agency. Provided, however, that the permittee comply with all provisions of this Subchapter, including construction standards and the reporting requirements as specified in Rule .0114. In the absence of such agreement, all wells specified in Paragraph (b) of this Rule require a well construction permit in addition to any other permits.

(d) ~~(e)~~ An application for a permit shall be submitted by the owner or his agent. ~~in duplicate to the department on forms furnished by the department, and shall include the following:~~ In the event that the permit applicant is not the owner of the property on which the well or well system is to be constructed, the permit application must contain written approval from the property owner and a statement that the applicant assumes total responsibility for ensuring that the well(s) will be located, constructed, maintained and abandoned in accordance with the requirements of this Subchapter.

(e) The application shall be submitted in duplicate to the Division, on forms furnished by the Division, and shall include the following:

- (1) For all wells:
  - (A) the owner's name (facility name);
  - (B) the owner's mailing address (facility address);
  - (C) description of the well type and activity requiring a permit;
  - (D) facility location (map);
  - (E) site plan showing location of all sources or potential sources of groundwater contamination and locations of proposed wells; a map of the facility and general site area, to scale, showing the locations of:
    - (i) all property boundaries, at least one of which is referenced to a minimum of two landmarks such as identified roads, intersections, streams or lakes;
    - (ii) all existing wells, identified by type of use, within the property boundaries;
    - (iii) the proposed well or well system;
    - (iv) any test borings; and
    - (v) all sources of known or potential groundwater contamination (such as septic tank systems; pesticide, chemical or fuel storage areas; animal feedlots;

landfills or other waste disposal areas) within 500 feet of the proposed well site;

(F) location and description of existing wells on the same site or within the same well system; the well drilling contractor's name, if known;

~~(G) location of any test borings;~~

(G) ~~(H)~~ construction diagram of the proposed well(s) including specifications describing all materials to be used, methods of construction and means for assuring the integrity and quality of the finished well(s).

(2) For water supply wells or well systems with a designed capacity of 100,000 gpd or greater the application shall include, in addition to the information required in Subparagraph (e)(1) of this Rule: the application shall include:

(A) the number, yield and location of existing wells in the system;

(B) the design capacity of the proposed well(s);

(C) any other information that the ~~department~~ Division may reasonably deem necessary.

(3) For those monitoring wells ~~and recovery wells~~ with a design deviation from the specifications of Rule .0108 of this Section, in addition to the information required in Subparagraph (e)(1) of this Rule:

(A) a description of the subsurface conditions sufficient to evaluate the site. Data from test borings, wells pumping tests, etc., may be required as necessary;

(B) a description of the quantity, character and origin of the contamination;

~~(C) a justification for the necessity of the design deviation; and~~

~~(D) (C)~~ any other information that the ~~department~~ Division may reasonably deem necessary.

(4) For those recovery wells with a design deviation from the specifications in Rule .0108 of this Section, in addition to the information required in Subparagraph (e)(1) and Parts (e)(3)(A), (B) and (C) of this Rule, the application shall describe the disposition of any fluids recovered if the disposal of those fluids will have an impact on any existing wells other than those installed for the express purpose of measuring the effectiveness of the recovery well(s).

(f) In the event of an emergency, monitoring wells and/or recovery wells may be constructed



after verbal approval is provided by the Director or his delegate. After the fact After-the-fact applications shall be submitted by the driller or owner within ten days after construction begins. The application shall include construction details of the monitoring well(s) and/or recovery well(s).

(g) It shall be the responsibility of the well owner or his agent to see that a permit is secured prior to the beginning of construction of any well for which a permit is required under the rules of the this Subchapter.

Statutory Authority G.S. 87-87.

.0107 STANDARDS OF CONSTRUCTION: WATER-SUPPLY WELLS

(a) Location.

(1) The well shall not be located

- (A) in an area ~~not~~ generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions, and drainage ways;
- (B) at a minimum horizontal distance of 50 feet from any water-tight sewage and liquid-waste collection facility (such as cast iron pipe) except in the case of wells intended for a single family dwelling where it is not feasible to obtain 50 feet separation between a well and a water-tight liquid-waste collection facility because of lot size or other fixed conditions, the horizontal separation distance shall be the maximum feasible distance, but in no case less than 25 feet; provided the sewer line is constructed of leak-proof pipe, such as cast iron pipe, with leaded or mechanical joints;
- (C) at a minimum horizontal distance of 100 feet from any other sewage or liquid-waste collection or disposal facility (such as a septic tank and drain fields) and any other source of existing or potential pollution or contamination, except in the case of wells intended for a single family dwelling where it is not feasible to obtain 100 feet horizontal separation between a well and a source because of lot size or other fixed conditions, the separation distance shall be maximum feasible distance, but in no case less than 50 feet.

(2) The minimum horizontal separation between a well, intended for a single-family residence or other non-public water system, and potential sources of groundwater contamination shall be as follows unless otherwise specified:

(A) Septic tank and drainfield .....	100 ft.
(B) Other subsurface ground absorption waste disposal system .....	100 ft.
(C) Industrial or municipal sludge-spreading or wastewater-irrigation sites .....	100 ft.
(D) Water-tight sewage or liquid-waste collection or transfer facility .....	50 ft.
(E) Other sewage and liquid-waste collection or transfer facility .....	100 ft.
(F) Cesspools and privies .....	100 ft.
(G) Animal feedlots or manure piles .....	100 ft.
(H) Fertilizer, pesticide, herbicide or other chemical storage areas .....	100 ft.
(I) Non-hazardous waste storage, treatment or disposal lagoons .....	100 ft.
(J) Sanitary landfills .....	500 ft.
(K) Other non-hazardous solid waste landfills .....	100 ft.
(L) Animal barns .....	100 ft.
(M) Building foundations .....	50 ft.
(N) Surface water bodies .....	50 ft.
(O) Chemical or petroleum fuel underground storage tanks regulated under 15A NCAC 2N:	
(i) with secondary containment .....	50 ft.
(ii) without secondary containment .....	100 ft.
(P) All other sources of groundwater contamination .....	100 ft.

(3) For a well serving a single-family dwelling where lot size or other fixed conditions preclude the separation distances specified in Subparagraph (a)(2) of this Rule, the required separation distances may be reduced to the maximum possible but in no case less than the following:

(A) Septic tank and drainfield .....	50 ft.
(B) Water-tight sewage or liquid-waste collection or transfer facility .....	25 ft.
(C) Building foundations .....	25 ft.
(D) Cesspool or privies .....	50 ft.

(4) A well or well system, serving more than one single-family dwelling but with a designed capacity of less than 100,000 gpd, must meet the separation requirements specified in Subparagraph (a) (2) of this Rule;



## PROPOSED RULES

- (5) A well or well system with a designed capacity of 100,000 gpd or greater must be located a sufficient distance from known or anticipated sources of groundwater contamination so as to prevent a violation of applicable groundwater quality standards, resulting from the movement of contaminants, in response to the operation of the well or well system at the proposed rate and schedule of pumping;
- (6) ~~(2)~~ Actual separation distances must conform with the more stringent of applicable federal, state and local requirements;
- (7) ~~(3)~~ Wells drilled for public water supply systems regulated by the ~~Department of Human Resources~~ Division of Environmental Health shall meet the siting and all other requirements of that ~~department.~~ Division.
- (b) Source of water.
- (1) The source of water for any well intended for domestic use shall not be from a water bearing zone or aquifer that is known to be contaminated;
- (2) In designated areas described in Rule .0117 of this Section, the source shall be greater than 35 feet;
- (3) In designated areas described in Rule .0116 of this Section, the source may be less than 20 feet, but in no case less than 10 feet; and
- (4) In all other areas the source shall be at least 20 feet below land surface.
- (c) ~~(b)~~ Drilling Fluids and Additives. Drilling Fluids and Additives shall be materials specified for use in not contain organic or toxic substances and may be comprised only of:
- (1) the formational material encountered during drilling; or
- (2) materials manufactured specifically for the purpose of borehole conditioning or water well construction. and approved by the Division.
- (d) ~~(c)~~ Casing.
- (1) If steel casing is used, then:
- (A) The casing shall be new, seamless or electric-resistance welded galvanized or black steel pipe. Galvanizing shall be done in accordance with requirements of ASTM A-120.
- (B) The casing, threads and couplings shall meet or exceed the specifications of ASTM A-53, A-120 or A589.
- (C) The minimum wall thickness for a given diameter shall equal or exceed that specified in Table 1.

TABLE 1: MINIMUM WALL THICKNESS FOR STEEL CASING:

Nominal Diameter (in.)	Wall Thickness (in.)
For 3-1/2" or smaller pipe, schedule 40 is required	
4	0.142
5	0.156
5-1/2	0.164
6	0.185
8	0.250
10	0.279
12	0.330
14 and larger	0.375

- (D) Stainless steel casing, threads, and couplings shall conform in specifications to the general requirements in ~~ANSI~~ ASTM A-530 and also shall conform to the specific requirements in the

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ASTM standard that best describes the chemical makeup of the stainless steel casing that is intended for use in the construction of the well;

(E) Stainless steel casing shall have a minimum wall thickness that is equivalent to standard schedule number 10S;

(F) Steel casing shall be equipped with a drive shoe if the casing is seated in a consolidated rock formation and for any other wells if the casing is driven. The drive shoe shall be made of forged, high carbon, tempered seamless steel and shall have a beveled, hardened cutting edge. A drive shoe will not be required for wells in which the grout surrounds and extends the entire length of the casing.

(2) If Thermoplastic Casing is used, then:

(A) the casing shall be new;

(B) the casing and joints shall meet or exceed all the specifications of ASTM F-480-81, except that the outside diameters will not be restricted to those listed in F-480;

(C) the maximum depth of installation for a given SDR or Schedule number shall not exceed that listed in Table 2;

**Editor's Note:** This Table has been moved from Part (e)(1)(C) in this Rule. The amendments to the table are shown below. The table is shown as deleted from Part (e)(1)(C).

TABLE 2: Maximum allowable depths (in feet) of Installation of  
Thermoplastic Water Well Casing

Nominal Diameter (in inches)											
Schedule number-	2	2.5	3	3.5	4	5	6	8	10	12	14 16
Schedule 40-	485	635	415	315	253	180	130	85	65	65	50 50
Schedule 80-	1460	1685	1170	920	755	550	495	340	290	270	265 255
All Diameters (in inches)											
SDR Number											
SDR 41	20										
SDR 32.5	50										
SDR 27.5	<del>80</del> 100										
SDR 26	95										
SDR 21	185										
SDR 17	355										
SDR 13.5	735										

(D) The top of the casing shall be terminated by the drilling contractor at least twelve inches above land surface;

(E) For wells in which the casing will extend into consolidated rock, thermoplastic casing shall be equipped with a section of steel casing at least three feet in length, or other device approved by the Director, sufficient to protect the physical integrity of the thermoplastic casing during the processes of seating and grouting the casing and subsequent drilling operations.

(3) ~~In constructing any well,~~ All water-bearing zones ~~that are known to contain~~ containing polluted, saline, or other non-potable water, that are encountered or penetrated during drilling, shall be

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adequately cased and cemented off so that pollution of the overlying and underlying groundwater zones will not occur.

- (4) Every well shall be cased with so that the bottom of the casing extending extends to a minimum depth as follows:
  - (A) Wells located within the area described in Rule .0117 of this Subchapter Section shall be cased from land surface to a depth of at least 35 feet;
  - (B) Wells located within the area described in Rule .0116 of this Subchapter Section shall be cased from land surface to a depth of at least 10 feet;
  - (C) Wells located in any other area shall be cased from land surface to a depth of at least 20 feet.
- (5) The top of the casing shall be terminated by the drilling contractor at least 12 inches above land surface.
- (6) The casing in wells constructed to obtain water from a consolidated rock formation shall be:
  - (A) adequate to prevent any formational material from entering the well in excess of the levels specified in Paragraph (i) of this Rule; and
  - (B) Firmly seated at least one foot into the rock, and
    - (i) sealed with grout at least one foot into the rock; or
    - (ii) sealed by some other method, approved by the Director, that will provide equal protection against the entrance of formation material or contaminants one foot below the top of the consolidated rock.
- (7) The casing in wells constructed to obtain water from an unconsolidated rock formation (such as gravel, sand or shells) shall extend at least one foot into the top of the water-bearing formation.
- (8) Upon completion of the well, the well casing shall be sufficiently free of obstacles as necessary to allow for the installation and proper operation of pumps and associated equipment.
- (e) ~~(d)~~ Grouting.
  - (1) Casing shall be grouted to a minimum depth of twenty feet below land surface except that:
    - (A) In those areas designated by the Director to meet the criteria of Rule .0116 of this Subchapter Section, grout shall extend to a depth of two feet above the screen or, for open end wells, to the bottom of the casing, but in no case less than 10 feet.
    - (B) In those areas designated in Rule .0117 of this Subchapter, Section, grout shall extend to a minimum of 35 feet below land surface.
    - (C) The casing shall be grouted as necessary to seal off all aquifers or zones with water of a poorer quality than that of the producing zone(s).

TABLE 2: Maximum allowable depths (in feet) of Installation of  
Thermoplastic Water Well Casing

Nominal Diameter												
Schedule number	2	2.5	3	3.5	4	5	6	8	10	12	14	16
Schedule 40	485	635	415	315	253	180	130	85	65	65	50	50
Schedule 80	1160	1685	1170	920	755	550	495	340	290	270	265	255
All Diameters												
SDR 41	20											
SDR 32.5	50											
SDR 27.5	80											
SDR 26	95											



SDR 24	185
SDR 47	355
SDR 13.5	725

- (2) For large diameter wells, commonly referred to as "bored" wells, cased with concrete pipe or ceramic tile, the following shall apply:
- (A) The diameter of the bore hole shall be at least six inches larger than the outside diameter of the casing;
- (B) The annular space around the casing shall be filled with a cement-type grout to a depth of at least 20 feet, excepting those designated areas specified in Rules .0116 and .0117 of this Section. The grout shall be placed in accordance with the requirements of this Paragraph.
- (3) For any well constructed to obtain water from consolidated rock, the well casing shall be grouted, using a cement type grout, to a height of five feet above the intersection of the casing and the consolidated rock.
- (4) Bentonite grout may only be used in that portion of the borehole that is below the water table throughout the year.
- (5) ~~(2)~~ Grout shall be placed around the casing by one of the following methods:
- (A) Pressure. ~~The annular space between the casing and the formation shall be a minimum of 1.5 inches.~~ Grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular area around the casing and overflows at the surface.
- (B) Pumping. ~~The annular space between the casing and formation, shall be a minimum of 1.5 inches.~~ Grout shall be pumped into place through a hose or pipe extended to the bottom of the annular space which can be raised as the grout is applied. The grout hose or pipe should remain submerged in grout during the entire application.
- (C) Other. ~~The annular space around the casing shall be a minimum of three inches. The annular space shall be completely filled with grout by any method that will insure completed filling of the space; provided the annular area does not contain water. If the annular area contains water it shall be dewatered or the grout shall be placed by either the pumping or pressures method. Grout may be emplaced in the annular space, by gravity flow through a pipe, to a maximum depth of 20 feet below land surface.~~
- (6) ~~(3)~~ If an outer casing is installed, it shall be grouted by either the pumping or pressure method.
- (7) ~~(4)~~ All grout mixtures shall be prepared prior to emplacement.
- (8) ~~(5)~~ The well shall be grouted within five working days after the casing is set.
- (9) ~~(6)~~ No additives which will accelerate the process of hydration shall be used in grout for thermoplastic well casing.
- (10) Where grouting is required by the provisions of this Section, the grout shall extend outward from the casing wall to a minimum thickness equal to either one-third of the diameter of the outside dimension of the casing or two inches, whichever is greater; excepting, however, that large diameter bored wells shall meet the requirements of Subparagraph (c)(2) of this Rule.
- (f) ~~(e)~~ Well Screens.
- (1) The well, if constructed to obtain water from an unconsolidated rock formation, shall be equipped with a screen that will adequately prevent the entrance of formation material into the well after the well has been developed and completed by the well contractor.
- (2) The well screen be of a design to permit the optimum development of the aquifer with minimum head loss consistent with the intended use of the well. The openings shall be designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging.
- (3) Multi-screen wells shall not connect aquifers or zones which have differences
- ~~(A) in water quality which would result in contamination of any aquifer or zone.~~
- ~~(B) in water levels that would result in depletion of water from any aquifer or zone or significant change in head in any aquifer or zone.~~
- (g) ~~(f)~~ Gravel- and Sand- Packed Wells.
- (1) In constructing a gravel- or sand- packed well:

- (A) The gravel packing material shall be composed of quartz, granite, or similar rock material and shall be clean, ~~rounded,~~ of uniform size, water-washed and free from clay, silt, or other deleterious material.
- (B) The size of the gravel packing material shall be determined from a grain size analysis of the formation material and ~~should be compatible with the grain size of the aquifer.~~ shall be of a size sufficient to prohibit the entrance of formation material into the well in concentrations above those permitted by Paragraph (h) of this Rule.
- (C) The gravel packing material shall be placed in the annular space around the screens and casing by a fluid circulation method, preferably through a conductor pipe ~~or~~ to insure accurate placement and avoid bridging.
- (D) The gravel packing material shall be adequately disinfected.
- (E) For gravel ~~or sand-~~ packed wells in which an outer casing, that is grouted its entire length, does not extend to the top of the producing zone, a neat cement plug of at least 10 feet in vertical thickness shall be placed in the annular area between the inner casing and formation opposite the first clay above the top screen. The remaining space shall be filled with grout or clay except the upper 20 feet, which shall be filled with grout.
- (F) Centering guides must be installed within five feet of the top packing material to ensure even distribution of the packing material in the borehole.
- (2) The gravel pack packing material shall not connect aquifers or zones which have differences
  - (A) in water quality that would result in deterioration of the water quality in any aquifer or zone.
  - (B) ~~In water levels that would result in depletion of water from any aquifer or zone or significant change in head in any aquifer or zone.~~
- (g) Large Diameter Wells
  - (1) ~~A large diameter well cased with concrete pipe and commonly referred to as a "bored" well, may be constructed.~~
  - (2) ~~If the casing joints are not sealed, the construction shall be as follows:~~
    - (A) ~~The bore hole shall have a minimum diameter of six inches larger than the outside diameter of the casing.~~
    - (B) ~~The annular space around the casing shall be filled with neat cement, sand cement or concrete grout to a depth of at least 20 feet below land surface. The grout shall be placed in accordance with requirements of Rule .0107 (d)(3) of this Subchapter.~~
    - (C) ~~The annular space around the casing below the grout shall be filled with sand or gravel.~~
    - (D) ~~The gravel pack material shall be composed of quartz, granite, or similar rock material and shall be clean, rounded, uniform, water-washed and free from clay, silt, or other deleterious material.~~
    - (E) ~~The gravel shall be adequately disinfected.~~
  - (3) ~~If the casing joints are sealed, the bore hole shall have a minimum diameter of six inches larger than the outside diameter of the casing to a depth of at least 20 feet below the land surface. The annular space around the casing shall be filled with neat or sand cement grout to a depth of at least 20 feet below land surface.~~
  - (4) ~~The well head shall be completed in the same manner as required for other water supply wells.~~
- (h) Well Development.
  - (1) All water supply wells shall be properly developed by the well driller;
  - (2) Development shall include removal of formation materials, mud, drilling fluids and additives ~~A total suspended solids concentrations of less than 5 milligrams per liter of formation materials is considered acceptable.~~ such that the water contains no more than:
    - (A) five milligrams per liter (19 milligrams per gallon) of settleable solids; or
    - (B) ten NTUs of turbidity as suspended solids.
- (i) Well Head Completion.
  - (1) Access Port. Every water supply well and such other wells as may be specified by the Commission shall be equipped with a usable access port or air line. The access port shall be at least one half inch inside diameter opening so that the position of the water level can be determined at any time. Such port shall be installed and maintained in such manner as to prevent entrance of water or foreign material.
  - (2) Well Contractor Identification Plate.
    - (A) An identification plate, showing the drilling contractor and registration number and the information specified in Part (i)(2)(E) of this Rule, shall be installed on the well within 24 72 hours after completion of the drilling.

- (B) The identification plate shall be constructed of a durable weatherproof, rustproof metal, or equivalent material approved by the Director.
- (C) The identification plate shall be ~~securely~~ permanently attached to the well casing or enclosure floor around the casing where it is readily visible.
- (D) The identification plate shall not be removed from the well casing or enclosure floor by any person.
- (E) The identification ~~tag~~ plate shall be stamped with a permanent marking ~~within 30 days of completion of drilling~~ to show the:
  - (i) total depth of well;
  - (ii) casing depth (ft.) and inside diameter (in.);
  - (iii) screened intervals of screened wells;
  - (iv) ~~gravel~~ packing interval of gravel- or sand- packed wells;
  - (v) yield, in gallons per minute (gpm), or specific capacity in gallons per minute per foot of drawdown (gpm/ft.-dd); and
  - (vi) static water level and date measured;
  - ~~(vii) drilling contractor and registration number;~~
  - ~~(viii) (vii) date well completed.~~
- (3) Pump Installer Identification Plate.
  - (A) An identification plate, displaying the name and registration number of the pump installation contractor, shall be permanently attached to either the aboveground portion of the well casing, or the enclosure floor if present, within 72 hours after completion of the pump installation;
  - (B) The identification plate shall be constructed of a durable waterproof, rustproof metal, or equivalent material approved by the Director;
  - (C) The identification plate shall not be removed from the well casing or enclosure floor by any person; and
  - (D) The identification plate shall be stamped with a permanent marking to show the:
    - (i) date the pump was installed;
    - (ii) the depth of the pump intake; and
    - (iii) the horsepower rating of the pump.
- (4) ~~(3)~~ Valved flow. Every artesian well that flows under natural artesian pressure shall be equipped with a valve so that the flow can be completely stopped. Well owners shall be responsible for the operation and maintenance of the valve.
- (5) ~~(4)~~ Pitless adapter adapters or pitless units shall be allowed as a method of well head completion under the following conditions:
  - (A) The pitless adapter unit device be of standard design and manufactured specifically for the purpose of water well construction;
  - ~~(B) the unit shall meet industry standards for strength and water tightness;~~ Design, installation and performance standards shall be those specified in PAS-1 (Pitless Adapter Standard No. 1) as adopted by the Water System Council's Pitless Adapter Division;
  - ~~(C) The unit pitless device will be compatible with the well casing;~~
  - ~~(D) the unit be joined to the well casing by either a threaded coupling or welded joint;~~
  - ~~(D) (E)~~ The top of the unit pitless device shall extend at least 8 inches above land surface;
  - ~~(E) (F)~~ The unit pitless device shall have an access port.
- (5) All openings for piping, wiring, and vents shall enter into the well at least eight inches above land surface, except where pitless adapter adapters or pitless units are used, and shall be adequately sealed to preclude the entrance of contaminants into the well.

Statutory Authority G.S. 87-87; 87-88.

**.0108 STANDARDS OF CONSTRUCTION:**

**WELLS OTHER THAN WATER SUPPLY**

(a) No well shall be located, constructed, operated, or repaired in any manner that may adversely impact the quality of groundwater. Any test ~~holes and borings~~ hole or boring shall be permanently abandoned by the driller in accordance with Rule .0113 of this Section within two days after drilling or two days after testing is

complete, whichever is least restrictive; except in the case that a test well is being converted to a production well, in which case conversion shall be completed within 30 days.

(b) Injection wells shall conform to the standards set forth in Section .0200 of this Subchapter.

(c) Monitoring wells and recovery wells shall be located, designed, constructed, operated and abandoned with materials and by methods which



are compatible with the chemical and physical properties of the contaminants involved, specific site conditions and specific subsurface conditions. Specific construction standards will be itemized in the construction permit, if such a permit is required, but the following general requirements will apply:

(1) For wells from which samples of groundwater or other liquids will be obtained for the purpose of examination or testing, or for the recovery of polluted groundwater:

(A) ~~(4)~~ The borehole shall not penetrate to a depth greater than the depth to be monitored or the depth from which contaminants are to be recovered.

(B) ~~(2)~~ The well shall not hydraulically connect separate aquifers.

(C) ~~(3)~~ The construction materials shall be compatible with the contaminants to be monitored or recovered.

(D) ~~(4)~~ The well shall be constructed in such a manner that water or contaminants from the land surface cannot migrate along the borehole annulus into gravel pack the packing material or well screen area.

(E) ~~(5)~~ ~~When a gravel pack is~~ Packing material placed around the screen a seal shall be installed above the gravel. shall extend to a depth at least one foot above the top of the screen. A one foot thick seal, comprised of bentonitic clay or other material approved by the Director, shall be emplaced directly above and in contact with the packing material.

(F) ~~(6)~~ Grout shall be placed in the annular space between the casing and the borehole wall from land surface to a depth within two feet above the top of the well screen the top of the clay seal or to the bottom of the casing for open end wells.

(G) ~~(7)~~ All wells shall be secured to reasonably insure against unauthorized access and use.

(H) ~~(8)~~ All wells shall be afforded reasonable protection against damage during construction and use.

(I) ~~(9)~~ Any wells which are flowing artesian wells shall be valved so that the flow can be regulated.

(J) The well casing shall be terminated no less than 12 inches above land surface datum unless both of the following conditions are met:

(i) site-specific conditions directly related to business activities, such as vehicle

traffic, would endanger the physical integrity of the well, and

(ii) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.

(K) ~~(10)~~ Each well shall have permanently affixed an identification plate constructed of a durable material and shall contain the following information:

(i) ~~(A)~~ drilling contractor name and registration number;

(ii) ~~(B)~~ date well completed;

(iii) ~~(C)~~ total depth of well;

(iv) ~~(D)~~ a warning that the well is not ~~the~~ for water supply and that the groundwater may contain hazardous materials; and

(v) ~~(E)~~ depth(s) to screen(s).

(L) Each well shall be developed such that the level of turbidity or settleable solids does not preclude accurate chemical analyses of any fluid samples collected.

(2) For any well which will only be used to measure groundwater levels, the following general requirements will apply:

(A) The borehole shall not penetrate to a depth greater than the depth at which fluid elevation measurements will be made;

(B) The well shall not hydraulically connect separate aquifers;

(C) The well shall be constructed in such a manner that water or contaminants from the land surface cannot migrate along the borehole channel into the packing material or well screen areas;

(D) Grout shall be placed in the annular space between the casing and the borehole from land surface to the clay seal above the packing material or to the bottom of the casing for open end wells;

(E) Unless the wells will not be left unattended, such as during a well capacity or aquifer capacity test, all wells shall be secured to reasonably insure against unauthorized access and use;

(F) All wells shall be afforded reasonable protection against damage during construction and use;

(G) Any well which is a flowing artesian well shall be valved such that flow can be regulated;

(H) The well casing shall be terminated no less than 12 inches above land surface datum unless both of the following conditions are met:

(i) site-specific conditions related to business activities, such as vehicle traf-

- fic, would endanger the physical integrity of the well, and
- (ii) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well.
- (1) An identification plate constructed of a rustproof, durable material shall be permanently affixed to the well and shall contain the following information:
- (i) drilling contractor name and registration number,
- (ii) date well completed,
- (iii) total depth of well,
- (iv) a warning that the well is not a water supply well and that the groundwater may contain contaminants.
- (d) Observation Wells. Wells constructed for the purpose of monitoring or testing for the presence of liquids associated with tanks regulated under 15A NCAC 2N (Criteria and Standards Applicable to Underground Storage Tanks) shall be constructed in accordance with 15A NCAC 2N .0504.
- (4) shall be cased as specified in .0107(e) of this Subchapter unless otherwise approved by the department.
- (2) shall be grouted to within two feet of the well screens or, for open end wells, to the bottom of the casing unless otherwise approved by the department.
- (e) Wells constructed for the purpose of monitoring for the presence of vapors associated with tanks regulated under 15A NCAC 2N shall:
- (1) be constructed in such a manner as to prevent the entrance of surficial contaminants or water into or alongside the well casing; and
- (2) be provided with a lockable cap in order to reasonably insure against unauthorized access and use.
- (f) Temporary wells and all other non-water supply wells shall be constructed in such a manner as to preclude the vertical migration of contaminants within and along the borehole channel.
- (g) For sand or gravel-packed wells, centering guides must be installed within five feet of the top of the packing material to ensure even distribution of the packing material in the borehole.

*Statutory Authority G.S. 87-87; 87-88.*

#### .0109 PUMPS AND PUMPING EQUIPMENT

- (a) The pumping capacity of the pump shall be consistent with the intended use and yield characteristics of the well.
- (b) The pump and related equipment for the well shall be conveniently located to permit easy access and removal for repair and maintenance.

(c) The base plate of a pump placed directly over the well shall be designed to form a watertight seal with the well casing or pump foundation.

(d) In installations where the pump is not located directly over the well, the annular space between the casing and pump intake or discharge piping shall be closed with a watertight seal preferably designed specifically for this purpose.

(e) The well shall be properly vented at the well head to allow for the pressure changes within the well except when a suction lift type pump is used.

(f) A hose bibb shall be installed at the well head by the person installing the pump for obtaining water samples. In the case of offset jet pump installations the hose bibb shall be installed on the return (pressure) side of the jet pump piping.

(g) A priming tee shall be installed at the well head in conjunction with offset jet pump installations.

(h) Joints of any suction line installed underground between the well and pump shall be surrounded by six inches of cement, or encased in a larger pipe that is sealed at each end.

(i) The drop piping and electrical wiring used in connection with the pump shall meet all applicable underwriters specifications. acceptable to the department.

(j) Contaminated water shall not be used for priming the pump.

*Statutory Authority G.S. 87-87; 87-88.*

#### .0110 WELL TESTS FOR YIELD

(a) Every water supply well shall be tested for capacity by a method and for a period of time acceptable to the department.

(b) The permittee may be required as a permit condition to test any well for capacity by a method stipulated in the permit.

(c) Standard methods for testing domestic well capacities include:

##### (1) Pump Method

- (A) select a permanent measuring point, such as the top of the casing;
- (B) measure and record the static water level below or above the measuring point prior to starting the pump;
- (C) measure and record the discharge rate at intervals of 10 minutes or less;
- (D) measure and record water levels using a steel or electric tape at intervals of 10 minutes or less;
- (E) continue the test for a period of at least one hour;
- (F) make measurements within an accuracy of plus or minus 0.25 of a foot, an inch.



- (2) Bailer Method
  - (A) select a permanent measuring point, such as the top of the casing;
  - (B) measure and record the static water level below or above the measuring point prior to starting the bailing procedure;
  - (C) bail the water out of the well as rapidly as possible for a period of at least one hour; determine and record the bailing rate in gallons per minute at the end of the bailing period;
  - (D) measure and record the water level immediately after stopping bailing process.
- (3) Air Rotary Drill Method
  - (A) measure and record the amount of water being injected into the well during drilling operations;
  - (B) measure and record the discharge rate in gallons per minute at intervals of one hour or less during drilling operations;
  - (C) after completion of the drilling, continue to blow the water out of the well for at least 30 minutes and measure and record the discharge rate in gallons per minute at intervals of 10 minutes or less during the period;
  - (D) measure and record the water level immediately after discharge ceases.
- (4) Air Lift Method
  - (A) Measurements shall be made through a pipe placed in the well;
  - (B) The pipe shall have a minimum inside diameter of at least five-tenths of an inch and shall extend from top of the well head to a point inside the well that is below the bottom of the air line;
  - (C) Measure and record the static water level prior to starting the air compressor;
  - (D) Measure and record the discharge rate at intervals of 10 minutes or less;
  - (E) Measure and record the pumping level using a steel or electric tape at intervals of 10 minutes or less;
  - (F) Continue the test for a period of at least one hour.
- (d) Public, Industrial and Irrigation Wells. Every public, industrial and irrigation well upon completion, shall be tested for capacity by the drilling contractor (except when the owner specifies another agent) by the following or equivalent method:
  - (1) The water level in the well to be pumped and any observation wells shall be measured and recorded prior to starting the test.
  - (2) The well shall be tested by a pump of sufficient size and lift capacity to satisfactorily test the yield of the well, consistent with the well diameter and purpose.
  - (3) The pump shall be equipped with sufficient throttling devices to reduce the discharge rate to approximately 25 percent of the maximum capacity of the pump.
  - (4) The test shall be conducted for a period of at least 24 hours without interruption and shall be continued for a period of at least four hours after the pumping water level stabilizes (ceases to decline). When the total water requirements for wells other than public, community or municipal supply wells are less than 100,000 gpd, the well shall be tested for a period and in a manner to satisfactorily show the capacity of the well, or that the capacity of the well is sufficient to meet the intended purpose.
  - (5) The pump discharge shall be set at a constant rate or rates that can be maintained throughout the testing period. If the well is tested at two or more pumping rates (a step-drawdown test), the pumping water level shall be stabilized for a period of at least four hours for each pumping rate.
  - (6) The pump discharge rate shall be measured by an orifice meter, flowmeter, weir, or equivalent metering device. The metering device shall have an accuracy within plus or minus five percent.
  - (7) The discharge rate of the pump and time shall be measured and recorded at intervals of 10 minutes or less during the first two hours of the pumping period for each pumping rate. If the pumping rate is relatively constant after the first two hours of pumping, discharge measurements and recording may be made at longer time intervals but not to exceed one hour.
  - (8) The water level in each well and time shall be measured and recorded at intervals of five minutes or less during the first hour of pumping and at intervals of 10 minutes or less during the second hour of pumping. After the second hour of pumping, the water level in each well shall be measured at such intervals that the lowering of the pumping water level does not exceed 0.25 of a foot or ~~three inches~~ an inch between measurements.
  - (9) A reference point for water level measurements (preferably the top of the casing) shall be selected and recorded for the pumping well and each observation well to be measured during the test. All water



level measurements shall be made from the selected reference points.

- (10) All water level measurements shall be made with a steel or electric tape or equivalent measuring device.
- (11) All water level measurements shall be made within an accuracy of plus or minus 0.25 of a foot ~~or three inches~~. (three inches).
- (12) After the completion of the pumping period, measurements of the water level recovery rate, in the pumped well, shall be made for a period of at least two hours in the same manner as the drawdown.

*Statutory Authority G.S. 87-87; 87-88.*

**.0111 DISINFECTION OF WATER SUPPLY WELLS**

All water supply wells shall be disinfected upon completion of construction, maintenance, repairs, pump installation and testing as follows:

(1) Chlorination.

- (a) ~~(1)~~ Chlorine shall be placed in the well in sufficient quantities to produce a chlorine residual of at least 100 parts per million (ppm) in the well. A chlorine solution may be prepared by dissolving high test calcium hypochlorite (trade names include HTH, Chlor-Tabs, etc.) in water. About 0.12 percent available chlorine is needed per 100 gallons of water for 100 ppm chlorine residual. As an example, a well having a diameter of six inches, has a volume of about one and five-tenths gallons per foot. If the well has 200 feet of water, the minimum amount of hypochlorite required would be 0.36 lbs. (1.5 x 200 feet = 300 gallons, 0.12 lbs. per 100 gallons, 0.12 x 3 = 0.36 lbs.)
- (b) ~~(2)~~ The chlorine shall be placed in the well by one of the following or equivalent methods:
  - (i) ~~(a)~~ Chlorine tablets may be dropped in the top of the well and allowed to settle to the bottom.
  - (ii) ~~(b)~~ Chlorine solutions shall be placed in the bottom of the well by using a bailer or by pouring the solution through the drill rod, hose, or pipe placed in the bottom of the well. The solution shall be flushed out of the drill rod, hose, or pipe by using water or air.
- (c) ~~(3)~~ Agitate the water in the well to insure thorough dispersion of the chlorine.
- (d) ~~(4)~~ The well casing, pump column and any other equipment above the water level in the well shall be thoroughly rinsed with

the chlorine solution as a part of the disinfecting process.

- (e) ~~(5)~~ The chlorine solution shall stand in the well for a period of at least 24 hours.
- (f) ~~(6)~~ The well shall be pumped until the system is clear of the chlorine before the system is placed in use.
- (7) ~~A sample of the water should be analyzed and found safe for human consumption.~~
- (2) Other materials and methods of disinfection may be used upon prior approval by the Director.

*Statutory Authority G.S. 87-87; 87-88.*

**.0112 WELL MAINTENANCE: REPAIR: GROUNDWATER RESOURCES**

(a) Every well shall be maintained in a condition whereby it will conserve and protect the ~~ground water~~ groundwater resources, and whereby it will not be a source or channel of contamination or pollution to the water supply or any aquifer.

(b) All materials used in the maintenance, replacement, or repair of any well shall meet the requirements for new installation.

(c) Broken, punctured or otherwise defective or unserviceable casing, screens, fixtures, seals, or any part of the well head shall be repaired or replaced, or the well shall be properly abandoned.

(d) National Science Foundation (NSF) approved PVC pipe rated at 160 PSI may be used for liner casing. The annular space around the liner casing shall be at least five-eighths inches and shall be completely filled with neat-cement grout.

*Statutory Authority G.S. 87-87; 87-88.*

**.0113 ABANDONMENT OF WELLS**

(a) Any well which has been abandoned, either temporarily or permanently, shall be abandoned in accordance with one of the following procedures:

- (1) Procedures for temporary abandonment of wells:
  - (A) Upon temporary removal from service or prior to being put into service, the well shall be sealed with a water-tight cap or seal compatible with casing and installed so that it cannot be removed easily by hand.
  - (B) The well shall be maintained whereby it is not a source or channel or contamination during temporary abandonment.
  - (C) Every temporarily abandoned well shall be protected with a casing.

- (2) Procedures for permanent abandonment of wells:
  - (A) All casing and screen materials may be removed prior to initiation of abandonment procedures if such removal will not cause or contribute to contamination of the groundwaters. Any casing not grouted in accordance with Rule .0107 Paragraph (d) of this Section shall be removed or properly grouted.
  - (B) The entire depth of the well shall be sounded before it is sealed to ensure freedom from obstructions that may interfere with sealing operations.
  - (C) The well shall be thoroughly disinfected prior to sealing.
  - (D) In the case of gravel-packed wells in which the casing and screens have not been removed, neat-cement shall be injected into the well completely filling it from the bottom of the casing to the top.
  - (E) "Bored" wells shall be completely filled with cement grout, dry clay or material excavated during drilling of the well and then compacted in place.
  - (F) Wells, other than "bored" wells, constructed in unconsolidated formations ~~other than "bored" wells~~ shall be completely ~~filled~~ filled with cement grout by introducing it through a pipe extending to the bottom of the well which can be raised as the well is filled.
  - (G) Wells constructed in consolidated rock formations or that penetrate zones of consolidated rock may be filled with cement, sand, gravel or drill cuttings opposite the zones of consolidated rock. The top of the sand, gravel or cutting fill shall be at least five feet below the top of the consolidated rock. The remainder of the well shall be filled with cement grout only.
  - (H) Test wells less than 20 feet in depth which do not penetrate the water table shall be abandoned in such manner as to prevent the well from being a channel allowing the vertical movement of water or a source of contamination to the groundwater supply. Test wells or borings that penetrate the water table shall be abandoned by completely filling with cement grout.
- (b) Any well which acts as a source or channel of contamination shall be repaired or permanently abandoned within 30 days ~~or~~ of receipt of notice from the department.
- (c) The drilling contractor shall permanently abandon any well in which the casing has not been installed or from which the casing has been

removed, prior to removing his equipment from the site.

(d) The owner shall be responsible for permanent abandonment of a well except:

- (1) As otherwise specified in these ~~Regulations~~ Rules; or
- (2) If well abandonment is required because the driller improperly locates, constructs, or completes the well.

*Statutory Authority G.S. 87-87; 87-88.*

#### **.0114 DATA AND RECORDS REQUIRED**

##### **(a) Well Cuttings.**

- (1) Samples of formation cuttings shall be collected and furnished to the ~~department~~ Division from all wells when such samples are requested by the ~~department~~ Division.
- (2) Samples or representatives cuttings shall be obtained for depth intervals of 10 feet or less beginning at the land surface. Representative cuttings shall also be collected at depths of each significant change in formation.
- (3) Samples of cuttings shall be placed in containers furnished by the ~~department~~ Division and such containers shall be filled, sealed and properly labeled with indelible-type markers, showing the well owner, well number if applicable, and depth interval the sample represents.
- (4) Each set of samples shall be placed in a suitable container(s) showing the location, owner, well number if applicable, driller, depth interval, and date.
- (5) Samples shall be retained by the driller until delivery instructions are received from the ~~department~~ Division or for a period of at least 60 days after the well record form (GW-1), indicating said samples are available, has been received by the ~~department~~ Division.
- (6) The furnishing of samples to any person or agency other than the ~~department~~ Division shall not constitute compliance with the department's request and shall not relieve the driller of his obligation to the department.

##### **(b) Reports.**

- (1) Any person completing or abandoning any well shall submit to the Division a record of the construction or abandonment. ~~on forms provided by the department. For public water supply wells, a copy of each completion or abandonment record shall also be submitted to the Health Department responsible for the county in which~~

the well is located. The record shall be on forms provided by the Division and shall include certification that construction or abandonment was completed as required by these Regulations, Rules, the owner's name and address, well location, diameter, depth, yield, and any other information the department Division may reasonably require.

- (2) The certified record of completion or abandonment shall be submitted to the department within a period of thirty days after completion or abandonment.
- (3) The furnishing of records to any person or agency other than the Division shall not constitute compliance with the reporting requirement and shall not relieve the driller of his obligation to the Department.

Statutory Authority G.S. 87-87; 87-88.

**.0116 DESIGNATED AREAS: WELLS CASED TO LESS THAN 20 FEET**

(a) In some areas the best or only source of potable water supply exists between ten and twenty feet below the surface of the land. In consideration of this, the Director may designate areas of the state where wells may be ~~case~~ cased to a depth less than twenty feet. To make this determination, the Director will find:

- (1) that the only or best source of drinking water exists between a depth of ten and twenty feet below the surface of the land;
- (2) that utilization of said source of water is in the best interest of the public.
- (b) The following areas are so designated:
  - (1) in Currituck County on Terres Quarter Island and in an area between the sound and a line beginning at the end of SR 1130 near Currituck Sound, thence north to the end of SR 1133, thence north to the end of NC 3 at the intersection with the sound;
  - (2) on the Outer Banks from the northern corporate limit of Nags Head on Bodie Island, south to Ocracoke Inlet;
  - (3) all areas lying between the Intercoastal Waterway and the ocean from New River Inlet south to New Topsail Inlet;
  - (4) all areas lying between the Intercoastal Waterway and the ocean from the Cape Fear River south to the South Carolina line.

(c) In all other areas, the source of water shall be at least 20 feet below land surface, except when adequate quantities of potable water cannot be obtained below a depth of twenty feet,

and at sites not within areas designated in Subparagraph (b) of this Rule the source of water may be obtained from unconsolidated rock formations at depths less than twenty feet provided that:

- (1) the well driller can show to the satisfaction of the ~~department~~ Division, that sufficient water of acceptable quality is not available to a minimum depth of fifty feet; and
- (2) the proposed source of water is the maximum feasible depth above fifty feet, but in no case less than ten feet.
- (3) the regional ~~or central~~ office of the department shall be notified prior to the construction of a well obtaining water from a depth between 10 and 20 feet below land surface.

Statutory Authority G.S. 87-87.

**.0118 VARIANCE**

(a) The Director may grant a variance from any construction standard under the rules of this Section. Any variance will be in writing, and may be granted upon oral or written application to the Director, by the person responsible for the construction of the well for which the variance is sought, if the Director finds facts to support the following conclusions:

- (1) that the use of the well will not endanger human health and welfare or the groundwater;
- (2) that construction in accordance with the standards was not technically feasible in such a manner as to afford a reasonable water supply at a reasonable cost.

(b) The Director may require the variance applicant to submit such information as he deems necessary to make a decision to grant or deny the variance. The Director may impose such conditions on a variance or the use of a well for which a variance is granted as he deems necessary to protect human health and welfare and the groundwater resources. The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

(c) A variance applicant who is dissatisfied with the decision of the Director may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after receipt of the decision.

Statutory Authority G.S. 87-87; 87-88; 150B-23.

**.0119 DELEGATION**

(a) The Director is delegated the authority to grant permission for well construction under G.S. 87-87.



(b) The Director is delegated the authority to give notices and sign orders for violations under G.S. 87-91.

(c) The Director is delegated the authority to request the Attorney General to institute civil actions under G.S. 87-95.

(d) The Director is authorized to subdelegate, to an official of the Division, the granting of a variance from any construction standard, or the approval of alternate construction methods or materials, specified under the Rules of this Section.

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

## SUBCHAPTER 2L - GROUNDWATER CLASSIFICATION AND STANDARDS

### SECTION .0100 - GENERAL CONSIDERATIONS

#### .0107 COMPLIANCE BOUNDARY

(a) For disposal systems permitted prior to December 30, 1983, the compliance boundary is established at a horizontal distance of 500 feet from the waste boundary or at the property boundary, whichever is closer to the source.

(b) For disposal systems permitted on or after December 30, 1983, a compliance boundary shall be established 250 feet from the waste boundary, or 50 feet within the property boundary, whichever point is closer to the source.

(c) The boundary shall be established by the Director at the time of permit issuance. Any sale or transfer of property which affects a compliance boundary shall be reported immediately to the Director. ~~and the compliance boundary re-established accordingly.~~ For disposal systems which are not governed by Paragraphs (c) or (f) of this Rule, the compliance boundary affected by the sale or transfer of property will be re-established consistent with Paragraphs (a) or (b) of this Rule, whichever is applicable.

(d) For disposal systems permitted or re-permitted after January 1, 1993, no water supply wells shall be constructed or operated within the compliance boundary.

(e) For disposal systems permitted or re-permitted after January 1, 1993, a permittee shall not transfer land within an established compliance boundary unless:

(1) the land transferred is serviced by a community water system as defined in 15A NCAC 18C, the source of which is located outside the compliance boundary; and

(2) the deed transferring the property:

(A) contains notice of the permit, including the permit number, a description of the

type of permit, and the name, address and telephone number of the permitting agency; and

(B) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which prohibits the construction and operation of water supply wells within the compliance boundary; and

(C) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which grants the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes.

(f) If at the time a permit is issued or reissued after January 1, 1993, the permittee is not owner of the land within the compliance boundary, it shall be a condition of the permit issued or renewed that the landowner of the land within the compliance boundary other than the permittee execute and file in the Register of Deeds in the county in which the land is located, an easement running with the land which:

(1) contains:

(A) either a notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; or

(B) a reference to a notice of the permit with book and page number of its recordation if such notice is required to be filed by statute;

(2) prohibits the construction and operation of water supply wells within the compliance boundary; and

(3) reserves the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes.

(g) ~~(d)~~ The boundary shall form a vertical plane extending from the water table to the maximum depth of saturation.

(h) ~~(e)~~ For ground absorption sewage treatment and disposal systems which are permitted under 40 NCAC 10A .1000, 15A NCAC 18A .1900, the compliance boundary shall be established at the property boundary.

(i) ~~(f)~~ Penalties authorized pursuant to G.S. 143-215.6(a)(1)a. will not be assessed for violations of water quality standards within a compliance boundary unless the result of violations of permit conditions or negligence in the management of the facility.

(j) ~~(g)~~ The Director shall require:

- (1) that permits for all activities governed by G.S. 143-215.1 be written to protect the quality of groundwater established by applicable standards, at the compliance boundary;
- (2) that recommendations be made to ensure compliance with the applicable level of standards at the compliance boundary on all permit applications received for review from other state agencies;
- (3) that necessary groundwater quality monitoring shall be conducted within the compliance boundary; and
- (4) that a contravention of standards within the compliance boundary resulting from activities conducted by the permitted facility be remedied through clean-up, recovery, containment, or other response when any of the following conditions occur:
  - (A) a violation of any standard in adjoining classified waters occurs or can be reasonably predicted to occur considering hydrogeologic conditions, modeling, or other available evidence;
  - (B) an imminent hazard or threat to the public health or safety exists or can be predicted; or
  - (C) a violation of any standard in groundwater occurring in the bedrock other than limestones found in the Coastal Plain sediments.

Statutory Authority G.S. 143-215.1 (b); 143-215.3 (a) (1); 143B-282.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt rules cited as 15A NCAC 2D .1301 - .1305.*

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

*The public hearing will be conducted at 7:00 p.m. on May 18, 1992 at the County Courthouse Annex, County Commission Boardroom, 124 West Elm Street, Graham, North Carolina.*

*Reason for Proposed Action: To adopt an oxygenated gasoline standard as required by the 1990 Clean Air Act amendments.*

*Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing officer may limit oral presentation lengths to five minutes if many people want to speak. The record of proceedings will remain open until May 31, 1992, to receive additional written statements. To be included, the statement must be received by the Department by May 31, 1992.*

*Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:*

Mr. Thomas C. Allen  
Division of Environmental Management  
P.O. Box 29535  
Raleigh, North Carolina 27626-0535  
(919) 733-3340

*Fiscal Note: This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on March 5, 1992, OSBM on March 5, 1992, N.C. League of Municipalities on March 5, 1992, and N.C. Association of County Commissioners on March 5, 1992.*

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .1300 - OXYGENATED GASOLINE STANDARD

##### .1301 PURPOSE

This Section sets forth oxygenated gasoline standards in areas where an oxygenated gasoline program is implemented pursuant to State law for all gasoline sold wholesale for use or for all gasoline sold retail, offered for use, dispensed, or otherwise provided for use in any spark-ignition engine other than aircraft in the areas defined in Rule .1302(a) of this Section during the time periods defined in Rule .1302(b) of this Section.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3), (7).

##### .1302 APPLICABILITY

(a) This Section applies to gasoline identified in Rule .1301 of this Section during the time pe-



riod described in Paragraph (b) of this Rule in the two areas identified as follows:

- (1) the Raleigh Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties; and
- (2) the Greensboro/Winston-Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties.

(b) This Section applies to gasoline identified in Rule .1301 of this Section and in the counties identified in Paragraph (a) of this Rule for the four-month period beginning November 1 and running through the last day of February of the following year. The first such period begins November 1, 1992.

(c) Gasoline in storage within the counties identified in Paragraph (a) of this Rule prior to November 1 at a dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempted from Rule .1304 of this Section, but any gasoline supplied to the facility during the period identified in Paragraph (b) of this Rule shall comply with Rule .1304 of this Section.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3), (7).

### .1303 DEFINITIONS

For the purpose of this Section, "oxygenated gasoline" means any gasoline which contains a substance or substances to raise the oxygen content of the gasoline to conform with Rule .1304 of this Section.

Statutory Authority G.S. 143-213; 143-215.3 (a) (1); 143-215.108 (c) (7).

### .1304 OXYGEN CONTENT STANDARD

Gasoline to which this Section applies shall have an oxygen content of not less than 2.7 percent by weight during the period defined in Paragraph (b) of Rule .1302 of this Section.

Statutory Authority G.S. 143-215.3 (a) (1); 143-215.107 (a) (3), (7).

### .1305 MEASUREMENT AND ENFORCEMENT

(a) Gasoline samples shall be taken and handled by methods approved by the Gasoline and Oil Inspection Board.

(b) Gasoline samples shall be analyzed by the American Society for Testing and Materials (ASTM) standard test method, designation D

4815-89 or by other methods approved by the Gasoline and Oil Inspection Board.

(c) Enforcement shall be in accordance with procedures adopted by the Gasoline and Oil Inspection Board.

(d) The ASTM test method cited in this Rule is hereby incorporated by reference including any subsequent amendments and editions. A copy of the ASTM test method can be obtained from the Air Quality Section, Division of Environmental Management, P.O. Box 29525, Raleigh, North Carolina 27626, at no cost.

Statutory Authority G.S. 119-26; 143-215.3 (a) (1); 143-215.107 (a) (7); 150B-21.6.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Environment, Health, and Natural Resources intends to adopt rule(s) cited as 15A NCAC 2G .0601 - .0602 with changes from the proposed text noticed in the Register, Volume 6, Issue 18, pages 1316-1317.*

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

*Reason for Proposed Actions: Changes made following the 1/10/92 hearing altered the format of the proposed rules, but not their essence. Plants proposed for listing on the Noxious Aquatic Weed List remain essentially the same. Notification of these proposed rules will be broadly disseminated.*

*Comment Procedures: Interested persons may present written statements between May 1, 1992 and May 31, 1992. All such statements must be delivered or mailed to Dr. David J. DeMont, EHNR-Water Resources, P.O. Box 27687, Raleigh, NC 27611.*

## CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

### SUBCHAPTER 2G - WATER RESOURCES PROGRAMS

#### SECTION .0600 - AQUATIC WEED CONTROL

##### .0601 THE AQUATIC WEED CONTROL ACT

The North Carolina Aquatic Weed Control Act of 1991 empowers the State of North Carolina to control, eradicate, and regulate plants designated as noxious aquatic weeds. Unless specific exemptions are granted, the Aquatic Weed Con-



trol Act and the existing powers of the Commissioner of Agriculture prohibit importation, sale, use, culture, collection, transportation, and distribution of these plants in North Carolina. Permits for the movement of noxious aquatic weeds may be obtained from the Commissioner of Agriculture pursuant to 2 NCAC 48A .1705 and .1706, subject to the conditions stated therein.

Statutory Authority G.S. 113A-222; 113A-223; 113A-224.

**.0602 NOXIOUS AQUATIC WEED LIST**

The Secretary of the Department of Environment, Health, and Natural Resources has determined that the following aquatic plants exhibit characteristics which threaten or may threaten the health or safety of the people of North Carolina or beneficial uses of the waters of North Carolina:

(1) Aquatic species listed on the Federal Noxious Weed List. The Secretary of the Department of Environment, Health, and Natural Resources hereby incorporates by reference, including subsequent amendments and editions of the referenced materials, all aquatic species listed in 7 C.F.R. §360.200. A current list of the aquatic species on the Federal Noxious Weed List is available, free of charge, from the Aquatic Weed Control Program, Department of Environment, Health, and Natural Resources, Division of Water Resources, P.O. Box 27687, Raleigh, NC 27611. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twelve dollars (\$12.00).

(2) Additional Noxious Aquatic Weeds:  
*Crassula helmsii* - Swamp stonecrop  
*Lagarosiphon* spp. (All species) - African elodea  
*Salvinia* spp. (All except *S. rotundifolia*) - Water fern  
*Trapa* spp. (All species) - Water-chestnut  
*Ludwigia uruguayensis* (Camb.) Hara - Uruguay waterprimrose  
*Lythrum salicaria* L. - Purple loosestrife  
*Phragmites australis* (Cav.) Trin. ex Steud. - Common reed  
*Alternanthera philoxeroides* (Mart.) Griseb - Alligatorweed  
*Egeria densa* Planch. - Brazilian elodea  
*Myriophyllum spicatum* L. - Eurasian watermilfoil  
*Najas minor* All. - Brittleleaf naiad

Statutory Authority G.S. 113A-222.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Coastal Management intends to amend rule(s) cited as 15A NCAC 7H .0208, .0302 - .0303, .0306; 7J .0601 - .0603, .0605; and adopt rule(s) cited as 15A NCAC 7J .0604; 7M .1101 - .1102.*

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

*The public hearing will be conducted at 4:00 p.m. on May 28, 1992 at the Beaufort County Community College, Learning Resources Center, U.S. 264 East, Washington, N.C.*

**Reasons for Proposed Actions:**

**15A NCAC 7H .0208, .0302 - .0303, .0306 - To clarify and remove confusion and inconsistencies among CRC Rules.**

**15A NCAC 7J .0601 - .0605 - Consists of proposed guidelines for federal agencies requesting a Declaratory Ruling (interpretation) of a CRC Rule or policy as they apply to a publicly funded project.**

**15A NCAC 7M .1101 - .1102 - Will be a policy to encourage the beneficial disposal of dredge material so that the sand is not removed from the active coastal system.**

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than June 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.

**Editor's Note:** Pursuant to G.S. 150B-21.20(5) the agency is requesting that the current rule codified as 15A NCAC 7J .0604 be recodified to 15A NCAC 7J .0605 entitled: *Petitions for Rulemaking, with the proposed amendments.* The agency wishes to adopt a rule codified as 15A NCAC 7J .0604 entitled: *Federal Activities.*

*This recodification provides a clear and orderly arrangement of rules concerning declaratory rulings.*

## 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. 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 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 and public trust waters 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 and public trust waters 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, 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 development 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 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 for every one lin. ft. of shoreline adjacent to these public trust waters 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 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~~ Rule;
  - (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~~ rules 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.*

#### SECTION .0300 - OCEAN HAZARD AREAS

##### .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. ~~Hazard~~ Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents

hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them. The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

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

##### .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of ~~shoreline~~ structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately ~~sited~~ cited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

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

##### .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in these Rules



shall be located according to whichever of the following rules is applicable.

- (1) If neither a primary nor frontal dune exists in the AEC on or behind the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than 2 feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.
- (2) If a primary dune exists in the AEC on or behind the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable. For existing lots, however, where setting the development behind the crest of the primary dune would preclude any practical use of the lot, development may be located seaward of the primary dune. In such cases, the development shall be located behind the long-term erosion setback line and shall not be located on or in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or behind the lot on which the development is proposed, the development shall be set behind the frontal dune or behind the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable.
- (4) Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such

as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback behind the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliminiums) of more than 4 units or 5,000 square feet total floor area, and for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in .0306(a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long-term annual erosion rate plus 105 feet.

- (5) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development will be permitted that involves the significant removal or relocation of primary or frontal dune sand or vegetation thereon. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes shall be allowed only to the extent allowed by Rule .0308(b).

(c) In order to avoid excessive public expenditures for maintaining public safety, construction or placement of growth-inducing public facilities to be supported by public funds will be permitted in the ocean hazard area only when such facilities:

- (1) clearly exhibit overriding factors of national or state interest and public benefit,
- (2) will not increase existing hazards or damage natural buffers,
- (3) will be reasonably safe from flood and erosion related damage,
- (4) will not promote growth and development in ocean hazard areas.

Such facilities include, but are not limited to, sewers, waterlines, roads, and bridges. ~~and erosion control structures.~~



(d) Development shall not cause major or irreversible damage to valuable documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other reliable sources.

(e) Development shall be consistent with minimum lot size and set back requirements established by local regulations.

(f) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(g) Development shall be consistent with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.

(h) Development shall not create undue interference with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(i) Development proposals shall incorporate all reasonable means and methods to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that will:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(j) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgement from the applicant that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(k) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located seaward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(l) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration. The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened,

and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule .0308(a)(2) of this Section.

*Statutory Authority G.S. 113A-107; 113A-113 (b) (6); 113A-124.*

**SUBCHAPTER 7J - PROCEDURES FOR  
HANDLING MAJOR DEVELOPMENT  
PERMITS: VARIANCE REQUESTS: APPEALS  
FROM MINOR DEVELOPMENT PERMIT  
DECISIONS: AND DECLARATORY RULINGS**

**SECTION .0600 - DECLARATORY RULINGS  
AND PETITIONS FOR RULEMAKING**

**.0601 DECLARATORY RULINGS: GENERALLY**

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Coastal Resources Commission may issue a declaratory ruling as provided in G.S. 150B-17. G.S. 150B-4.

*Statutory Authority G.S. 113A-124; 150B-4.*

**.0602 PROCEDURE FOR REQUESTING  
DECLARATORY RULINGS**

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department of Environment, Health, and Natural Resources (DEHNR), P.O. Box 27687, Raleigh, North Carolina 27611-7687 and also the Attorney General's Office, Environmental Protection Section, P.O. Box 27629, 629, Raleigh, North Carolina 27602-7629, 27602-0629. All requests shall include the following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that is the subject of the declaratory ruling.

(b) A request for a ruling on the applicability of a rule, order, or statute must include a description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a commission rule must express state the interested person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request.

A request for a ruling must include or be accompanied by:

- (1) a statement of facts proposed for adoption by the Commission; and
- (2) a draft of the proposed ruling.

*Statutory Authority G.S. 113A-124; 150B-4.*

**.0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS**

(a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall prepare a recommendation for the Chairman ~~of the Coastal Resources Commission~~ as to whether the Commission should consent to issue a ruling or whether for good cause ~~a ruling would be undesirable.~~ the request for a declaratory ruling should be denied. The Chairman shall ~~decide whether a ruling will be issued.~~ Declaratory rulings shall be based only on stipulated, undisputed facts. A determination that the requesting party, any other directly affected persons, and the Division of Coastal Management cannot agree on a set of undisputed facts sufficient to support a meaningful ruling shall be considered good cause for not issuing a ruling. deny a request for declaratory ruling on finding that:

- (1) the requesting party, any other directly affected persons, and the Division of Coastal Management cannot agree on a set of undisputed facts sufficient to support a meaningful ruling;
- (2) the matter is the subject of a pending contested case hearing; or
- (3) no genuine controversy exists as to the application of a statute or rule to a proposed project or activity.

(b) After consenting to issue a ruling, the Commission shall ~~decide whether a hearing should be held and, if so, how the hearing shall be conducted.~~ Hearings will be held only for rulings concerning unusually complex matters: place the declaratory ruling on the agenda for its next regularly scheduled meeting.

~~(1) If a hearing is to be held, The Commission shall provide notice of the declaratory ruling proceeding to the requesting party, the adjacent property owners and other persons to whom the Commission decides to give notice shall be notified of the hearing and of the procedure to be~~

~~followed~~ no less than 10 days before the date for which the hearing declaratory ruling is set.

~~(2) If no hearing is to be held,~~ The requesting party and other persons to whom the Commission decides to give notice ~~shall be informed and shall be given adequate time allowed to submit written comments concerning the matter on which the ruling is to be made.~~ proposed declaratory ruling.

(c) If a ruling is to be issued, the ~~Commission~~ Chairman shall decide ~~at that time~~ whether notice should be given to persons other than the party requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider such factors as: whether additional public participation would aid the Commission in reaching a decision; whether any persons have requested in writing to be ~~allowed to participate in the ruling;~~ notified of proposed declaratory rulings; whether the property or personal rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would affect the application and interpretation of a rule in which other persons might be interested. All persons receiving notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.

(d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.

~~(e) (4)~~ The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:

- (1) the petition request for a ruling;
- (2) any written comments by interested parties;
- (3) the statement of undisputed facts on which the ruling was based;
- (4) ~~(3)~~ any transcripts of oral proceedings, or, at least in the absence of a transcript, a summary of all arguments;



(5) ~~(4)~~ any other matter considered by the agency Commission in making the decision; and

(6) ~~(5)~~ the decision declaratory ruling together with the reasons therefor.

(f) ~~(e)~~ A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.

(g) ~~(f)~~ A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. ~~Failure~~ Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

*Statutory Authority G.S. 113A-124; 150B-4.*

#### **.0604 FEDERAL ACTIVITIES**

(a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.

(b) The request for ruling shall include:

(1) a statement identifying the rule, statute or order at issue;

(2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of property adjacent to the property on which the proposed federal activity will take place;

(3) a statement of facts proposed for adoption by the Commission and any documentary evidence supporting the proposed statement of facts;

(4) a draft of the proposed ruling;

(5) a statement indicating that the Division of Coastal Management has preliminarily determined that the project may be inconsistent with a coastal management statute or regulation; and

(6) a statement identifying the factual issues in dispute between the Department and the federal agency.

(c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent

property owners and to persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling. Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.

(d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission. Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

*Statutory Authority G.S. 113A-124; 150B-4.*

#### **~~.0604~~ .0605 PETITIONS FOR RULEMAKING**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to ~~G.S. 150B-16~~ G.S. 150B-20 and shall contain the following information:

(1) either a draft of the proposed rule or a summary of its contents;

(2) a statement of reasons for adoption of the proposed rule(s);

(3) a statement of the effect on existing rules or orders;

(4) any data in support of the proposed rule(s);

(5) a statement of the effect of the proposed rule on existing practices; and

(6) the name and address of the petitioner.

(b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the Commission's consideration. Petitions will be considered in accordance with the requirements of ~~G.S. 150B-16~~ G.S. 150B-20.

*Statutory Authority G.S. 113A-124; 150B-20.*

#### **SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA**

#### **SECTION .1100 - POLICIES ON BENEFICIAL USE AND AVAILABILITY OF MATERIALS RESULTING FROM THE EXCAVATION OR**



MAINTENANCE OF NAVIGATIONAL CHANNELS

.1101 DECLARATION OF GENERAL POLICY

Certain dredged material disposal practices may result in removal of material important to the sediment budget of ocean and inlet beaches. This may, particularly over time, adversely impact important natural beach functions especially during storm events and may increase long term erosion rates. Ongoing channel maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal sites as existing sites fill. This is a financially and environmentally costly undertaking. In addition, new sites for disposal are increasingly harder to find because of competition from development interests for suitable sites. Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of navigation channels be used in a beneficial way wherever practicable.

*Statutory Authority G.S. 113A-107.*

.1102 POLICY STATEMENTS

(a) Clean, beach quality material dredged from navigation channels within the active nearshore, beach, or inlet shoal systems must not be removed permanently from the active nearshore, beach or inlet shoal system unless no practicable alternative exists. Preferably, this dredged material will be disposed of on the ocean beach or shallow active nearshore area where environmentally acceptable and compatible with other uses of the beach.

(b) Research on the beneficial use of dredged material, particularly poorly sorted or fine grained materials, and on innovative ways to dispose of this material so that it is more readily accessible for beneficial use is encouraged.

(c) Material in disposal sites not privately owned should be available to anyone proposing a beneficial use not inconsistent with Paragraph (a) of this Rule.

(d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is in the public interest and should be encouraged at every opportunity.

*Statutory Authority G.S. 113A-107.*

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources, NCWTFB Board*

*of Certification intends to amend rule(s) cited as 15A NCAC 18D .0105, .0201, .0203, .0205, .0301, .0304, .0403 and adopt rule(s) cited as 15A NCAC 18D .0307.*

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

*The public hearing will be conducted at 9:00 a.m. on June 9, 1992 at the Jane S. McKimmon Center, NC State University, Western Boulevard, Raleigh, N.C.*

*Reasons for Proposed Actions: To establish distribution system classification and personnel certification grades. To provide for a longer application review period. To improve criteria for the revocation and reinstatement of certification. To provide conditions for issuing well certifications to persons holding surface certifications.*

*Comment Procedures: Any person requiring information may contact Mr. John C. McFadyen, P.O. Box 27687, Raleigh, North Carolina 27611-7687. Telephone (919) 733-0379. Written comments may be submitted to the above address no later than June 1, 1992. Notice of an oral presentation must be given to the above address at least three days prior to the public hearing.*

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18D - WATER TREATMENT FACILITY OPERATORS

SECTION .0100 - GENERAL POLICIES

.0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

- (1) "Acceptable Experience" means the active, daily, on-site performance of operational duties, including water facility laboratory duties, at a water treatment facility; a minimum of 50 percent of the experience requirement must consist of these duties. This 50 percent minimum experience may be 50 percent on-site duties for 100 percent of the time period requirements or 100 percent on-site duties for 50 percent of the time period requirements. The other 50 percent may be in related fields such as wastewater facility operation, wastewater laboratory, water pumping stations, or water system design and engineering. The experience of Division of Environmental Health, Public Water Supply Section personnel may be acceptable if their job duties include inspection

or on-site technical assistance of water treatment facilities which is sufficient to meet the 50 percent minimum.

- (2) "Board" means the Water Treatment Facility Operators Board of Certification.
- (3) "Certified Operator" means any holder of a certificate issued by the Board in accordance with the provisions of G.S. 90A-20 to -29.
- (4) "College Graduate" means a graduate of an accredited four-year institution awarding degrees on the bachelor level.
- (5) "Licensee" means any person who holds a current certificate issued by the water treatment facility operators board of certification.
- (6) "Owner" shall mean person, political subdivision, firm, corporation, association, partnership or non-profit corporation formed to operate a public water supply facility.
- (7) "Political Subdivision" means any city, town, county, sanitary district, or other governmental agency or privately owned public water supply operating a water treatment facility.
- (8) "Operator in responsible charge" means a person designated by the owner of the water treatment facility to be responsible for the total operation and maintenance of the facility. The operator in responsible charge must possess a valid certificate issued by the Board equivalent to or exceeding the classification of the facility for which he or she is designated. The operator in responsible charge is actually in charge of the daily operation and maintenance of the treatment facility and shall reside within 50 miles of the facility and shall be readily available for consultation on the premises of the facility in case of an emergency, malfunction or breakdown of equipment or other needs. No person shall be in responsible charge of more than one surface water facility or five well water facilities without written permission from the Board. A request for permission shall include documentation that the facilities in question can be managed in compliance with the requirements of 15A NCAC 18C. An owner may designate a different person to be the operator in responsible charge for surface water treatment facilities, well water facilities, and distribution facilities.
- (9) "Secretary" shall mean the Secretary of the Department of Environment, Health, and Natural Resources.

(10) "Water Treatment Facilities" means any facilities for public water supplies including source of supply, treatment, storage, pumping or distribution of water for human consumption.

(11) "Service Connection" means a water tap made to provide a water connection to the water distribution system.

(12) "Fire Protection System" means dry or wet sprinkler systems or fire hydrant connection to the water distribution system.

Statutory Authority G.S. 90A-21(c).

## SECTION .0200 - QUALIFICATION OF APPLICANTS AND CLASSIFICATION OF FACILITIES

### .0201 GRADES OF CERTIFICATION

Applicants for the various grades of certification shall meet the following educational and experience requirements:

- (1) GRADE A-SURFACE shall have one year acceptable experience at a surface water facility while holding a Grade B-Surface certificate and have satisfactorily completed an approved A-Surface school.
- (2) GRADE B-SURFACE shall:
  - (a) Be a college graduate with a ~~bachelor of science~~ bachelors degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a surface water facility, or
  - (b) Have one year of acceptable experience at a surface water facility while holding a Grade C-Surface certificate and have satisfactorily completed an approved B-Surface school.
- (3) GRADE C-SURFACE shall:
  - (a) Be a college graduate with a ~~bachelor of science~~ bachelors degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a surface water facility, or
  - (b) Be a high school graduate or equivalent, have six months acceptable experience at a surface water facility and have satisfactorily completed an approved C-Surface school.
- (4) GRADE A-WELL shall have one year of acceptable experience at a well water facility while holding a Grade B-Well certificate and have satisfactorily completed an approved A-Well school.

(5) GRADE B-WELL shall:

- (a) Be a college graduate with a bachelor of science bachelors degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a well water facility, or
- (b) Have one year of acceptable experience at a well water facility while holding a Grade C-Well certificate and have satisfactorily completed an approved B-Well school.

(6) GRADE C-WELL shall:

- (a) Be a college graduate with a bachelor of science bachelors degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a well water facility, or
- (b) Have six months of acceptable experience at a well water facility and have satisfactorily completed an approved C-Well school.

(7) GRADE A-DISTRIBUTION shall have one year of acceptable experience at Grade B or higher distribution system while holding a Grade B-Distribution certificate and have satisfactorily completed an approved A-Distribution school, and hold current cardiopulmonary resuscitation certificate.

(8) GRADE B-DISTRIBUTION shall:

- (a) Be a college graduate with a bachelors degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six

months of acceptable experience at a Grade B or higher distribution system, or

- (b) Have one year of acceptable experience at a Grade C or higher distribution system while holding a Grade C-Distribution certificate and have satisfactorily completed an approved B-Distribution school, and

- (c) Provide certification that the applicant has satisfactorily made a wet tap on a water main under pressure, made a hydrostatic pressure test on a segment of water main, disassembled and assembled a gate valve, replaced a main valve within a fire hydrant, and disinfected and sampled a water main.

(9) GRADE C-DISTRIBUTION shall:

- (a) Be a college graduate with a bachelors degree in the physical or natural sciences, or be a graduate of a two year technical program with a diploma in water and wastewater technology, and have six months of acceptable experience at a Grade C or higher distribution system, or
- (b) Be a high school graduate or equivalent, have six months acceptable experience at a Grade C or higher distribution system and have satisfactorily completed an approved C-Distribution school, or
- (c) Have one year of acceptable experience at a Grade C or higher distribution system and have satisfactorily completed an approved C-Distribution school, and
- (d) Hold a certificate of completion of approved trench shoring training.

Statutory Authority G.S. 90A-21(c); 90A-22; 90A-23.

.0203 DETERMINATION OF VARIOUS CLASSES OF CERTIFICATION

(a) Determination of various classes of certification shall be based on the classification of water treatment facilities to be operated.

(b) The designation of plant classification shall be based on the following point system:

PARAMETER	RATING VALUE	POINTS
(1) Surface Water Source		
(A) flowing stream	5	
(B) flowing stream with impoundment	7	
(C) raw water treatment (CuSO <sub>4</sub> , etc.)	3	
(2) Ground Water Source		
(A) first five wells	5	
(B) add 1 point per 5 wells or fraction thereof over 5	1	
(3) Coagulation		
(A) aluminum sulfate, ferric chloride, etc.	10	
(B) polymer	5	
(4) Mixing		
(A) baffle	2	
(B) mechanical	4	
(C) air	3	



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**PROPOSED RULES**

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(5) Oxidation (pre-treatment)	
(A) $\text{Cl}_2 \text{O}_2$ ;	5
(B) ozone	5
(C) $\text{KMnO}_4$ ;	3
(D) $\text{Cl}_2$ ;	3
(6) Carbon Treatment	2
(7) Aeration	
(A) mechanical draft	3
(B) coke tray/splash tray	2
(C) diffused	3
(D) packed tower (VOC reduction)	10
(8) pH Adjustment (primary)	
(A) NaOH	5
(B) lime/soda ash	3
(C) acid ( $\text{H}_2 \text{SO}_4$ , $\text{HCl}$ , etc.)	5
(9) Sedimentation	
(A) standard rate	5
(B) tube settlers	3
(C) upflow	8
(D) pulsators and plates, etc.	5
(10) Contact Tank	1
(11) Filtration	
(A) pressure	
(i) sand/anthracite	8
(ii) synthetic media (birm)	8
(iii) granular activated carbon (GAC)	10
(B) gravity	
(i) sand	10
(ii) anthracite (mixed)/GAC	12
(iii) with surface wash or air scour	2
(12) Ion Exchange	
(A) softener, Na cycle	5
(B) softener, H cycle	7
(C) Fe and Mn (greensand)	10
(D) mixed bed or split stream	12
(13) Lime Softening	
(A) spiractors	10
(B) clarifier with coagulation	12
(C) fuel burner (recarbonation)	5
(14) Phosphate (sequestering agent)	5
(15) Stabilization	
(A) acid feed	5
(B) phosphate	2
(C) caustic (NaOH)	5
(D) lime/soda ash	3
(E) contact units (calcifier, etc.)	5
(16) Reverse Osmosis, Electrodialysis	15
(17) Disinfection	
(A) gas $\text{Cl}_2$ ;	10
(B) hypochlorite solution	7
(C) $\text{Cl}_2 \text{O}_2$ (sodium chlorite and $\text{Cl}_2$ )	13
(D) ozone	13
(E) ammonia and $\text{Cl}_2$ ;	12
(18) Fluoridation	
(A) saturator	8
(B) dry feed	8
(C) solution (acid)	10
(19) Pumping	

## PROPOSED RULES

(A) raw	3
(B) intermediate	1
(C) finished	3
(D) system booster	2
(20) Storage	
(A) raw	1
(B) treated ground level tank	1
(C) elevated in system (each extra tank 1 pt)	2
(D) hydropneumatic	2
(21) Population Served 1 point per 1,000 persons served	50 max.
(22) Plant Capacity 1 point per 1 MGD capacity	25 max.
(23) On-Site Quality Control	
(A) bacteriological	
(i) MPN/MF	5
(ii) HPC	2
(iii) MMO-MUG (Colilert)	2
(B) pH	
(i) meter	2
(ii) test kit	1
(C) fluoride	
(i) meter	3
(ii) colorimetric	3
(D) chlorine	
(i) titrator	3
(ii) colorimeter/spec.	2
(iii) test kit	1
(E) iron	1
(F) hardness	1
(G) alkalinity	1
(H) turbidity	1
(I) manganese	1
(J) others (1 pt. each)	1
(K) A.A. Spec, or G.C. Unit	5 each

(c) The designation of distribution system classifications shall be based on system characteristics as outlined in Rule .0205 of this Section.

*Statutory Authority G.S. 90A-21(c); 90A-22.*

### **.0205 CLASSIFICATIONS OF WATER TREATMENT FACILITIES**

(a) Treatment plant classification shall ~~Classification of water treatment facilities will~~ be based on the source of water and the number of points assigned each facility as taken from the table in Rule .0203(b) of this Section. Classifications are as follows:

Class C	0 - 50 points
Class B	51 - 110 points
Class A	over 110 points

(b) The classification of distribution systems shall be the same as the current plant classification for systems directly associated with a classified surface water plant or well system as determined by Paragraph (b) of Rule .0203 of this Section.

(1) For systems not directly associated with a classified surface water plant or well system the designation of distribution systems shall be based on the following system characteristics:

(A) Class C-DISTRIBUTION shall be any system with greater than 100 service connections but less than 1,001 service connections, with no fire protection system;

(B) Class B-DISTRIBUTION shall be any system with greater than 1,000 service connections but less than 3,301 service connections or any system less than 1001 service connections, with a fire protection system; and

(C) Class A-DISTRIBUTION shall be any system with greater than 3,300 service connections.

(2) Class CROSS-CONNECTION-CONTROL shall be any distribution system with requirement for five or more backflow prevention devices to be installed within the water distribution system.

Statutory Authority G.S. 90A-21(c); 90A-22.

SECTION .0300 - APPLICATIONS AND FEES

.0301 APPLICATION FOR EXAM

(a) All applicants for regular exams shall file an application on a form available from: Chairman, N.C. Water Treatment Facility Operators Certification Board, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

(b) Applications for certification must be submitted to the Board at least ~~two weeks~~ 30 days prior to the date of the examination.

(c) The application shall include, at least the following information:

- (1) biographical data,
- (2) place of employment,
- (3) education,
- (4) work experience, and
- (5) date and location of exam.

(d) The applicant shall certify that the information given is correct to the best of ~~his~~ his/her knowledge. In addition, the applicant's supervisor shall certify that ~~he~~ he/she has reviewed the application and recommends that the applicant be considered for certification by the Board.

(e) Applicants are required to take the examination at the place and date specified on the application.

Statutory Authority G.S. 90A-21(c); 90A-24.

.0304 FEE SCHEDULE

(a) The cost of examination and certification shall be twenty dollars (\$20.00).

(b) The cost of a temporary certificate shall be eighteen dollars (\$18.00) for a new certificate.

(c) The examination and certification fee must be paid to the Board when the application is submitted.

(d) The cost of the annual certification renewal shall be eighteen dollars (\$18.00). Renewal fees shall be payable the first of each calendar year and shall be delinquent on the first day of February if not paid prior to that date. Delinquent certifications shall be charged an additional fee of thirty dollars (\$30.00) on the first day of February of each year.

(e) The operator shall keep the Board informed of his/her current mailing address.

Statutory Authority G.S. 90A-27.

.0307 REVOCATION OF CERTIFICATE

If an operator fails to renew his certificate and allows it to lapse five years, his/her certificate shall be revoked.

Statutory Authority G.S. 90A-25.1; 90A-26.

SECTION .0400 - ISSUANCE OF CERTIFICATE

.0403 ISSUANCE OF GRADE CERTIFICATE

(a) When the names of the operators and the grade of their current voluntary certificate are known, the Board shall notify ~~the town officials~~ and the operator involved and upon payment of the license fee issue a grade certificate corresponding to the grade of certification now held by the operator.

(b) To obtain a certificate the applicant shall satisfactorily complete an examination except in the case of a temporary certificate or when certification is by reciprocity, or when the certificate is being issued to the holder of a current voluntary certificate pursuant to Paragraph (a) of this Rule.

(c) Any operator holding a valid surface certification may petition the Board, and the Board may reinstate a revoked, lapsed, or suspended well certification if the grade of the surface certification is equal to or higher than the grade of the well certification.

(d) Any operator holding a valid surface certification issued prior to June 30, 1989 may petition the Board, and the Board may issue an equivalent well certification without examination if the operator has the well facility acceptable experience required for certification and satisfactorily completes an approved equivalent well school. The Board shall not issue equivalent well certification after January 1, 1996.

Statutory Authority G.S. 90A-21(c); 90A-23; 90A-25.

TITLE 19A - DEPARTMENT OF  
TRANSPORTATION

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation intends to amend rule(s) cited as 19A NCAC 2B .0165.*

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

*Instructions on how to demand a public hearing: A demand for a public hearing must be made in writing and mailed to the Department of Transportation, c/o A.D. Allison, II, P.O. Box 25201,*



Raleigh, N.C. 27611. The demand must be received within 15 days of this Notice. A copy of the fiscal note prepared for this proposed amendment can be obtained from the Department of Transportation.

**Reason for Proposed Action:** The amendment is needed to enable the Department to contract with private firms to perform asbestos inspections and abatements necessary for the clearing of structures on highway right of way.

**Comment Procedures:** Any interested person may submit written comments on the proposed rule by mailing the comments to the Department of Transportation, c/o A.D. Allison, II, P.O. Box 25201, Raleigh, N.C. 27611, within 30 days after the proposed rule is published or until the date of any public hearing held on the proposed rule, whichever is longer.

**Editor's Note:** This Rule has been filed as a temporary amendment effective May 4, 1992 for a period of 180 days to expire on October 31, 1992.

## CHAPTER 2 - DIVISION OF HIGHWAYS

### SUBCHAPTER 2B - HIGHWAY PLANNING

#### SECTION .0100 - RIGHT OF WAY

##### .0165 ASBESTOS CONTRACTS WITH PRIVATE FIRMS

(a) The North Carolina Department of Transportation maintains a staff capable of performing the normal workload for most of the functions required for the acquisition of rights of way for our highway systems. However, it is recognized that situations arise and certain specific needs exist which can best be met by the use of qualified consultants outside the Department.

These Rules and Regulations are established as a guide for the preparation, execution and administration of contracts for Asbestos Inspections, Asbestos Removals, and Structure Clearings by consultant firms that are over ten thousand dollars (\$10,000.00).

Due to the diversity of contract types, some portions of these Rules and Regulations may not be fully applicable to all situations. The Right of Way Branch Manager shall be responsible for determining deviations from portions of these Regulations are justified. Any deviation from these Rules will require approval of FHWA if Federal Funds are involved in the project.

These Rules and Regulations have been developed in response to and in accordance with the following directives and requirements:

- (1) General Statute 136-28.1(f) and General Statute 130A-444 thru General Statute 130A-451.
- (2) 23 CFR 710-720, FHWA right of way regulations which contain some contracting requirements.
- (3) 49 CFR 18.36, USDOT contracting regulations.
- (4) NCDOT Title VI Compliance Program.

All personnel involved with contracts for Asbestos Inspections, Asbestos Removals and Structure Clearings shall comply with G.S. 133-31 and the Department of Transportation Personnel Manual, Section VI, entitled "Employee Relations".

(b) **DEFINITIONS.** The following definitions are for the purpose of clarifying and describing words and terms used herein:

- (1) **Contract Administrator** - The individual who is assigned the responsibility of initiating, negotiating, and administering the contracts for Asbestos Inspections, Asbestos Removals and Structure Clearings.
- (2) **Cost per Unit of Work** - A method of compensation based on an agreed cost per unit of work including actual costs, overhead, payroll additives and operating margin.
- (3) **Cost Plus Fixed Fee** - A price on the actual allowable cost, including overhead and payroll additives, incurred by the firm performing the work plus a pre-established fixed amount for operating margin.
- (4) **Cost Proposal** - A detailed submittal specifying the amount of work anticipated and compensation requested for the performance of the specific work or services as defined by the Department.
- (5) **Firm** - Any private agency, firm, organization, business or individual offering qualified Asbestos Inspections, Asbestos Removals and Structure Clearings.
- (6) **Lump Sum** - A fixed price, including cost, overhead, payroll additives and operating margin for the performance of specific work or services.
- (7) **Payroll Burden** - Employer paid fringe benefits including employers portion of F.I.C.A., comprehensive health insurance, group life insurance, unemployment contributions to the State, vacation, sick leave, holidays, workers compensation and other such benefits.

- (8) **Proposal** - An expression of interest by a firm for performing specific work or services for the Department.
- (9) **Scope of Work** - All services, actions and physical work required by the Department to achieve the purpose and objectives defined in the contract. Such services may include the furnishing of all required labor, equipment, supplies and materials except as specifically stated.
- (10) **Contract Amendment** - A formal amendment which modifies the terms of an existing contract.
- (11) **Termination Clause** - A contract clause which allows the Department to terminate, at its discretion, the performance of work, in whole or in part, and to make final payment in accordance with the terms of the contract.

(c) **APPLICATION.** These Rules and Regulations shall apply to all Retainer contracts for Asbestos Inspections, Asbestos Removals, and Structure Clearings obtained by the Right of Way Branch of the Department of Transportation under the authority of G.S. 136-28.1(f) and in accordance with the provisions of G.S. 130A-444 through 130A-451.

(d) **SELECTION COMMITTEE.** The Committee shall consist of the Right of Way Branch Manager or his designated Representative, the State Relocation Agent and Property Manager or his designated Representative, and at least one employee of the Department's Preconstruction Unit and/or Construction Unit Professional Staff designated by the Right of Way Branch Manager, and shall be chaired by the Right of Way Branch Manager or his Representative.

(e) **SELECTION OF FIRMS.** On a yearly basis (or as needed), the Department shall advertise for firms interested in performing Asbestos Inspections, Asbestos Removals, and Structure Clearings for the North Carolina Department of Transportation. The advertisement will be published in the North Carolina Purchase Directory. The response time will normally be two weeks after the advertising date. The response shall include copies of the numbered certifications of employees certified by NC Department of Environment, Health, and Natural Resources - Occupational Health Section Asbestos Program to perform Asbestos Inspections, copies of the firms latest brochures, and such similar information related to the firms qualifications.

Evaluation of the firms expressing interest will be based on the following considerations:

- (1) Possesses a high ethical and professional standing (10%);
- (2) Responsible personnel shall be recognized professionals in the field(s) of expertise required by the contract and shall possess all required State and Federal Certifications (20%);
- (3) Adequate in both number and quality of staff to perform the required services experience in the field(s) of expertise required by the contract (10%);
- (4) Adequacy in both number and quality of staff to perform the required services (10%);
- (5) Ability to meet the time schedule established for the work (10%);
- (6) Financial ability to undertake the proposed work (10%);
- (7) Adequacy of the firms accounting system to identify costs chargeable to the project (10%);
- (8) Performance by the firm on previous contracts with the Department of Transportation (10%);
- (9) Any other data pertinent to the contract under consideration (5%);
- (10) When pertinent, the firm shall possess the quality of equipment necessary to perform the required services to the standards acceptable to the Selection Committee (5%).

The Selection Committee shall, on the basis of the criteria of Subparagraphs (e)(1) through (e)(10) of this Rule, select eight firms and two alternates a sufficient number of firms for contract negotiations in order that those negotiations will produce a sufficient number of contracts to handle the anticipated work over the next year.

(f) **REQUEST FOR PROPOSALS.** Each Selected Firm and Alternate will be requested by the Contract Administrator to submit a Proposal which provides for:

- (1) a per unit cost for Asbestos Inspections which may be required by the Department during the year's term of the contract; Unit Cost for inspection and lab analysis, if any;
- (A) per residential unit (800 - 2000 SF frame structure - maximum of 8 samples);
- (B) per miscellaneous non-residential unit (less than 800 SF - maximum of 4 samples - out buildings, signs, barns, etc.);
- (C) per commercial unit (2,000 to 5,000 SF - maximum of 10 samples;
- (D) per any unit having areas greater then those listed in Paragraph (f)(1) (A) thru (C) (subject to adjustment if approved by the Department); and



- (2) a per square foot cost and a per running foot cost for removing any asbestos material located in the inspections process; and a per unit cost for Final Visual Inspection of abated improvements including air monitoring; and
- (3) a unit price for general clearing of an improvement from 2,000 - 5,000 square feet; a unit price for general clearing of an improvement from 2,000 - 5,000 square feet; a unit price for general clearing of an improvement over 5,000 square feet. a per unit abatement price - to a maximum of 200 SF or LF;
  - (A) Non-Friable Asbestos;
    - (i) per square foot of asbestos materials;
    - (ii) per linear foot of asbestos materials
  - (B) Friable Asbestos;
    - (i) per square foot of asbestos materials;
    - (ii) per linear foot of asbestos materials;
- (4) a per unit cost for general clearings;
  - (A) Residential (up to 1,500 SF);
    - (i) per square foot - frame;
    - (ii) per square foot - masonry or other;
  - (B) Commercial (up to 3,000 SF);
    - (i) per square foot - frame;
    - (ii) per square foot - masonry or other.

The Proposal Request shall state that the Department intends to enter into a Retainer Contract for the term of one year and up to a maximum amount of two hundred and fifty thousand dollars (\$250,000.00) each with eight a sufficient number of firms on a Statewide basis to perform Asbestos Inspections, Asbestos Removal, and Structure Clearing on an as needed basis.

(g) **NEGOTIATION OF CONTRACTS.** Upon receipt of the Proposals from the ~~eight~~ Selected Firms and ~~two~~ Alternates negotiations shall be initiated with the ~~eight~~ Selected Firms to produce a Retainer Contract with a term ~~on~~ of one year and maximum amount of up to two hundred and fifty thousand dollars (\$250,000.00). Should negotiations fails to reach successful execution of a contract with any Selected Firm, they will be terminated and negotiations will be initiated with an Alternate Firm.

The object of the negotiations shall be to establish an acceptable per unit cost for any Asbestos Investigations needed by the Department for the term of the contract and to establish an acceptable per square foot cost and per running foot cost for abatement of any asbestos discovered upon completion of the inspections and a unit cost for clearing of improvements.

When agreement is reached on the unit costs, a Retainer Contract shall be executed with the

eight Selected Firms a sufficient number of Selected Firms to perform the anticipated work for the term of one year and shall provide which provides for the scope of services enumerated in this Rule.

(h) **BOARD OF TRANSPORTATION APPROVAL AND EXECUTION OF CONTRACT.** Upon completion of final negotiations, the firm shall execute a minimum of two contract originals.

The contract shall then be submitted to the State Highway Administrator who may consult with the Advisory Budget Commission pursuant to G.S. 136-28.1(f). The proposed contract will then be submitted to the Board of Transportation for approval.

Upon approval by the Board of Transportation the contract will be executed by the Manager of Right of Way and returned to the Contract Administrator. The Contract Administrator will transmit one original contract to the contracting firm and shall retain one original in the Central Office. A copy of the contract will be provided to the Department's Fiscal Section.

(i) **REQUEST FOR SPECIFIC JOB ESTIMATES.** When the Department acquires Structures that require inspection for asbestos, two firms who have executed the Retainer Contract will be contracted by the Right of Way Branch, given the location of the Structure(s), and requested to submit an Work Assignment Cost Estimate. The first Firm's estimate shall cover Inspections, both preliminary and final; and the second Firm's Estimate shall be for Abatements, if any, and Clearing, if required, of the structure. The Estimate of Job Costs submitted by the contractor will be reviewed by Right of Way Staff Personnel to insure:

- (1) that the per unit cost is in compliance with those specified in the Retainer Contract; and
- (2) the quantities specified in the Estimate of Job Costs are reasonable.

If the estimate is found to be reasonable, the Contract Administrator shall authorize the work by the Firm under the Retainer Contract by signing the Estimate document. If the estimate is unacceptable and agreement cannot be reached by negotiations with the Firm, an Estimate will be requested from another Firm on Retainer Contract and evaluated in the same manner until agreement is reached and work can be authorized.

In the event that an agreement cannot be reached through negotiations with any firm on Retainer Contract, then the Department shall terminate negotiations and advertise for specific project



bids under the provisions of Paragraph (r) of this Rule.

(j) SUB-CONTRACTING. A Contracting Firm may sublet portions of the work proposed in the contract only upon approval of the Contract Administrator.

The responsibility for procuring a subcontractor and assuring the acceptable performance of the work lies with the prime contractor. Also, the prime contractor will be responsible for submitting the proper supporting data to the Contract Administrator for all work that is proposed to be sublet.

(k) METHODS OF COMPENSATION. Cost Per Unit of Work - This method of compensation is suitable for contracts where the magnitude of work is uncertain but the character of work is known and a cost of the work per unit can be determined accurately.

(l) ADMINISTRATION OF CONTRACT. The administration of the contract shall be the responsibility of the Contract Administrator. This will include the review of invoices and recommendation for payment to the Fiscal Section.

(m) CONTRACT AMENDMENTS. Each contract should contain procedures for contract modifications and define what changes are permitted by mutual agreement of the parties involved and the changes that can only be made by means of a contract amendment.

The Contract Administrator with the concurrence of the Manager of Right of Way may authorize changes involving minor details or clarifications, changes in time schedules, and other changes of a minor nature which do not cause a significant change in the scope of work, or a change in the amount of compensation. The Department reserves the right with the concurrence of the Manager of Right of Way to delete any clearing item.

No work is to be performed by the contracting firm on additional or disputed items until the dispute is resolved and/or a contract amendment is executed. Contract amendments shall be processed using the same procedures as described in Subparagraphs (e)(7) and (e)(8) of this Rule.

(n) MONITORING OF WORK. The responsibility for monitoring the work, the schedule and performing reviews at intermediate stages of the work shall rest with the staff personnel. An inspector may be assigned on each job by the Division Engineer who shall make periodic status reports to the Division Right of Way Office. The firm will be required to provide a written progress report accompanying each invoice describing the work performed for the project covered by the invoice.

(o) FINAL PAYMENT. When it is determined that the work is complete, the final invoice shall be approved by the Contract Administrator and forwarded to the Fiscal Section with a recommendation for payment. When the contract is terminated by the Department, the final payment shall be for that portion of work performed. Should the firm believe that additional compensations and/or time should be allowed for services not covered under the contract, the firm must notify the Department in writing within 30 days after receipt of final payment. The Department will render a decision on the claim which will be final, subject to review in accordance with Chapter 150B of the North Carolina General Statutes. Exhaustion of the administrative procedure described herein shall be a prerequisite to the firm's right of review.

(p) TERMINATION OF CONTRACTS. All contracts shall include a provision for the termination of the contract by the Department with proper notice to the contracting firm.

(q) QUARTERLY REPORT. A quarterly report on the use of outside firms will be submitted to the Right of Way Branch Manager. This report shall be prepared by the Contract Administrator and will be in chart/graphic or other appropriate format. Copies shall be provided to the State Highway Administrator and the Assistant State Highway Administrator.

(r) CONTRACTS ON SPECIFIC PROJECTS. At its discretion, the Department may let individual contracts on specific projects for inspections, abatements, and/or structure clearings to a responsible bidder other than those contractors holding the contracts described in Paragraphs (a) through (q) of this Rule after publicly advertising for bids. Upon determination by the Manager of the Right of Way Branch that the project schedule does not allow time for public advertising the Department may solicit at least three informal bids and award a contract to the lowest responding qualified bidder.

Statutory Authority G.S. 136-28.1(f).

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

*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 .0203, .0211, .0218 - .0219.*

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

*The public hearing will be conducted at 3:30 p.m. on May 22, 1992 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.*

*Reason for Proposed Actions: To be consistent with Board policies; to delete item to avoid repetition (included in Rule .0219); to comply with American Disabilities Act and guidelines established by National Council of State Boards of Nursing; to reflect change in G.S. 90-171.33.*

*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 submitted by June 1, 1992 to the North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129.*

## CHAPTER 36 - BOARD OF NURSING

### SECTION .0200 - LICENSURE

#### .0203 REINSTATEMENT OF LAPSED LICENSE

(a) The registrant whose license has lapsed and who desires reinstatement of that license will:

- (1) furnish information required on forms provided by the Board;
  - (2) provide a statement of the reason for failure to apply for renewal prior to the deadline;
  - (3) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
  - (4) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
  - (5) submit such other evidence that the Board may require to determine whether the license should be reinstated; and
  - (6) ~~(3) submit payment of reinstatement and renewal fee. and~~
  - (4) ~~submit such other evidence that the Board may require to determine whether the license should be reinstated.~~
- (b) The registrant whose license has lapsed for a period of five years or more will also submit:
- (1) evidence of mental and physical health necessary to competently practice nursing;
  - (2) evidence of satisfactory completion of a Board-approved refresher course; and
  - (3) a recent photograph for identification purposes, if deemed necessary.
- (c) If a refresher course is required, the registrant must apply for reinstatement of the license

within one year of completing the refresher course in order to receive a current license. The application for reinstatement must include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.

(d) The Board may decline to reinstate a license if it is not satisfied as to the applicant's ability to practice nursing, or it may issue a license for a restricted period of time.

Statutory Authority G.S. 90-171.23(b); 90-171.35; 90-171.37.

#### .0211 EXAMINATION

(a) An applicant meets the educational qualifications to write the examination for licensure to practice as a registered nurse by:

(1) graduating from a board approved nursing program designed to prepare a person for registered nurse licensure:

(A) applicants graduating before July 1, 1981 have no time restrictions on writing the examination;

(B) applicants graduating after July 1, 1981 must write the examination within three years of graduation.

(2) graduating from a nursing program outside the United States or Canada that is designed to prepare graduates for the equivalent of licensure as a registered nurse, and submitting the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications.

(b) An applicant meets the educational qualifications to write the examination for licensure to practice as a licensed practical nurse by:

(1) graduating from a Board approved nursing program designed to prepare a person for practical nurse licensure:

(A) applicants graduating before July 1, 1981 have no time restrictions on writing the examination; and

(B) applicants graduating after July 1, 1981 must write the examination within three years of graduation.

(2) graduating from a nursing program outside the United States or Canada that is designed to prepare graduates for the equivalent of licensure as a licensed practical nurse, and submitting evidence from a Board approved evaluation agency of the required educational qualifications and evidence of English proficiency from a Board approved agency or service;



- (3) graduating within the past three years from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure; ~~or~~
- (4) graduating from a nursing program outside the United States and Canada that is designed to prepare graduates for registered nurse licensure, submitting evidence of English proficiency from a Board approved agency or service, and failing to pass the examination for registered nurse licensure in any jurisdiction within the past three years; or
- (5) ~~(4)~~ completing a Board approved course of study such as offered by the U.S. Navy for Hospital Corpsman. Applicants must write the examination within three years of completing active duty/selected reserve duty as a military Hospital Corpsman. The Board approved course of study includes:
  - (A) a course equivalent to the U.S. Navy Hospital Corpsman Basic (Class "A") course;
  - (B) Advancement Examination for Navy Hospital Corpsman Third Class or an equivalent examination;
  - (C) college level human lifespan growth and development course; and
  - (D) a nursing course provided by the Navy or another approved agency that includes maternal-child nursing theory and clinical, the legal role of the LPN, the nursing process, and nutrition.
- (c) An application to the Board of Nursing for examination shall be submitted at least 60 days prior to the examination. ~~In instances where the 60 day deadline cannot be met, the Board may grant an exception upon request from the director of the nursing educational program in which the applicant is enrolled or from the applicant.~~ Pursuant to The Americans with Disabilities Act and guidelines established by the National Council of State Boards of Nursing, Inc., the Board cannot accept applications received after the established deadline date. An admission card with specific information as to time, date, and place of examination will be mailed to the applicant approximately 14 days prior to the date of the examination.
- ~~(d)~~ Those applicants who qualify for examination in accordance with G.S. 90-171.29 will be issued a Status A temporary license as provided for in G.S. 90-171.33. A temporary license may be withheld in accordance with G.S. 90-171.37.
- ~~(d)~~ ~~(e)~~ The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.
  - (1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.
  - (2) The examination for licensure as a registered nurse shall be administered in February and July on dates determined by the National Council of State Boards of Nursing, Inc.
  - (3) The examination for licensure as a licensed practical nurse shall be administered in April and October on dates determined by the National Council of State Boards of Nursing, Inc.
  - (4) Scores on the examination shall be reported, by mail only, to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.
  - (5) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination is 350. For the examination offered in July 1982 and through July 1988, the passing score is 1600. Beginning February 1989, the passing score for registered nurse licensure is reported as "PASS".
  - (6) The passing score for the examination for practical nurse licensure, up to and including the April 1988 is 350. Beginning October 1988, the passing score for practical nurse licensure is reported as "PASS".
- ~~(e)~~ ~~(f)~~ Applicants who meet the qualifications for licensure will be issued a certificate of registration and a license to practice nursing for the remainder of the year.
- ~~(f)~~ ~~(g)~~ Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction of the United States, providing:
  - (1) the Board of Nursing in that jurisdiction consents to proctor the applicant;
  - (2) arrangements are made through the North Carolina Board of Nursing sufficiently in advance of the examination date to meet application requirements in both jurisdictions; and



- (3) the applicant pays any service fee charged by the proctoring Board.

(g) ~~(h)~~ The North Carolina Board of Nursing may proctor an examination upon request of another state Board of Nursing at the regularly scheduled examination sessions if space is available. The applicant shall submit a service fee for such proctoring.

Statutory Authority G.S. 90-171.23(15); 90-171.29; 90-171.30.

**.0218 LICENSURE WITHOUT EXAMINATION  
(BY ENDORSEMENT)**

(a) The Board will provide an application form which the applicant who wishes to apply for licensure without examination (by endorsement) must complete in its entirety.

- (1) The applicant for licensure by endorsement as a registered nurse is required to show evidence of:

(A) completion of a nursing program approved by the jurisdiction of original licensure;

(B) attainment of a standard score equal to or exceeding 350 on each test in the State Board Test Pool Examination administered prior to July 1982; or a standard score of 1600 on the licensing examination developed by the National Council of State Boards of Nursing, Inc. beginning in July 1982 and up to and including the July 1988 examination; or beginning in February 1989, a score of "PASS". An exception to this requirement is made for the applicant who was registered in the original state prior to April 1964. Such applicant must have attained the score, on each test in the series, which was required by the state issuing the original certificate of registration;

(C) mental and physical health necessary to competently practice nursing; and

(D) unencumbered active license in original jurisdiction of licensure or another jurisdiction; all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and

(E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).

- (2) The applicant for licensure by endorsement as a licensed practical nurse is required to show evidence of:

- (A) completion of:

(i) a program in practical nursing approved ~~in~~ by the jurisdiction of original licensure; or ~~by meeting the requirements as cited in Rule .0211 (b)(2)(3) of this Section.~~

(ii) course(s) of study within an approved program(s) which is (are) comparable to that required of practical nurse graduates in North Carolina; or

(iii) approved course of study for military hospital corpsman which is (are) comparable to that required of practical nurse graduates in North Carolina.

The applicant who was graduated prior to July 1956 will be considered on an individual basis in light of licensure requirements in North Carolina at the time of original licensure;

(B) achievement of a passing score on the State Board Test Pool Examination or the licensing examination developed by the National Council of State Boards of Nursing, Inc. If originally licensed on or after September 1, 1957, and up to and including the April 1988 examination, an applicant for a North Carolina license as a practical nurse on the basis of examination in another state must have attained a standard score equal to or exceeding 350 on the licensure examination. Beginning in October 1988, an applicant must have received a score of "PASS" on the licensure examination. The applicant who was licensed prior to September 1, 1957 in the original jurisdiction will be considered on an individual basis in light of the licensure requirements in North Carolina at the time of original licensure;

(C) mental and physical health necessary to competently practice nursing; and

(D) unencumbered active license in original jurisdiction of licensure or another jurisdiction; all jurisdictions in which a license is or has ever been held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant will be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and

(E) completion of all court conditions resulting from any misdemeanor or felony conviction(s).

(b) The North Carolina Board of Nursing will require applicants for licensure by endorsement to provide proof of secondary education achievement only if deemed necessary for identification, or other just cause.

(c) Individuals Graduates of Canadian nursing programs who have been licensed in Canada on the basis of the Canadian Nurses' Association Test Service Examination (CNATS) written in the English language are eligible to apply for registration by endorsement provided the applicant has not failed the examination developed by the National Council of State Boards of Nursing, Inc. in North Carolina.

(d) A nurse educated and licensed outside the United States of America is eligible for North Carolina licensure by endorsement if the nurse has:

- (1) proof of education as required by the Board or a certificate issued by the Commission on Graduates of Foreign Nursing Schools; and
- (2) proof of passing the licensing examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction. An exception to this requirement is made for the applicant who was registered by Canadian province examination written in the English language prior to CNATS or SBTPE, and has worked in nursing within the past five years or has completed a Board-approved refresher course.

(e) When completed application, evidence of current license in another jurisdiction, and fee are received in the Board office, a temporary license is issued to the applicant. Employer references may be requested to validate competent behavior to practice nursing.

(f) Facts provided by the applicant and the Board of Nursing of original licensure are compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure is verified. When eligibility is determined, a certificate of registration and a current license for the remainder of the calendar year are issued.

*Statutory Authority G.S. 90-171.23(b); 90-171.33; 90-171.37.*

#### .0219 TEMPORARY LICENSE

(a) The Board of Nursing may issue a Status A nonrenewable temporary license under the following circumstances.

- (1) A person is eligible for a Status A nonrenewable temporary license if that person:
  - (A) has graduated from an approved nursing program, filed a completed examination application form with correct fee, meets all qualifications for licensure by examination in North Carolina, and is

scheduled for the licensure examination at the first opportunity after graduation; or

- (B) has filed an application for licensure without examination with correct fee and provided verification of awaiting the results of the first writing of the examination developed by the National Council of State Boards of Nursing, Inc. in another jurisdiction.
- (2) The Status A nonrenewable temporary license expires on the lesser of ~~six~~ nine months or the date a full license is issued or notice of failure of the examination is received.
- (3) Status A temporary license authorizes the holder to:
  - (A) practice only in nursing situations where direct supervision by a registered nurse is available and at a standard of care of a fully licensed nurse; and
  - (B) perform direct patient care only, i.e., may not accept authority for nor assume responsibility to assign, supervise, or direct other nursing personnel; and
  - (C) participate in such orientation and continuing education activities as the employer offers to prepare the holder of a Status A temporary license for the employment position.
- (4) Holders of valid Status A temporary license shall identify themselves as R.N. Applicant (R.N.A.) or L.P.N. Applicant (L.P.N.A.), as the case may be, after signatures on records.
- (5) Upon expiration, revocation, or return of the Status A temporary license, the individual is ineligible to practice nursing as described in Paragraph (a)(3) of this Rule.
  - (b) The Board may issue a Status P nonrenewable temporary license to persons who have filed a completed application for licensure without examination with correct fee and provided validation of an active license in another jurisdiction.
    - (1) The Status P nonrenewable temporary license expires on the lesser of six months or the date a full license is issued or when it is determined the applicant is not qualified to practice nursing in North Carolina.
    - (2) Status P temporary license authorizes the holder to practice nursing in the same manner as a fully licensed R.N. or L.P.N., whichever the case may be.
    - (3) Holders of valid Status P temporary license shall identify themselves as R.N. Petitioner (R.N.P.) or L.P.N. petitioner

(L.P.N.P.), as the case may be, after signatures on records.

- (4) Upon expiration, revocation, or return of the Status P temporary license, the individual is ineligible to practice nursing as described in Paragraph (b)(2) of this Rule.

(c) The Board of Nursing may withhold or delay issuance of a temporary license in the following circumstances:

- (1) a person otherwise eligible for Status A temporary license:

(A) has not completed court conditions resulting from any felony or misdemeanor conviction(s); or

(B) was convicted of any felony or misdemeanor after enrolling in nursing program.

- (2) a person otherwise eligible for Status P temporary license:

(A) has indicated court conviction(s) have occurred; or

(B) has indicated disciplinary action is pending or has occurred in another jurisdiction.

- (3) a person otherwise eligible for a temporary license who is the subject of investigation or action pursuant to G.S. 90-171.37.

Statutory Authority G.S. 90-171.33.

## 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 amend rule(s) cited as 25 NCAC 1A .0006; 1H .0602, .0616 - .0617, .0621.*

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

*The public hearing will be conducted at 9:00 a.m. on June 2, 1992 at the Personnel Development Center, 101 W. Peace Street, Raleigh, N.C.*

### *Reasons for Proposed Actions:*

25 NCAC 1A .0006 - Rule changed to provide clarification of the delegation of authority with respect to decentralization.

25 NCAC 1H .0602 - Rule amended to clarify posting procedures.

25 NCAC 1H .0616 - Rule changed to clarify verification procedures for employers.

25 NCAC 1H .0617 - Rule changed to clarify the employee's responsibility regarding verification of identification and employment subsequent to hiring.

25 NCAC 1H .0621 - Rule changed to provide clarification on verification of credentials and requires verification to be completed within 90 days of employment and prior to granting permanent status.

*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.

*Editor's Note:* Rules 25 NCAC 1H .0602 and .0621 were noticed for amendment in the North Carolina Register, Volume 6, Issue 23 on page 1777. The text printed in italics was adopted by the State Personnel Commission and are pending review by the Rules Review Commission. Proposed effective date of these changes is June 1, 1992.

## CHAPTER 1 - OFFICE OF STATE PERSONNEL

### SUBCHAPTER 1A - GENERAL PROVISIONS

#### .0006 DELEGATION OF AUTHORITY: DECENTRALIZATION

(a) The Office of State Personnel, under the direction of the State Personnel Director, has sole responsibility for the implementation of the State Personnel Commission's rules, policies and procedures. The State Personnel Director has the exclusive authority for final approval of all personnel actions under these Rules and policies.

(b) The State Personnel Director may delegate authority for final approval and accountability of certain personnel actions to the heads of state agencies and universities, and by extension, to the head of their personnel administration function. The decision to delegate authority for final approval of certain personnel actions or not to delegate, as well as the matters to be delegated, shall be at the discretion of the State Personnel Director. The delegation decision by the State Personnel Director shall be made based upon these factors:

- (1) the willingness of agency heads and chancellors to accept the accountability of their own personnel functions under a delegation of authority from the Office of State Personnel;



- (2) the record of agency cooperation and compliance with Commission policies and procedures;
- (3) an informed assessment of the performance history of the agency's personnel function;
- (4) the demonstrated knowledge and expertise in the administration of the Commission's policies and procedures by the personnel staff of the agency; and
- (5) the staff size of the agency personnel function, including the number of professional level personnel positions.
- (1) the acceptance of accountability for their own personnel functions by agency heads and chancellors under a delegation of authority from the State Personnel Director;
- (2) the history of agency cooperation and compliance with Commission policies and related statutes, including practices under G.S. 126-5(c1) and related corrective actions;
- (3) a pre-assessment of the compliance capability of the agency's personnel functions and the personnel staff;
- (4) the demonstrated knowledge and expertise in the administration of the Commission's policies and procedures by the personnel staff of the agency;
- (5) the maintenance of an adequate staff in the agency's personnel functions, including an appropriate number of professional level positions commensurate with the size and complexity of the agency; and
- (6) the maintenance of a quality control plan within the agency's personnel functions designed to improve the professionalism of the personnel staff and to produce accurate data in a current and timely manner.

(c) Delegation shall be achieved through decentralization agreements which shall specify agency responsibility for implementing Personnel Commission programs and shall identify those personnel actions for which the agency shall have final approval authority. The agreement shall provide that the decentralized personnel administration authority may be unilaterally withdrawn or modified by the State Personnel Director based upon demonstrated inability or unwillingness on the part of the agency or university to maintain the level of personnel administration as measured by factors in Paragraph (b) of this Rule.

(d) The Office of State Personnel shall perform routine, ongoing monitoring of all agency and university decentralization agreements for compliance with specified levels of authority and with

Commission rules, policies and procedures. The Office of State Personnel shall perform periodic on-site performance audits. These monitoring and auditing procedures shall be in accordance with accepted auditing principles and with the advice of the State Auditor.

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) Vacancies which shall be filled from within the agency workforce shall be prominently posted in at least the following locations:

- (1) The personnel office of the agency having the vacancy; and
- (2) The particular work unit of the agency having the vacancy.

(c) ~~(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 position number, 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 Cooperative 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) ~~(c)(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.

(d) ~~(e)~~ 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 position number, 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 Cooperative Education and state government intern programs.

(e) ~~(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.

(f) ~~(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.

(g) ~~(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.

(h) ~~(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 recog-



nized 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.

#### .0616 AGENCY RESPONSIBILITY

(a) The Immigration Reform and Control Act (IRCA) of 1986 requires that all U.S. employees be either United States citizens, or aliens with proper work authorization from the U.S. Immigration and Naturalization Service (INS). The IRCA further requires that all employers verify the employment eligibility of persons employed after November 6, 1986.

(b) ~~(a)~~ All state agencies and universities shall, within three working days from entry on duty, at the time of hire or no later than the third working day, verify the employment eligibility of all new employees hired on or after November 7, 6, 1986. Verification must establish both identity and employment authorization, and shall include the completion of federal Form I-9. INS has approved a number of documents which the employee can provide to meet this purpose, and it is not permissible for agencies to specify a certain document type. Form I-9 must be retained for three years after the employee's hiring date, or one year after the employee's separation, whichever is later.

(c) ~~(b)~~ If an employee's work authorization expires, the agency shall update the Form I-9 to show that the employee has a renewed authorization to continue employment; if an authorization renewal cannot be obtained, employment must be discontinued. If a prior employee is re-employed within three years of the initial completion of Form I-9, and the information on the initial form remains accurate, it is not necessary for the employing agency to complete a new Form I-9. the employing agency must update and verify eligibility. In instances of promotion, demotion, and/or reemployment involving inter-agency transfer, the original, employing agency must provide to the employee or the receiving agency, upon request, a copy of the most recent Form I-9.

Authority G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987.

#### .0617 EMPLOYEE'S RESPONSIBILITY

All employees hired ~~on or~~ after November 7, 6, 1986, must present documents to the employing agency or university within their first three work days at the time of hire or no later than the third working day which verify their identity and em-

ployment ~~authorization.~~ eligibility. If an employee is unable to present the actual documents within this time limit, he/she must present a receipt from INS within the three day period validating his/her application for the required documents, and must provide the actual documents within ~~24~~ 90 days of initial employment. An employee whose original work authorization has expired must present proof of an authorization renewal in order to remain employed.

Authority G.S. 126-4(4); 8 C.F.R. Parts 109 and 274a, 1987.

#### .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 within 90 days of initial employment and prior to the granting of permanent status. ~~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.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel intends to amend rule(s) cited as 25 NCAC 1E .1302 with changes from the proposed text noticed in the Register, Volume 6, Issue 23, pages 1782 - 1783.*

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

*Reason for Proposed Action: 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.*

*Comment Procedures: Interested persons may present statements in writing by mail addressed to: Barbara Coward, Office of State Personnel, 116 W. Jones St., Raleigh, N.C. 27603. Comments are to be received by June 1, 1992.*



*Editor's Note: An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the Register unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.*

## CHAPTER 1 - OFFICE OF STATE PERSONNEL

### SUBCHAPTER 1E - EMPLOYEE BENEFITS

#### SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

##### .1302 POLICY

(a) In ~~those~~ 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~~ Rule, 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 time and to result in a substantial loss of income to the employee due to limited leave in the employee's leave account, generally considered to be at least 20 consecutive workdays. If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last 12 months, an exception to the 20 day period may be made. The intent of this ~~policy~~ Rule 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~~ Rule 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 Rule. ~~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, (prorated for part-time employees),

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) 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 with the supplemental leave schedule published by the Office of State Personnel.

(e) 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.

(f) Nonqualifying conditions: This Rule 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; short-term, recurring medical or therapeutic treatments. Pregnancy is not covered unless there are unforeseen complications. The "normal" six-week recovery period after delivery is not a condition covered by this Rule. Shared leave cannot be used during the six-week period, regardless of the nature or cause of a condition or its date of onset. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to the intent of this Rule and must be applied consistently and equitably.

Statutory Authority G.S. 126-4.

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel intends to repeal rule(s) cited as 25 NCAC 11 .0102, .0201 - .0206, .0302 - .0316, .0401 - .0402, .0501 - .0511, .0601 - .0606, .0701 - .0708, .1001 - .1002, .1005, .1007, .1009 - .1013, .1103, .1201 - .1204, .1206 - .1210, .1315, .1402 - .1403, .1405 - .1413, .1501 - .1508, .1601 - .1603; and adopt rule(s) cited as 25 NCAC 11 .1701 - .1704, .1801 - .1806, .1901 - .1905, .2001 - .2005, .2101 - .2107, .2201, .2301 - .2308, .2401 - .2406.*

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

*The public hearing will be conducted at 9:00 a.m. on June 2, 1992 at the Personnel Development Center, 101 W. Peace Street, Raleigh, N.C.*

### *Reasons for Proposed Actions:*

25 NCAC II .0102, .0201 - .0206, .0302 - .0316, .0401 - .0402, .0501 - .0511, .0601 - .0606, .0701 - .0708, .1001 - .1002, .1005, .1007, .1009 - .1013, .1103, .1201 - .1204, .1206 - .1210, .1315, .1402 - .1403, .1405 - .1412, .1501 - .1508, .1601 - .1603 - *Repeal outdated policies no longer utilized.*

25 NCAC II .1701 - .1704, .1801 - .1806, .1901 - .1905, .2001 - .2005, .2101 - .2107, .2201, .2301 - .2308, .2401 - .2406 - *The following proposed rules are to replace out of date rules in the process of being repealed.*

*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 II - SERVICE TO LOCAL GOVERNMENT

#### SECTION .0100 - GENERAL PROVISIONS

##### .0102 AUTHORITY FOR CLASSIFICATION PLAN

(a) The State Personnel Director is authorized to allocate and reallocate individual positions consistent with the basic established classification and pay plan.

(b) The State Personnel Director is authorized to modify the basic established classification plan for local government positions subject to Chapter 126 of the North Carolina General Statutes pending final approval of the State Personnel Commission and the Governor.

*Statutory Authority G.S. 126-3; 126-4(1); 126-5(a).*

#### SECTION .0200 - LOCAL GOVERNMENT EMPLOYMENT POLICIES

##### .0201 APPLICABILITY

State law (N.C.G.S. Chapter 126, "The State Personnel Act") provides for the establishment

of a system of personnel administration applicable to certain local employees paid entirely or in part from federal funds. Local governing boards are authorized by G.S. Chapter 126 to establish personnel systems which will fully comply with the applicable federal standards and may then remove such employees from the state system to their own system.

*Statutory Authority G.S. 126-1; 126-11.*

##### .0202 COVERAGE

(a) The provisions of Chapter 126 apply to employees of local social service departments, public health departments, mental health centers and local offices of civil preparedness which receive federal grant-in-aid funds. The Governor, with the approval of the Council of State, determines for which of the positions subject to the provisions of Article 4 of Chapter 126 appointments and promotions shall be based on a competitive system of selection. Coverage may change from time to time. The following positions have been designated by the Governor and Council of State to be filled through a competitive system of selection:

- (1) all positions for employees of the local social service departments except members of local boards of social service, officials serving ex officio and performing incidental administrative duties, part-time professional persons who are not engaged in the performance of administrative duties and custodial employees;
- (2) all positions for employees of local public health departments except members of the local boards of health, members of advisory councils or committees, officials serving ex officio and performing incidental administrative duties, part-time professional persons who are not engaged in the performance of administrative duties, part-time clerical employees in organized health clinics which are operated at times other than the regular office hours of the local health department and which require not more than 10 hours per week on the part of any one employee, and custodial employees;
- (3) all positions for employees of local mental health centers except members of the local mental health authority, members of advisory councils or committees, officials serving ex officio and performing incidental administrative duties, part-time professional persons who are not engaged in the performance of administrative duties and custodial employees;



- (1) all positions for employees of local offices of emergency management except directors of the offices of emergency management; members of local boards or commissions; members of advisory councils or committees or similar boards paid only for attendance at meetings; officials serving *ex officio* and performing incidental administrative duties; part-time professional personnel who are paid for any form of medical or other professional services and who are not engaged in the performance of administrative duties; attorneys serving as legal counsel; all employees of those county, city or other local offices of emergency management and offices who do not desire to receive federal matching funds for personnel and administrative costs and custodial employees.
- (b) In addition to the exceptions stated in this Rule, there may, upon request from the governor or any agency or department head, be exempted from the competitive service the following:
  - (1) executive heads of departments, agencies, offices or divisions and employees reporting directly to these who determine and publicly advocate substantive program policy; provide legal counsel; or are required to maintain a direct confidential working relationship with one of these exempt officials;
  - (2) temporary positions established for the purpose of conducting a special project, study, or investigation; and positions in experimental or research projects designed to improve the operation of the Competitive Service System. Department or agency heads may submit to the State Personnel Director a request for such exemption from one or more of the competitive service policies established by the State Personnel Commission. A waiver period of up to two years may be requested, with the possibility of extension. The request must contain a detailed description of the project and its objectives. Satisfactory plans for Competitive Service System improvement projects will be submitted to the U.S. Office of Personnel Management (regional office) for approval; such approval must be received before these projects can be implemented.
- (1) The State Personnel Commission has provided that equal employment opportunity is an established policy of the State of North Carolina, and affirmative action will be provided in its administration.
- (2) The Equal Employment Opportunity Commission, as a matter of interim guidance, has ruled that sexual harassment, where conditions and privileges of employment are dependent upon sexual favors, is a form of discrimination on the basis of sex.
- (3) It shall be the responsibility of local jurisdictions to develop and implement affirmative action programs, consistent with these policies, for personnel services provided to and personnel administration within subject grant-aided agencies. These programs will include:
  - (A) identification and elimination of artificial barriers to equal employment opportunity;
  - (B) work force analysis to determine whether percentages of minorities and women employed in various job categories are substantially similar to percentages of those groups available in the relevant labor force who possess the basic job-related qualifications. Where underrepresentation occurs, employment procedures will be analyzed to determine the cause;
  - (C) development of a systematic action plan, with goals and timetables, formulated to correct any substantial disparities or other problems identified in the work force and employment analyses;
  - (D) periodic evaluation of results to assess the effectiveness of the affirmative action programs in achieving affirmative action goals on a timely basis;
- (4) The Office of State Personnel will be available to provide technical assistance in meeting policy requirements in accordance with G.S. 126-10.
- (b) Political Activity
  - (1) Every employee will have the right to freely express his views as a citizen and to cast his vote. Coercion for political purposes of and by employees of federally aided programs and use of their positions for political purposes will be prohibited. Participation in partisan political activity by any employee subject to these standards is prohibited with respect to any activity prohibited in federally grant-aided programs under the Federal Hatch-Political Activities Act as amended, 5 USC 1501-1508.

Statutory Authority G.S. 126-12.

#### .0203 EQUAL EMPLOYMENT OPPORTUNITY

##### (a) Affirmative Action



- (2) Any violation of this Rule may be considered sufficient cause for dismissal of the employee.

(c) Appeal of Discrimination

- (1) Any applicant or employee who believes that employment, promotion, training, transfer or salary increase was denied or that demotion, transfer, lay-off or termination was forced because of race, color, national origin or political or religious opinions or affiliations may appeal to the State Personnel Commission (such appeal consisting of a contested case hearing before the Office of Administrative Hearings and a final decision by the State Personnel Commission). Appeal may also be filed if discrimination on the basis of age, sex or handicapping condition did not result from bona fide occupational qualifications.

- (2) If in its review of the complaint the State Personnel Commission determines that the plaintiff was discriminated against, it shall within five days issue binding corrective orders or such other appropriate action as the commission shall find justified.

*Authority G.S. 126-16; 126-17; 126-36; 126.36.1; 168A-3; Title VII of the 1964 Civil Rights Act as amended in 1972; Federal Standards for a Merit System of Personnel Administration; 5 USC 1501-1508; P.L. 95-256.*

.0204 EMPLOYMENT OF RELATIVES

(a) The employment of close relatives within the same department or work unit of a local government agency subject to G.S. Chapter 126 is to be avoided unless significant recruitment difficulties exist. If there are fewer than three other available eligibles for a vacancy and it is necessary for relatives to be considered for employment or if two individuals are already employed and marry, the following will apply:

Two members of an immediate family shall not be employed within the same department or work unit of a local government agency subject to G.S. Chapter 126 if such employment will result in one supervising a member of his immediate family or where one member occupies a position which has influence over the other's employment, promotion, salary administration and other related management or personnel considerations.

(b) The term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems

might be created within the work unit or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals would be violated. In general this would include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson and granddaughter. Also included are the step, half and in-law relationships as appropriate based on the above listing. It may also include others living within the same household or otherwise closely identified with each other as to suggest difficulty may develop.

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

.0205 CONFLICTING EMPLOYMENT

No employee shall hold any office or have other employment which may conflict with his employment in a competitive service agency. Terminal leave shall not be considered as employment for this purpose. Determination of conflict shall be made by the agency and the State Personnel Commission.

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

.0206 PERSONNEL RECORDS AND REPORTS

Such personnel records as are necessary for the proper administration of a competitive service system and related programs will be maintained. Periodic reports will be prepared as necessary to indicate compliance with applicable state and local requirements and the federal and state standards:

(1) **Personnel Records.** Each agency shall maintain a service record for each employee including name, position title, organization unit, all changes in status, performance evaluations and other information considered pertinent. Personnel changes shall be submitted on prescribed forms to agency personnel offices and to the Office of State Personnel.

(2) **Payroll Records.** A true copy of the payroll of each local social services, public health, mental health and civil preparedness unit shall be submitted to the agency personnel and/or budget offices within two weeks following each payroll period. The payroll information shall be used in reviewing conformity by local units to established rules and regulations.

*Authority G.S. 126-4; 153A-98; Standards for a Merit System of Personnel Administration.*

SECTION .0300 - LOCAL GOVERNMENT  
POSITION ANALYSIS

### .0302 ORGANIZATION

This function is organized under the supervision of a section head who is aided by personnel analysts and technicians, administrative assistants, secretaries and other employees as designated by the State Personnel Director.

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

### .0303 DEFINITIONS

The following definitions shall apply to this Section:

- (1) **Position.** A group of duties and responsibilities to be performed by one individual employed on a full-time or part-time basis;
- (2) **Class.** A specific group of positions which are so similar in duties and responsibilities that they justify common treatment in selection, compensation and other employment processes, and the same descriptive title may be used to designate all positions in the class regardless of the agencies in which they are located;
- (3) **Class Specification.** A generalized description of the duties and responsibilities characteristic of positions which comprise a class; it is not intended to describe all the duties of each position in the class but rather to give a composite view of the class so as to set it apart from other classes;
- (4) **Recruitment Standards.** The standards necessary for recruiting an employee to fill a position comprising:
  - (a) **Knowledges, Skills and Abilities.** The requirements of employees for successful work performance in positions allocated to a class written in terms of what are required of new employees at the time of employment or promotion;
  - (b) **Minimum Education and Experience.** A translation of the knowledges, skills and abilities into quantifiable education and experience standards which are the minimum qualification requirements an applicant should possess at the time of appointment;
  - (c) **Equivalent Combination of Education and Experience.** A phrase to indicate that, in recruitment and selection, reasonable substitutions of formal education and experience, one for the other, will be made or that additional pertinent experience or specialized education may be considered;
  - (d) **Special Requirements.** Any special licenses or certificates needed by an employee to perform a given job, or any specific conditions (i.e. physical endurance

or emotional stability) highlighted by demands of a position in a class, where such conditions are primary selection factors;

- (5) **Position Classification.** The systematic arrangement of positions into classes according to the kind of work, level of difficulty and responsibility and job requirements;
- (6) **Benchmark.** A real job having duties and responsibilities usually typical of a group of jobs in an occupational category described in terms of factors which determine skill levels.

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

### .0304 POLICY ON ESTABLISHING MINIMUM QUALIFICATION STANDARDS

(a) It shall be the policy of the state to establish job-related minimum qualification standards wherever they are practical for each class of work in the position classification plan. The standards will be based on the required skills, knowledges and abilities common to each classification. The qualification standards and job-related skills, knowledges and abilities shall serve as guides for the selection and placement of individuals.

(b) The education and experience statements serve as indicators of the possession of identified skills, knowledges and abilities and as guides to primary sources of recruitment; reasonable substitutions of formal education and job-related experience, one for the other, will be made. The State Personnel Commission recognizes that a specific quantity of formal education or number of years experience does not always guarantee possession of the identified skills, knowledges and abilities for every position in a class. Qualifications necessary to perform successfully may be attained in a variety of combinations. Management is responsible for determining specific job-related qualifications that are an addition to minimum standards; such qualifications must receive prior approval of the State Personnel Director. Management shall be responsible for any adverse effects resulting from the use of selection standards that have not been established or approved by the State Personnel Director.

(c) The State Personnel Director is authorized to modify education and experience requirements for established classifications consistent with this policy and to report such changes to the board.

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

### .0305 CLASSIFICATION METHOD

All positions are defined by the types and levels of work involved and evaluated based on the application of accepted job analysis techniques and



according to common job factors and the relative importance of the presence or absence of such job factors in the positions.

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

**.0306 CLASSIFICATION PLAN**

The classification plan for local governments in North Carolina consists of a system for identifying all types and levels of positions subject to Chapter 126 of the North Carolina General Statutes together with standards and procedures for maintaining the plan.

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

**.0307 MAINTENANCE OF THE CLASSIFICATION PLAN**

The State Personnel Director is responsible for maintaining the classification plan for covered local government positions. Need for classification actions may be reported by an agency, or the Office of State Personnel may initiate studies of single positions, occupational groups or organizational groups of positions to determine that the classifications are current. While control of the classification plan is retained by the Office of State Personnel, the maintenance of the plan is the responsibility of everyone concerned with personnel management. This includes individual employees, immediate supervisors and agency heads.

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

**.0308 ALLOCATION OF POSITIONS TO CLASSIFICATION PLAN**

Every covered position in local government shall be allocated to an appropriate class in the classification plans. The allocation of a position is its assignment to a class containing all positions which are sufficiently similar in duty assignments to justify common treatment in selection, compensation and other employment processes. A class may consist of a single unique position or of many like positions.

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

**.0309 TENTATIVE AND FLAT-RATE PROVISIONS FOR TEMPORARY CLASS.**

The State Personnel Director is authorized to establish temporary classifications with tentative pay grades or flat-rate salaries when insufficient information is available to make permanent classification and pay recommendations to the State Personnel Commission. When sufficient information is available, the director will make a recommendation to the State Personnel

Commission which will incorporate the temporary class and pay into the permanent classification plan and pay plan. Such temporary classes, tentative pay grades and flat-rate salaries shall be administered according to all applicable rules and regulations approved by the State Personnel Commission.

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

**.0310 NEW AND ADDITIONAL PERMANENT: FULL OR PART-TIME POSITIONS**

(a) The duties of a budgeted position must be defined and the position must be assigned to an official classification in the salary plan.

(b) Form PD-118, or its equivalent, shall be submitted to the Office of State Personnel 30 days prior to the proposed effective date of the establishment of the new position. If the proposed employee for the new position is known, copies of Form PD-100 should accompany PD-118 (see 25 NCAG II, Section .1500; Rules .1503 and .1506).

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

**.0311 ALLOCATION OR REALLOCATION OF A VACANT POSITION**

In order to allocate or reallocate a position that has been vacant for more than one year, the duties of the position shall be redescribed by a Form PD-118 (see 25 NCAG II, Section .1500; Rule .1506), or its equivalent, before it is filled.

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

**.0312 REALLOCATION OF AN ESTABLISHED POSITION TO ANOTHER CLASS.**

Reallocation is the assignment of a position from one class to another as the result of a change in assigned duties and responsibilities.

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

**.0313 EFFECTIVE DATE OF REALLOCATION**

Form PD-118, or its equivalent, and the original copy of PD-102 should be submitted to the Office of State Personnel 30 days prior to the proposed effective date of the reallocation to allow adequate time for study and processing of the requests (see 25 NCAG II, Section .1500; Rules .1506 and .1507). Requests received after the first day of the month are subject to be made effective no earlier than the first of the following month and can be effective only after complete information is available to make a decision. If any party is delayed in carrying out its responsibilities, the employee should not be caused to suffer, and the effective date will be revised to the



most reasonable date consistent with the time that complete information would have been available to make the decision on the reallocation of the position.

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

**.0314 TRANSFER OF POSITIONS**

If an established position is transferred between divisions, units, places of work, budget codes or subheads, Form PD-118 (see 25 NCAC II, Section 1500, Rule 1506), or its equivalent, must be submitted although there may be no changes in the position title or basic level of duties and responsibilities assigned to the position. A statement should be included on the form indicating there is no change in the assigned duties and responsibilities of the position.

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

**.0315 ABOLISHMENT OF A POSITION**

(a) A position that is no longer being used by an agency or for which budgeted funds are not available should be abolished.

(b) Normally Form PD-118 (see 25 NCAC II, Section 1500, Rule 1506), or its equivalent, should be submitted to the Office of State Personnel 30 days prior to the proposed effective date of the abolition of the position. Other methods may be agreed upon in cases where large numbers of positions are to be abolished.

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

**.0316 ABOLISHMENT OF A CLASS**

(a) The abolishment of a class may be necessary as a result of:

- (1) a classification study;
- (2) reallocation of all positions in the class to another class;
- (3) abolishment of all positions in the class.

(b) Recommendation to abolish a class shall be submitted to the State Personnel Commission for appropriate action.

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

**SECTION .0400 - LOCAL GOVERNMENT  
POSITION CLASSIFICATION SERVICES**

**.0401 CHARGES**

**.0504 LEGAL; ADMINISTRATIVE MANAGEMENT; AND RELATED CLASSES**

(a) Business Management

Classification Title

(a) Service charges will be based upon the nature of the work requested, and the anticipated salary, travel, lodging, subsistence, printing, and overhead costs necessary to complete the requested work. An individual proposal will be developed in response to each project request.

(b) Transferable products developed to meet a general need, such as personnel policy models, record system models, job evaluation models, etc., will be offered at a fair market price.

(c) The total funds received from all sources through charges will not exceed the actual operating costs of the service program.

*Statutory Authority G.S. 126-10.*

**.0402 MEMORANDUM OF AGREEMENT FOR  
TECHNICAL ASSISTANCE**

The memorandum of agreement for technical assistance is an agreement signed by the Office of State Personnel and the local jurisdiction setting out the terms and conditions under which the Office of State Personnel agrees to supply technical assistance in position classification to the local jurisdiction.

*Statutory Authority G.S. 126-10.*

**SECTION .0500 - POSITIONS IN LOCAL  
GOVERNMENT**

**.0501 CLASSIFICATIONS**

The classifications in this Section are those which are used exclusively in local government positions covered by the State Personnel Act.

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

**.0502 FILING OF CLASSIFICATION  
STANDARDS**

Complete classification standards are filed in the Office of State Personnel and may be obtained upon request from Position Management Division, Office of State Personnel.

*Statutory Authority G.S. 150B-14(3).*

**.0503 CLASSIFICATION STANDARDS**

The filed classification standards contain descriptions of work performed in the classification, education requirements and experience requirements.

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

Grade No.

## PROPOSED RULES

County Social Services Business Officer I	72
County Social Services Business Officer II	74

(b) General Administrative

Classification Title	Grade No.
County Social Services Program Administrator I	72
County Social Services Program Administrator II	74
County Director of Social Services I	72
County Director of Social Services II	74
County Director of Social Services III	76
County Director of Social Services IV	78
County Director of Social Services V	83
Local Mental Health Center Unit Coordinator	70
Coordinator, Health Service	70
Administrative Assistant, Civil Preparedness	60
Administrative Officer, Civil Preparedness	63
Assistant Director, Local Preparedness	64
Day Care Director I	64
Day Care Director II	66

(c) Personnel Management and Training

Classification Title	Grade No.
County Social Services Training Officer	71

Statutory Authority G.S. 126-4.

.0505 DATA PROCESSING CLASSES  
Statistical

Classification Title	Grade No.
Public Health Statistician	58

Statutory Authority G.S. 126-4.

.0506 INFORMATIONAL AND EDUCATIONAL CLASSES  
(a) Publicity and Promotion

Classification Title	Grade No.
Immunization Education Aide	54

(b) Program Development, Promotion, and Information Services

Classification Title	Grade No.
Area Occupational Program Specialist	67
Social Setting Detoxification Manager	64
Substance Abuse Education Supervisor	67
Substance Abuse Education Consultant Trainee	NG
Substance Abuse Education Consultant	66
Substance Abuse Education Specialist Trainee	NG
Substance Abuse Education Specialist	63
Substance Abuse Information Center Director	64

## PROPOSED RULES

Substance Abuse DUI Specialist I	60
Substance Abuse DUI Specialist II	63
Substance Abuse DUI Supervisor	65

(e) Occupational and Adult Instruction and Administration

Classification Title	Grade No.
Home Economist Trainee	NG
Home Economist	63

Statutory Authority G.S. 126-4.

### .0507 HUMAN SERVICES CLASSES

Social, Vocational and Correctional Counseling, Rehabilitation, and Training

Classification Title	Grade No.
Day Care Services Coordinator I	68
Day Care Services Coordinator II	72
Educational Developmental Technician Trainee	NG
Educational Developmental Technician	60
Adult Developmental Activities Program Coordinator Trainee	NG
Adult Developmental Activities Program Coordinator	63
Work Adjustment Coordinator Trainee	NG
Work Adjustment Coordinator	63
Workshop Programming Supervisor	65
Workshop Director III	70
Developmental Day Teacher I	63
Developmental Day Teacher II	66
Developmental Day Director I	67
Developmental Day Director II	68
Developmental Day Director III	70
Therapeutic Preschool Teacher	66
Educational Program Coordinator	68

Statutory Authority G.S. 126-4.

### .0508 MEDICAL, HEALTH, AND LABORATORY CLASSES

(a) Medical Laboratory and Laboratory Services

Classification Title	Grade No.
Venereal Disease Epidemiologic Assistant	54

(b) Medical Supply and Supportive Classes

Classification Title	Grade No.
Dental Assistant (Local Health)	53

(c) Professional Medical

Classification Title	Grade No.
Pediatric Consultant	82

(d) Professional Nursing



## PROPOSED RULES

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Classification Title	Grade No.
Mental Health Nurse Trainee	NG
Mental Health Nurse I	67
Mental Health Nurse II	69
Mental Health Nurse Supervisor	71
Nurse Specialist Public Health	70

(e) Non-professional Nursing, Counseling, and Personal Care

Classification Title	Grade No.
Community Social Services Assistant	54
Community Support Services Supervisor	60
Community Support Services Manager	67
Community Mental Health Assistant	54
Community Mental Health Technician	58
Chore Worker Supervisor	56

Statutory Authority G.S. 126-4.

.0509 LICENSING: INSPECTION: AND PUBLIC SAFETY CLASSES

(a) Sanitation

Classification Title	Grade No.
Summer Helper, Sanitation	48
Environmental Health Supervisor III	74
Environmental Health Coordinator	68

(b) Industrial and Natural Resources

Classification Title	Grade No.
Air Hygienist I	67
Air Hygienist II	70
Air Hygienist III	73
Director of Environmental Health I	76
Director of Environmental Health II	78

Statutory Authority G.S. 126-4.

.0510 SKILLED TRADES AND ALLIED CLASSES

Technical and Scientific

Classification Title	Grade No.
Radiological Instrument Specialist	60

Statutory Authority G.S. 126-4.

.0511 ENGINEERING: ARCHITECTURAL: AND ALLIED CLASSES

Structural, Electrical, and Mechanical Engineering

Classification Title	Grade No.
Shelter Project Officer	64

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

SECTION .0600 - RECRUITMENT AND  
SELECTION

.0601 RECRUITMENT

(a) Policy. Local departments and agencies will meet their workforce needs through systematic recruitment and career support programs which identify, attract, select, and develop the human resources necessary for present and future work.

(b) The employment of individuals will be carried out with forethought for the balance of skills needed to sustain growth and assure future leadership. Programs and practices which foster internal advancement opportunities for current employees will be earnestly attended; for tenure and experience is to be valued. At the same time, there will be a planned and reasoned infusion of persons from outside the organization, who can offer scarce talent, a fresh perspective, or the latest academic knowledge. This will be accomplished through targeted recruitment efforts which bear a logical and systematic relationship to the desired workforce representation, and afford equal applicant opportunity within the limits of these goals. Through such a purposeful integration of experience, perspective, and vitality, the mission of service to the public will be best met.

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

.0602 POSTING AND ANNOUNCEMENT OF  
VACANCIES

(a) Vacant positions to be filled will be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply.

(b) Vacancies which will be filled from within the agency workforce will be prominently posted in an area known to employees, and 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, and contact person for each position to be filled. An exception to this posting requirement will be permissible where a formal, pre-existing "understudy" arrangement has been established by management.

(c) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the internal workforce shall be listed with the local Job Service Office of the Employment Security Commission. Listings will include the appropriate announcement informa-

tion and vacancies so listed shall have an application period of not less than seven work days.

(d) If an agency makes an effort to fill a vacancy from within, and is unsuccessful, the listing with the Employment Security Commission would take place when the 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.

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

.0603 APPLICANT INFORMATION AND  
APPLICATION

(a) The primary source of public information and referral for vacancies in subject local government programs is the Employment Security Commission. Interested persons may contact their local ESC Job Service Office. Other sources may also be designated by local departments and agencies.

(b) Persons applying for a local vacancy must complete and submit the official application form designated by the hiring authority and approved by the reviewing state agency. It is not necessary for local agencies to accept official application forms in the absence of an actual vacancy under active recruitment.

(c) Each agency shall be responsible for evaluating the accuracy of statements made in an application, and may seek job-related evidence of the applicant's suitability for employment.

(d) An applicant may be disqualified if he:

- (1) lacks any of the preliminary qualifications established for the class of the position being applied for;
- (2) has been convicted of a crime of a nature which would raise serious public doubt about suitability for the responsibilities of the specific position being applied for;
- (3) has made a false statement of material fact in the application process;
- (4) used or attempted to use political pressure or bribery to secure an advantage in the selection process;
- (5) fails to submit an application correctly or within the prescribed time limits;
- (6) has directly or indirectly obtained information concerning any required selection procedure to which an applicant is not entitled;
- (7) lacks the physical or mental ability to perform the essential duties of the position even with reasonable accommodation;

- (8) holds an office or has other employment which would constitute a conflict of interest with the public responsibility vested in the position being sought.

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

#### .0604 EMPLOYMENT OF RELATIVES

(a) The employment of relatives within the same local department or agency is to be avoided unless significant recruitment difficulties exist. If the employment of relatives must be considered, the following will apply: Two members of an immediate family shall not be employed within the same department or agency if such employment will result in one supervising a member of his/her immediate family, or where one member occupies a position which has influence over the other's employment, promotion, salary administration, and other related management or personnel considerations.

(b) The term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems might be created within the work unit, or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals would be violated. In general, this would include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter. Also included are the step-, half-, and in-law relationships as appropriate based on the listing in this Rule. 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.*

#### .0605 VETERAN'S PREFERENCE

Persons entitled to veteran's preference must so indicate on any application filed. Verifying documentation may be required by the agency if so desired.

*Statutory Authority G.S. 126-4(10); 128-5.*

#### .0606 SELECTION

##### (a) Selection of Applicants

- (1) The selection of applicants for appointment will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be best qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.

- (2) Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. In any vacancy instance, the same selection process will be used consistently with all applicants. Equal employment consideration will be afforded. Reference checking and other means of verifying applicant qualifications may be employed as necessary. It should be recognized and explained to persons selected that the probationary period is a required extension of the selection process.

- (3) The Office of State Personnel will provide technical assistance, upon request, to agencies wishing to design or review selection procedures.

##### (b) Minimum Qualifications

- (1) The employee or applicant must possess at least the minimum education and experience requirements, or their equivalent, set forth in the state class specification for the class of the position to be filled. This shall apply in new appointments, promotions, demotions, transfers, and reinstatements.

- (2) The education and experience requirements serve as indicators of the possession of the skills, knowledges, and abilities which have been shown through job evaluation to be important to successful performance, and as a guide to primary sources of recruitment. It is recognized that a specific quantity of formal education or number of years experience does not always guarantee possession of the necessary skills, knowledges, and abilities for every position. Qualifications necessary to perform successfully may be attained in a variety of combinations. In evaluating qualifications, reasonable substitutions of formal education and job-related experience, one for the other, will be made upon request by the local appointing authority to the appropriate state review agency.

- (3) Management is responsible for determining the vacancy-specific qualifications that are an addition to minimum class standards. Such qualification requirements must bear a logical and job-related relationship to the minimum standard. Management shall be accountable for the adverse effects resulting from the use of qualification standards that are unreasonably construed.

- (4) The review authority for qualifications in questionable selection situations rests first



with the respective regional personnel office of the Department of Human Resources, and the state Office of Emergency Management, and finally with the Office of State Personnel.

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

## SECTION .0700 - APPOINTMENT AND SEPARATION

### .0701 APPOINTMENT

An appointment is the approved employment of an applicant or employee to perform the duties and responsibilities of an established position subject to the provisions of the State Personnel Act. The selection and appointment of persons to all subject positions shall be by the action of the appointing authority.

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

### .0702 TYPES OF APPOINTMENTS AND DURATION

#### (a) Probationary Appointment

- (1) Individuals receiving original appointments to permanent positions must serve a probationary period. Persons being rehired after leaving employment in a subject position, and employees voluntarily accepting promotions, transfers, or demotions in another county, area mental health-substance abuse program, district health program, or emergency management program, may be required to serve a probationary period by their new employers. This period is an essential extension of the selection process, and provides the time for effective adjustment by the new employee or elimination of those whose performance will not meet acceptable standards.
- (2) The length of the probationary period shall be not less than three nor more than nine months of either full-time or part-time employment. The length is dependent upon the complexity of the position and the rapidity of progress made by the particular individual in the position. When the employee's performance meets the required standard of work, after at least three months and not more than nine months in the position, the employee shall be given permanent status unless in a trainee appointment. If the desired level of performance is not achieved within nine months after initial appointment, the employee shall be separated from service unless in trainee status; an employee with

a trainee appointment is not expected to reach a satisfactory performance standard for the regular class until he has completed the training period.

- (3) At any time during a probationary period an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or hearing. The employee must be given notice of dismissal, including reasons.
- (4) Satisfactory service during a probationary, temporary, or trainee appointment may constitute part or all of the probationary period. Employment in an intermittent or emergency appointment shall not be credited toward the probationary period.
- (b) Trainee Appointment
  - (1) A trainee appointment may be made to a position in any class for which the specification includes special provisions for a trainee progression leading to a regular appointment. An individual may not be appointed as a trainee if he possesses the acceptable training and experience for the class.
  - (2) The specification for each class in which a trainee appointment is authorized will define the minimum qualifications for the trainee appointment and the minimum qualifications for a regular probationary appointment. It is, of course, expected that the individual will progress through supervised experience to a minimum level of satisfactory performance in the position during a period of time indicated by the difference between the amounts of experience required for the two types of appointments. This limit does not include time spent on educational leave or additional time required to participate in a work-study program designed to meet educational requirements for the class. An employee may not remain on a trainee appointment beyond the time he meets the educational and experience requirements for the class. After the employee has successfully completed all educational and experience requirements he shall be given probationary or permanent status in the position or shall be separated. If the period of the trainee appointment equals or exceeds nine months, the employee must be given permanent status immediately or be separated.
  - (3) If an employee with permanent status in another class accepts a trainee appointment, the permanent status will be waived

for the duration of the trainee appointment. The employee can regain permanent status either through successful completion of the trainee appointment, by reinstatement to the class in which he previously held status, or by transfer to a position in a class for which he/she would have been eligible based on previous permanent status.

- (4) A former employee who does not meet the minimum requirements of the class to which he is being appointed shall be given a trainee appointment. All requirements for the trainee appointment must be satisfied prior to attaining permanent status.

(c) **Permanent Appointment.** A permanent appointment is an appointment to a permanently established position when the incumbent is expected to be retained on a permanent basis. Permanent appointments follow the satisfactory completion of a probationary and/or trainee appointment, or may be made upon reinstatement of a qualified employee.

(d) **Time-Limited Appointment.** A time-limited appointment may be made to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less; or
- (2) to a permanent position that has an established duration of no more than two years. Such appointment shall not be made for less than six months. If at the end of the two year time-limited appointment, the work is expected to continue and the position becomes permanent, the employee should be given a permanent appointment. A time-limited appointment is distinguished from a temporary appointment by the greater length of time, and from the regular permanent appointment by its limited duration.

(e) **Temporary Appointment.** A temporary appointment may be made to a permanent or temporary position. The appointment shall be limited to a maximum duration of twelve months.

(f) **Pre-Vocational Student Appointment.** This appointment is to be used to enable students to gain practical knowledge of their particular occupational area of interest. A suitable plan for training under close supervision must be developed for the individual. In the case of a co-operative, work study, internship, or similar appointment, the time schedule for work must be determined. The basis of eligibility and selection for such an appointment shall be outlined

in a formal plan developed by the participating agencies for each type and level of student involvement. A copy of the plan must be submitted for approval by the State Personnel Director, or his designee. Upon successful completion of their training, individuals may be considered for any vacant position for which qualified. Work time spent in a pre-vocational student appointment may be counted toward the required probationary period.

(g) **Emergency Appointment**

(1) An emergency appointment may be made when an emergency situation exists requiring the services of an employee before it is possible to identify a qualified applicant through the regular selection process. When it is determined that an emergency appointment is necessary, all other requirements for appointment will be waived.

(2) An emergency appointment may be made for a period of up to sixty work days (consecutive or non-consecutive). An individual may not receive successive emergency appointments with the same department or agency. At least three calendar months must elapse before that department or agency can give the same individual another emergency appointment.

(h) **Appointment of Incumbents in Newly-Covered Programs**

(1) Upon extension of State Personnel Act requirements to a program, position, or group of positions, the incumbent(s) may be appointed with permanent status in his classification under any of the following circumstances:

(A) The employee is qualified for reinstatement on the basis of previous permanent status in a comparable position; or

(B) The employee has at least three months of satisfactory service in the program/agency, as certified by the appointing authority, and the appointing authority recommends that the employee be granted permanent status.

(2) If the agency fails to grant permanent status within nine months from the initial coverage then the incumbent must be terminated. Employees given trainee appointments will be given permanent status consistent with other trainee appointments.

(3) Incumbents who have less than three months of service with the agency shall be continued with no status until they are



granted permanent status or terminated as required in this Rule. Employees with more than three months but less than nine months service in the agency may be continued without status until nine months have elapsed. At the end of nine months, however, the incumbent must be granted permanent status or terminated.

(4) **Work-Against Appointment.** When qualified applicants are unavailable, and there is no trainee provision for the classification of the vacancy, the appointing authority may appoint an employee below the level of the regular classification in a work-against situation. A work-against appointment is for the purpose of allowing the employee to gain the qualifications needed for the full class through on-the-job experience. The appointee must meet the minimum education and experience standard of the class to which initially appointed. A work-against appointment may not be made when applicants are available who meet the education and experience requirements for the full class, and for the position in question.

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

#### .0703 TRANSFER; PROMOTION; DEMOTION; AND SEPARATION

Decisions relating to transfers, promotions, demotions, separations, salary advancements, and other personnel actions affecting employees should be based on the overall performance and potential of the employee. Evaluation shall be systematic and objective, and guidance shall be provided for development of the employee as an individual. Efforts should be devoted to improving the effectiveness of employees, assessing training needs, and planning training opportunities.

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

#### .0704 TRANSFER

A transfer is the movement of an employee from one position to another position in the same class or between classes having comparable qualification requirements or the same salary grade.

The transfer of any probationary or trainee employee may be made to other positions at the same level. After completion of the first three months of satisfactory service, an employee in probationary or trainee status may be transferred to any position to which he could be transferred if he were a permanent employee.

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

#### .0705 PROMOTION

(a) A promotion is a change to a classification at a higher level. This may result from movement to another position or by the present position being reallocated to a higher classification as a result of increases in the level of duties and responsibilities.

(b) When it is feasible, a vacancy should be filled by promotion of a qualified permanent employee. Selection should be based upon demonstrated capacity, and quality of service. If promotion results from movement to another position, the candidate must possess the minimum training and experience for the class. If the promotion results from the present position being reallocated to a higher classification, the employee may be promoted by waiver of the stated education and experience requirements if he has satisfactorily performed for a minimum of three months prior to the reallocation.

(c) An employee in a work-against appointment cannot be promoted, upon reallocation of his position, by waiver of education and experience requirements until he has served at least one year in the work-against class or until qualified for the new class. The incumbent in a work-against situation must be promoted as soon as he meets the qualifications for the higher class or the position must be reallocated to the lower class.

(d) If the employee in a position which is reallocated to a higher classification has permanent status, and is not promoted, he shall receive the same consideration as is given an employee in a reduction-in-force.

(e) An employee in probationary or trainee status may be promoted to another position in a higher classification if the person is qualified for such an appointment. The employee's probationary period will continue until performance meets the required standard, as certified by the appointing authority, except that in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).

(f) An employee in probationary status occupying a position at the time it is reallocated upward may be promoted to the new class if the person possesses the minimum qualification and experience requirements; if not qualified the employee shall remain at the former level working against the higher classification or be separated. If promoted during the probationary period, the employee will continue in probationary status until performance meets the required standard, but in no case shall the duration be longer than



nine months after initial probationary appointment (unless the person is in trainee status).

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

#### .0706 DEMOTION/REASSIGNMENT

Demotion or reassignment is a change in status resulting from assignment of a position to a lower classification level. It may result from the choice of the employee, reallocation of a position, inefficiency in performance, unacceptable conduct, reduction-in-force, or better utilization of individual resources. If the change results from inefficiency in performance or as a disciplinary action, the action is considered a demotion. If the change results from a mutually agreed upon arrangement, the action is considered a reassignment. When an employee in permanent, probationary, or trainee status is demoted, it is expected that he will possess the minimum qualifications required for the new class at the respective level of appointment.

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

#### .0707 SEPARATION

(a) Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status will not be subject to involuntary separation or suspension except for cause or reduction in force.

(1) **Resignation or Retirement.** An employee may terminate his services with the agency by submitting a resignation or request for retirement to the appointing authority. It is expected that an employee will give at least two weeks' notice prior to his last day of work.

(2) **Dismissal.** Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of the Policy on Suspension and Dismissal. (See 25 NCAC II, Section 1300.)

(3) **Reduction-in-Force.** For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while there are emergency, intermittent, temporary, probationary, or trainee employees in their initial six months of the trainee progression serving in the same or related class, unless the permanent employee is

not willing to transfer to the position held by the non-permanent employee, or the permanent employee does not have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee.

(b) An employee in temporary, probationary, or trainee status who is separated in accordance with these provisions may retain his status for one year from the date of separation. If suitable employment becomes available during the period, the employee may be reinstated at the request of the agency.

(c) A permanent employee who resigned in good standing or was separated by reduction in force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience standard for the class to which he is being appointed.

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

#### .0708 VETERANS

Permanent or probationary employees who resigned or were granted leave without pay to serve in the Armed Forces of the United States, are eligible for reinstatement to the same position or one of like status, seniority, and pay. The employee may receive any salary increases which he/she might have received had he/she remained in his/her position, subject to the availability of funds and the limit placed by the maximum of the assigned salary range. If, during military service, an employee is disabled to the extent that he/she cannot perform the duties of his/her original position, he/she shall be reinstated to a position with duties commensurate with the disability, if any such position is available.

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

### SECTION .1000 - COMPENSATION

#### .1001 COMPENSATION PLAN

The compensation plan shall include a schedule of salary ranges and rules for salary administration. Within basic policies and rules established by the State Personnel Commission, local jurisdictions may establish and administer compensation plans which provide a level of pay based upon financial ability, fiscal policy, and local prevailing rates.

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

**.1002 ESTABLISHMENT OF SALARY SCHEDULE**

(a) Local jurisdictions may establish and administer salary schedules which meet basic approval requirements of the State Personnel Commission as follows:

- (1) The schedule must consist of series of salary ranges with minimum, maximum, and intermediate rates of pay;
- (2) There must be a vertical increase between consecutive salary ranges within the schedule.

(b) The State Personnel Director shall make available salary schedule models which meet these basic criteria and make available staff resources to advise and consult with local jurisdictions in the development of acceptable schedules. Board of county commissioners or municipal governing boards may adopt and use a model schedule or, as an alternative, may submit a modified schedule for review and approval by the State Personnel Commission. Schedules may be modified in order to provide a structure deemed more suitable to local fiscal policy and financial ability so long as the other basic requirements are met. Modified schedules shall be accompanied by data and statements of explanation supporting the need for the modification because of local financial ability and fiscal policy. Local jurisdictions having a compensation plan for other non-subject employees may submit the salary schedule of that plan for approval under these same provisions.

(c) Proposed local salary schedules shall be designated or submitted to the State Personnel Director by the beginning date of each fiscal year, and at the time of significant change during interim periods. In submitting, the following requirements shall prevail:

- (1) For the programs of a single county, the board of county commissioners shall establish and submit a proposed salary schedule.
- (2) When a municipality is performing a subject activity, the governing board of the municipality shall establish and submit the proposed schedule.
- (3) When two or more counties are combined into a district or area for the performance of an activity, the boards of county commissioners of the counties must jointly establish and submit a proposed schedule; the district or area schedule is established independently of the salary schedule for any of the individual counties.
- (d) An approved salary schedule must be in effect within a jurisdiction at all times. The ap-

proved schedule shall be applicable to both existing classes and to classes which may be established during its effective period.

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

**.1005 ADMINISTRATION OF SALARY SCHEDULE**

(a) Specific policy requirements and guidelines for administering the approved salary schedule are contained in the remainder of this Section. See 25 NCAC 11, Section .1000, Rules .1007 through .1012. These policy requirements shall apply to all departments employing on a competitive service basis. The State Personnel Director will periodically review with and assist local management in meeting the intent of these provisions.

(b) The State Personnel Director shall also make available upon request, advice and counsel on other salary administration policy guidelines representing a sound management approach to areas of concern in salary administration not covered under these basic requirements.

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

**.1007 SALARY RATES**

(a) **New Appointment.** The entrance salary rate for an employee shall be at the minimum of the range or at a salary rate within the salary range assigned to the class unless an employee is hired in a trainee appointment. Discretion should be exercised by boards of county commissioners or their designees on new appointment salaries above the minimum of the range to avoid creating salary inequities within the jurisdiction.

(b) **Promotion.** When a promotion occurs, the employee's salary shall be increased, if it is below the new minimum, to at least the minimum rate of the salary range assigned to the class to which he is promoted. If an employee's current salary is already above the new minimum salary rate, his salary may be adjusted upward or left unchanged at the discretion of local management, provided that the adjusted salary does not exceed the maximum of the assigned salary range. If the salary falls between steps in the salary range, it may be adjusted to the next higher step in the range.

(c) **Demotion.** When an employee's current salary falls above the maximum of the range for the lower class, his salary may remain the same until general schedule adjustments or range revisions bring it back within the lower range; or his salary may be reduced to any step in the lower salary range, as long as the reduced salary



does not fall below the minimum salary rate of that range. If the employee's current salary falls between steps in the lower range, it may be reduced to the next lower step.

(d) **Salary Adjustments; Salary Plan Revisions.** When the salary rates in the salary plan are changed or a class is moved to a higher or lower salary grade, the following adjustments shall be made in incumbents' salary rates:

(1) When it is an upward revision and the employee's current salary is less than the minimum salary rate of the salary range for the classification, the employee's salary shall be adjusted to at least the minimum of the range. If the employee's salary is already at or above the new minimum of the range, management may elect to increase the salary to another step within the range. An employee's salary may not, however, exceed the maximum of the range.

(2) If there is a downward revision, management may elect to reduce each employee's salary rate by a corresponding amount or allow the salary rates to remain the same.

(e) **Trainee Adjustments.** During a trainee appointment an evaluation of the individual's performance and progress on the job is to be made at frequent intervals. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and are not necessarily limited to the full elapse of specified intervals. Salary adjustments may be either advanced or delayed depending upon the progress of the employee. In cases where salary adjustments have been advanced, normally the trainee's salary will not be adjusted to the minimum of the range for the regular classification until the employee meets all education and experience requirements for the appointment; the salary can be moved to the regular class rate only when job performance demonstrates achievement of duties, knowledge, and skills at the level of the class as verified by a class audit. Adjustments are to be given upon recommendation by the appointing authority and the supervisor that the employee has earned an increase.

When the employee with a trainee appointment has successfully completed the training and experience requirements for the classification, he must be given a regular appointment to that classification and his salary increased at least to the minimum rate of the salary range.

(f) **Merit Increases.** A program of merit increases shall be developed whereby all employees in a jurisdiction are eligible for consideration for merit salary increases. These increases are not automatic; they shall be based on meritorious

work performance. The following factors are considerations when evaluating the employees for merit increases: quality; quantity; and knowledge of work as measured by results; relationships with others as exemplified by willingness to accept assignments as requested; initiative and application of time; and amount of guidance required. Secondary factors considered are: relationship of performance to present pay; internal pay relationships; individual situation; length of time since last increase. Merit increases are to be equitably distributed among all eligible employees.

An employee's salary cannot be raised by merit increases to exceed the maximum salary rate of the salary range assignment to his class.

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

#### .1009 PAY STATUS

(a) An employee is in pay status when working, when exhausting annual or sick leave or when drawing worker's compensation for a period not to exceed 12 months. An employee is not in pay status after his last day of work when separated because of resignation, dismissal, death, retirement or reduction in force.

(b) Normally the first workday of the employee is established as the beginning date of employment. When the first day of a pay period falls on a non-workday and the employee begins work on the first workday of the period, the date to begin work will be shown as the first day of the pay period. When an employee is separated from service or begins leave without pay and he works on the last workday of the pay period, the separation date shall be shown as the last calendar day of the pay period.

(c) If an employee does not satisfy all pay status requirements to be eligible for pay for the full month (or other established pay period), he shall be paid on the basis of time actually worked plus any eligible holidays and paid leave time. To determine his salary, the actual work time, holidays and paid leave time are multiplied by either his daily or hourly salary rate as it appears in the salary schedule. The daily rate is based on a regular eight-hour schedule for 260 work days (five per week) each year; this rate may be used for all employees except any on special schedules whose work days regularly exceed eight hours. For the latter employees, the hourly rate should apply to the total hours worked plus any holiday and paid leave time. If a local jurisdiction has a policy applicable to its employees generally on how to compute pay for a partial pay period, that policy may be followed.



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

**.1010 ADDITIONAL COMPENSATION**

(a) The rates provided by the salary plan represent remuneration for full-time employment, but do not include reimbursements for actual and necessary expenses incurred incident to employment. No pay in addition to the regular salary shall be made unless the provisions are authorized by the appointing authority and approved by the state agency and the State Personnel Director.

(b) Travel expenses:

(1) No allowances or supplements in any form or from any source shall be paid to any employee for travel expense, subsistence, automobile expense or depreciation or any other expense, unless the same type and kind of additional allowance or supplement shall be paid to all employees of the agency having or incurring substantially similar expense in the performance of their official duties.

(2) The amount allowable for car depreciation shall be established annually by the local appointing authority. To be eligible to receive payment for car depreciation, the employee must be in a position in which he is required to travel regularly.

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

**.1011 OTHER PAY**

(a) For those cities or counties in which all employees are covered by a plan for a form of pay in addition to base salary for services performed, the coverage may be approved for agencies subject to these policies. The local authorities shall submit the plan to the State Personnel Director through their Department of Human Resources Regional Manpower Office or State Office of Civil Preparedness, and certify that it is computed on a consistent basis for all employees.

(b) Where there are two or more local jurisdictions comprising a single departmental unit, the jurisdictions shall operate as one unit in establishing any special pay forms; the action shall be independent of provisions for other employees of either jurisdiction.

*Statutory Authority G.S. 126-4; 126-5; 126-9.*

**.1012 ASSIGNMENT OF CLASSES WITHIN SALARY SCHEDULE**

(a) Within an approved salary schedule, local jurisdictions may determine salary range assignments for competitive service classes. The fol-

lowing basic requirements shall be adhered to in making salary range assignments:

(1) The use of appropriate class relationships based upon differences in the difficulty and responsibility of the work. In this regard, the relative difference between and among classes in a class series, and between significantly related classes within an occupational grouping, must be maintained as reflected by the official classification plan. Exception requests may occasionally arise as a matter of local fiscal policy. Such requests, accompanied by supporting data and staff recommendation, will be presented to the State Personnel Commission for approval;

(2) Each class will retain the same salary range assignment in its use in all subject programs of the jurisdiction;

(3) The current salary of each employee, except under specific circumstances included in the approved rules for salary administration, must fall between the minimum and maximum steps of the salary range of the class to which his position is assigned;

(4) A final factor to be used in making salary range assignments is consideration of the local financial ability and fiscal policy.

(b) It is not the intent of these provisions that the individual salaries of competent employees be threatened.

(c) The State Personnel Director shall provide information and guidance on questions of class relationships, labor market influence, fiscal policy considerations, and other matters pertinent to the determination of equitable and competitive salary range assignment.

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

**.1013 PROCEDURE FOR SUBMISSION AND APPROVAL**

(a) By the beginning date of each fiscal year and at times of any significant change during interim periods, a designated or modified salary schedule, and a list of salary range assignments to classes will be submitted to the State Personnel Director. The State Personnel Director shall review the proposed schedule and salary range assignments, determine that approval requirements have been met and certify jurisdictions meeting these requirements to the State Personnel Commission. The State Personnel Commission will then review and either grant or withhold approval of the proposed plan in each case. In cases where opposition to a proposed plan is unresolved locally, the State Personnel Commis-

sion will hear the opposing arguments in public session prior to making a final decision.

(b) An approved salary schedule and salary range assignment plan must be in effect within a jurisdiction at all times.

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

**SECTION .1100 - HOURS OF WORK AND OVERTIME PAY**

**.1103 HOURS OF WORK AND OVERTIME COMPENSATION**

The state policy on "hours of work and overtime compensation" as outlined in 25 NCAC 1D .1900 is intended to provide guidance in complying with federal regulations; however, each county, district, or area jurisdiction is responsible for compliance directly to the U.S. Department of Labor.

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

**SECTION .1200 - ATTENDANCE AND LEAVE**

**.1201 POLICY**

The rules and regulations in this Section governing attendance and leave are effective except when a board of county commissioners or the governing body of a municipality adopts rules and regulations for their employees generally and files these with the State Personnel Director.

*Statutory Authority G.S. 126-9(a).*

**.1202 HOURS OF WORK**

(a) **The Work Week.** The usual hours of work shall be 40 hours per week. Any departure must

correspond to a generally established work week for all county or municipal employees.

(b) **Holidays.** The same holidays shall be observed as other county or municipal departments observe. For employees of a district department, holidays shall be established by the governing board of that department.

If there is no uniform practice as to holidays observed by other employees of the county or municipality, or if no schedule of holidays has been provided for employees of a district department, holidays approved by the State Personnel Board for state employees shall be followed. They are:

New Year's Day  
Martin Luther King, Jr.'s Birthday  
Good Friday  
Memorial Day  
Independence Day  
Labor Day  
Veteran's Day  
Thanksgiving Day and the day after  
Christmas (2 days)

All of the holidays listed in this Rule are legal holidays established by the State Legislature or days observed as holidays as established by the State Personnel Commission. Employees may wish to be away from work on certain days for religious observances. Agency administrators should arrange the work schedule so that an employee may take vacation leave when requested because that day is a major religious observance for that employee. No such request for vacation leave should be denied unless it would create an emergency condition which cannot be prevented in any other manner.

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

**.1203 VACATION LEAVE**

(a) **Scheduling Leave.** Vacation leave shall be taken only upon authorization of the appointing authority. Employee preferences should be considered and schedules worked out bearing in mind individual and agency needs.

(b) **Leave Credits.** Vacation leave credits shall be provided for a full-time or part-time permanent, trainee, probationary, or temporary employee who is working or on paid leave for one-half of the regularly scheduled workdays in a month. The rate is based on length of aggregate covered service. Leave for part-time employees shall be computed as a percentage of total amount provided to a full-time employee, based on the percentage of full-time worked by the part-time employee.



## PROPOSED RULES

Years of Aggregate Covered Service	Hours Granted Each Month	Hours Granted Each Year	Days Granted Each Year
Less than 2 years	7 hrs. 50 mins.	94	11 3/4
2 but less than 5 years	9 hrs. 10 mins.	110	13 3/4
5 but less than 10 years	11 hrs. 10 mins.	134	16 3/4
10 but less than 15 years	13 hrs. 10 mins.	158	19 3/4
15 but less than 20	15 hrs. 10 mins.	182	22 3/4
20 years or more	17 hrs. 10 mins.	206	25 3/4

(c) **Maximum Accumulation.** Leave may be accumulated without any applicable maximum until December 31 of each calendar year. However, if the employee separates from service, payment for accumulated leave shall not exceed 240 hours. On December 31 any employee with more than 240 hours of accumulated leave shall have the excess accumulation cancelled so that only 240 hours are carried forward to January 1 of the next calendar year.

(d) **Advancement.** An employee may be advanced the amount of leave needed on an individual basis and which can be credited during the remainder of the calendar year.

(e) **Leave Charges.** Leave shall be charged in units of time appropriate and consistent with the responsibility of managing absences in keeping with operational needs.

(f) **Leave Transferable.** Unused leave may be transferred from one agency to another if the agency to which the transfer is being made will accept the leave; this includes transfer between state and local agencies.

(g) **Separation Payment of Vacation Leave.**

(1) Lump sum payment for leave is made only at the time of separation. An employee may be paid in a lump sum for accumulated leave not to exceed a maximum of 240 hours when separated due to resignation, dismissal, reduction in force, death, service retirement, or leave without pay. For monthly pay rolls, if the last day of terminal leave falls on the last work day in the month, pay shall be made for the remaining non-workdays in that month.

(2) If an employee separates and is overdrawn on leave, it will be necessary to make deductions from the final salary check.

(3) In the case of a deceased employee, payment for unpaid salary, terminal leave and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made in accordance with the provisions of N.C.G.S. 28A-25.6(a) or (e).

(4) An employee ceases to accumulate leave during the period of terminal leave. The employee will not be charged leave for any holidays occurring during that period. The last day of work is the date of separation even when the employee receives pay for accumulated vacation leave extending beyond this date.

*Statutory Authority G.S. 28A-25.6(a),(c); 126-4.*

### 1204 SICK LEAVE

(a) **Sick Leave Credits.** Sick leave credits at the rate of 8 hours per month or 96 hours per year shall be provided for a full-time or part-time (half-time or more) permanent, trainee, or probationary employee who is working or on paid leave for one-half or more of the regularly scheduled workdays in any month.

Leave for part-time employees shall be computed as a percentage of total amount provided to a full-time employee.

(b) **Accumulation.** Sick leave is cumulative indefinitely.

(c) **Advancement.** The appointing authority may advance sick leave not to exceed the amount

an employee can accumulate during the current calendar year.

(d) **Verification.** To avoid the abuse of sick leave privileges, the appointing authority may require a statement from a medical doctor or other acceptable proof that the employee was unable to work due to personal illness, family illness, or death in the family.

(e) **Use of Sick Leave.** Sick leave may be used for illness or injury which prevents an employee from performing usual duties and for the actual period of disability connected with childbearing or recovery therefrom.

**Note:** Female employees shall not be penalized in their condition of employment be-



cause they require time away from work caused by or contributed to by pregnancy, miscarriage, abortion, childbirth and recovery. Disabilities resulting from pregnancy shall, for sick leave purposes, be treated the same as any other temporary disability suffered by an employee. Accumulated sick leave may be used for the period of actual disability as a result of childbearing or recovery therefrom. Since there is no certainty as to when disability actually begins and ends, a doctor's certificate shall be required verifying the employee's period of temporary disability.

(f) It may also be requested for:

- (1) medical appointments; and
- (2) illness of a member of the employee's immediate family.

**Note:** For this purpose, immediate family is defined as spouse, parents, children (including step relationships) and other dependents living in the household.

(g) Death of a member of the employee's immediate family.

**Note:** For this purpose, immediate family is defined as spouse, parents, children, brother, sister, grandparents, and grandchildren. Also included are the step, half, and in-law relationships.

(h) **Leave Charges.** Only scheduled work hours shall be charged in calculating the amount of leave taken. Holidays shall not be counted as sick leave.

(i) **Sick Leave Transferable.** Unused sick leave may be transferred from one agency to another if the employing agency is willing to accept it. This includes transfer between state and local agencies.

(j) **Separation.**

(1) Sick leave is not allowable in terminal leave payments when an employee separates from service.

(2) If an employee separates and is overdrawn on leave, it will be necessary to make deductions from the final salary check.

(k) **Reinstatement of Sick Leave.**

(1) Sick leave shall be reinstated when an employee returns from authorized leave without pay or when reinstated within three years from any type of separation.

(2) If an employee separates from a state government position and returns to local government employment (or vice versa) within three years from the last workday, the employing agency may consider reinstatement of sick leave credits accumulated at the time of separation.

## .1206 MILITARY LEAVE WITH PAY

(a) The following definitions will apply to this Subchapter:

(1) "Armed forces or active military service" means Army, Navy, Air Force, Marine Corps, Coast Guard and other organizations which are brought into federal military service during an emergency or wartime.

(2) "Extended active duty" means that period of time for which an employee is ordered to active military service under the following circumstances:

(A) one voluntary enlistment or entry into any of the active military services for a period of four years or less at any time during the employee's career as a governmental employee or for all such enlistments or entries made during a declared state of national emergency or during time of war;

(B) upon call-up or order to federal active duty for an employee in the National Guard or one of the other reserve components;

(C) induction into active military service via selective service conscription.

(3) "Reserve components" of the United States Armed Forces means the National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve and the Coast Guard Reserve. The Civil Air Patrol is not a reserve component; it is an Air Force Auxiliary and its members are not subject to obligatory service. The National Guard is unique among the reserve components in that it has a dual role, serving both as a federal reserve component and as the State Militia. In its role as State Militia the North Carolina Army National Guard and the North Carolina Air National Guard respond to the Governor who is their commander-in-chief and serve as the military arm of the state government. Therefore, the National Guard is subject to active state duty upon order of the Governor.

(b) Leave with pay shall be granted to members of reserve components of the United States Armed Forces for certain periods of active duty training and to members of the State Militia (National Guard) for state military duty.

(c) **Period of Entitlement for All Reserve Components.** Military leave with pay shall be granted to full-time or part-time permanent, trainee and probationary employees for 96

working hours annually (prorated for part-time employees) for any type of active military duty of a member not on extended active duty as defined in Paragraph (a) of this Rule. On rare occasions due to annual training's (summer camp) being scheduled on a federal fiscal year basis an employee may be required to attend two periods of training in one calendar year. For instance, the employee may be required to attend annual training for federal fiscal year 1980 in March and for federal fiscal year 1981 in November. For this purpose only, an employee shall be granted an additional 96 hours military leave (prorated for part-time employees) during the same calendar year as required.

(d) Additional periods of entitlement for National Guard only are as follows:

- (1) infrequent special activities in the interest of the State, usually not exceeding one day, when so authorized by the Governor or his authorized representative.
- (2) active state duty (domestic disturbances, disasters, search and rescue, etc.) for periods not exceeding 30 consecutive calendar days. For periods in excess of 30 days, employees shall be entitled to military leave with differential pay between military pay and regular governmental pay if military pay is the lesser. Military leave for active state duty is to be considered separate from and in addition to military leave which may be granted for other purposes.

(e) Periods of Entitlement for Civil Air Patrol. When performing missions or encampments authorized and requested by the U.S. Air Force or emergency missions for the State at the request of the Governor or the Secretary of Crime Control and Public Safety, a member of the Civil Air Patrol is entitled to military leave not to exceed a combined total of 96 hours (prorated for part-time employees) in any calendar year unless otherwise authorized by the Governor. Such service by a local employee may be verified by the Secretary of Crime Control and Public Safety upon request of the employing agency.

(f) Unacceptable Periods:

- (1) regularly scheduled unit assemblies usually occurring on weekends and referred to as "drills". Although these periods are unacceptable for military leave with pay, the employing agency is required by federal law to excuse an employee for regularly scheduled military training duty. If necessary the employee's work schedule shall be appropriately rearranged to enable the employee to attend these assemblies. To determine the dates of these regularly

scheduled unit assemblies, the employing agency may require the employee to provide a unit training schedule which lists training dates for a month or more in advance. Employing agencies are not required to excuse an employee for military service performed under the circumstances defined in Subparagraphs (f)(2), (f)(3) and (f)(4) of this Rule;

- (2) duties resulting from disciplinary actions imposed by military authorities;
- (3) for unscheduled or incidental military activities such as volunteer work at military facilities, unofficial military activities, etc.;
- (4) for inactive duty training (drills) performed for the convenience of the member such as equivalent training, split unit assemblies, make-up drills, etc.

(g) Administrative Responsibility. The employing agency may require the employee to submit a copy of the orders or other appropriate documentation evidencing performance of required military duty.

(h) Retention and Continuation of Benefits. During the period of military leave without pay, no employee shall incur any loss of service or suffer any adverse service rating. The employee shall continue to earn and accumulate sick and annual leave, earn aggregate service credit and receive any promotion or salary increase for which otherwise eligible.

(i) Leave With Pay for Physical Examination for Military Service. An employee shall be granted necessary time off when an employee must undergo a required physical examination relating to military service.

(j) Military Leave With Differential Pay. Military leave with differential pay between military pay and regular governmental pay, if military pay is the lesser, shall be granted for active state duty for periods in excess of 30 consecutive calendar days.

Statutory Authority G.S. 126-4(10); 127A-116.

## .1207 CIVIL LEAVE

(a) Jury Duty. When an employee serves on a jury, he is entitled to leave with pay for the period of absence required. He is entitled to his regular compensation plus fees received for jury duty.

(b) Court Attendance. When an employee attends court in connection with his official duties, no leave is required. Fees received as a witness while serving in an official capacity shall be turned into the agency for which he works. (When an employee is required to attend court on a day that he would normally be off, the time



is to be considered as working overtime and the employee will be allowed compensatory leave.)

When an employee is subpoenaed or directed by proper authority to appear as a witness, he shall be granted civil leave with pay. Any fees received shall be turned in to the state agency for which he works. The employee may use annual leave rather than take civil leave with pay in which case he may retain any fees received.

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

#### .1208 EDUCATIONAL LEAVE

Educational leave shall be granted permanent and probationary employees in accordance with rules adopted by the employing agency.

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

#### .1209 LEAVE WITHOUT PAY

(a) A full-time or part-time permanent, probationary, or trainee employee may be granted leave without pay in the following situations:

- (1) the remaining period of disability after sick leave has been exhausted;
- (2) parental leave;
- (3) educational leave to better equip the employee for the performance of his duties and responsibilities;
- (4) periods of active duty with the armed forces of the United States as a result of involuntary draft or military conscription, or for a period of one voluntary enlistment not to exceed four years;
- (5) special work assignment to the state or federal levels of government;
- (6) vacation purposes; or
- (7) for other reasons deemed justified by the appointing authority.

(b) Leave without pay, except military leave, shall not exceed a maximum of 12 months within a calendar year unless the appointing authority requests an extension and it is approved by the state agency and the State Personnel Director. The decision to grant leave without pay is an administrative one for which the agency head must assume full responsibility. Factors to consider are needs of the employee requesting leave, workload, need for filling employee's job, chances of employee's returning to duty and the obligation of the agency to reinstate the employee to a position of like status and pay. It is the responsibility of the agency to administer leave without pay in a manner that is equitable to all of its employees.

(c) An employee going on sick leave without pay, military leave without pay, parental leave,

worker's compensation leave, or any other leave without pay (except for vacation purposes, or for other personal reasons not exceeding 10 consecutive workdays) may exhaust annual leave or may retain part or all of accumulated leave until the employee returns from leave without pay. However, if leave without pay extends through December 31, any annual leave accumulation above 240 hours shall be cancelled. All accumulated annual leave shall be exhausted by an employee before going on leave without pay for vacation purposes, or for other personal reasons not exceeding 10 consecutive workdays. When an employee is exhausting annual leave he continues to earn leave, is eligible to take sick leave, is entitled to holidays, and is eligible for salary increments during that period.

(d) At the expiration of such leave, the employee shall be reinstated to a position of similar status and pay unless such a position is no longer available due to budgetary reduction in staff. The employee shall retain accumulated sick leave, retirement status and time earned toward any salary increase. At least 30 days prior to the end of the leave the employee shall give written notice of intention to return to work; otherwise, the employer is not required to provide such reinstatement but may do so if feasible. Failure on the part of an employee to report promptly at the expiration of the leave of absence, except for satisfactory reasons submitted in advance, shall be cause for dismissal.

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

#### .1210 SPECIAL LEAVE WITHOUT PAY

(a) Sick Leave Without Pay. Sick leave without pay may be granted by the appointing authority for the remaining period of disability after sick leave has been exhausted. The employee may also exhaust annual leave before going on leave without pay, or may retain part or all of accumulated annual leave until his return to local service. In the event the employee needs more than one year of sick leave without pay, an extension must be requested.

(b) Parental Leave.

- (1) The natural parents of a newborn infant and the parents of a newly-adopted child under five years of age may request leave without pay under provisions of this policy. The natural mother may use accumulated sick leave for the actual period of temporary disability caused or contributed to by pregnancy and childbirth; see "Sick Leave" in Rule .1204 of this Subchapter.



- (2) The agency head shall grant leave without pay to the natural mother for all of the time of personal disability not covered by sick leave (either because the employee has exhausted all sick leave or prefers to retain it). Since there is no certainty as to when disability actually begins and ends, a doctor's certificate shall be required verifying, on a prescribed form, the employee's period of temporary disability.
  - (3) Limitation of employment by the employer before and after childbirth is prohibited, except for medical reasons as determined by a physician.
  - (4) The natural mother may desire to be on leave from work prior to and/or after the time of actual disability. Leave without pay may be granted for this purpose under the provisions of this policy.
  - (5) Leave without pay for the parent of an adopted child can begin no earlier than one week prior to the date the parent receives custody of the child.
- (c) **Military Leave Without Pay.** Leave without pay shall be granted for certain periods of active duty or for attendance at service schools. Except for extended active duty [covered in Subparagraph (3) of this Rule] use of all or any portion of an employee's 96 hours of annual military leave (pro-rated for part-time employees) with pay or regular annual (vacation) leave may be used in lieu of or in conjunction with military leave without pay.
- (1) **Attendance at Service Schools.** Military leave without pay shall be granted for attendance at service schools when such attendance is mandatory for continued retention in the military service. For purposes other than retention, military leave without pay may be granted employees for attendance at resident military service schools. However, when the employee is required by a reserve component to attend a resident specialized military course because the course is not available by any other means (i.e., correspondence course, USAR School, etc.) military leave without pay shall be granted. To verify that such a course is mandatory the agency may contact the Department of Crime Control and Public Safety.
  - (2) **Reserve Enlistment Program of 1963 (REP-63).** Leave without pay shall be granted for active duty training upon initial enlistment in a reserve component. This period is variable but averages about six months and is sometimes referred to as "six months' active duty."
  - (3) **Extended Annual Active Duty for Training.** Leave without pay shall be granted if additional time is required beyond the allowable 96 working hours each year. The employee may elect to use annual leave rather than go on leave without pay.
  - (4) **Extended Active Duty.** Military leave without pay shall be granted as outlined in this Subparagraph for periods of active duty in the Armed Forces of the United States. Use of military leave with pay is not authorized upon entry into extended active duty.
- (A) **Employee Eligibility.** Full-time or part-time permanent, trainee and probationary employees who enter active military service under situations as defined in Rule 1206(b) of this Section are eligible for leave without pay.
- (B) Additional leave without pay shall be granted for the following periods:
- (i) While awaiting entry into active duty provided any delay is not due to the employee's own fault. If desired by the employee this shall include any period of up to 30 days to allow employee to settle any personal matters.
  - (ii) The period immediately following military service while the employee's reinstatement with local government is pending provided the employee applies for such reinstatement within 90 days following release from active duty. Please note that it is the employee's responsibility to apply for reinstatement within the 90-day period.
  - (iii) Any period of involuntary extension of an enlistment which originally was made for four years or less when such extension is not made at the employee's request or due to his/her own fault. In case of involuntary extension the employee may be required to present satisfactory evidence that such extension was in fact involuntary.
  - (iv) Employees hospitalized for service-connected disability under honorable conditions and not due to their own misconduct shall be entitled to military leave without pay for that period certified by the attending physician as required for adequate recuperation to return to employment. Also, the employee shall be entitled to leave without pay for the period from the time of release by the physician until actually reinstated in local employment provided the employee applies for such

reinstatement within 90 days of such release by the physician.

- (5) **Employee Responsibility.** The employee shall make available to the agency head a copy of orders to report for active duty; shall advise the agency head of the effective date of leave and the probable date of return; shall provide the agency head with any requested information regarding military service; shall be responsible for making application for reinstatement within 90 days from the date of separation from service.
- (6) **Employer Responsibility.** It shall be the responsibility of the agency head to ascertain that the employee is eligible for military leave without pay. The agency head shall explain to the employee the rights and benefits concerning leave, salary increases, retirement status and reinstatement from leave. Forms PD 100 (see 25 NCAC, H, Section .1500, Rule .1503) indicating final separation shall be submitted if the employee exceeds the time limitations for military leave without pay or if the agency learns during the period of leave without pay that the employee will not return to governmental service.
- (7) **Retention and Continuation of Benefits.** The employee may choose to have accumulated annual leave paid in a lump sum; may exhaust this leave; or may retain part or all of accumulated leave until return to governmental service; the maximum accumulation of 240 hours applies to lump sum payment. Entitlement is given to full retirement membership service credit for the period of such active service in the Armed Forces after being separated or released; or becoming entitled to be separated or released; from active military service for other than dishonorable conditions. Under this provision, credit is received for such service upon filing with the Local Government Retirement System a copy of the service record showing dates of entrance and separation. (In addition, the retirement membership service credit is available to employees who return to governmental employment within a period of two years after the earliest discharge date, or any time after discharge and who have rendered 10 or more years of membership in the retirement system.) Voluntary enlistments following the earliest discharge are not creditable.
- (8) **Reinstatement from Leave Without Pay For Military Service.** Employees on leave

without pay who are separated or discharged from military service under honorable conditions and who apply for reinstatement within the established time limits shall be reinstated to the same position or one of like status, seniority and pay. If, during military service, an employee is disabled to the extent that the duties of the original position cannot be performed the employee shall be reinstated to a position with duties compatible with the disability. The employee's salary upon reinstatement shall be based on the salary rate just prior to leave plus any general salary increases due while on leave. The addition of performance salary increases may be considered by the agency head. If the employee was in trainee status at the time of military leave, the addition of trainee adjustments may be considered if it can be determined that the military experience was directly related to development in the area of civilian work to be performed. Employees who resign without knowledge of their eligibility for leave without pay and reinstatement benefits, but who are otherwise eligible for the reinstatement benefits of this Paragraph, shall be reinstated from military service the same as if they had applied for and been granted leave without pay for military service. An employee on leave without pay who receives a discharge or separation under conditions less than honorable may be considered for reinstatement. The decision to reinstate an employee so discharged or separated shall be the responsibility of the agency head.

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

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

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

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



25 NCAC 11 SECTION .0700 - APPOINTMENT AND SEPARATION; Rule .0702.

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

# SECTION .1400 - ACTIONS BY LOCAL GOVERNING BODY

## .1402 ESTABLISHING EQUIVALENT PERSONNEL SYSTEM

The State Personnel Act provides that when a board of county commissioners establishes and maintains a personnel system or system portion for all county employees that is substantially equivalent to the system established under General Statute 126, the competitive service employees may also be included within the terms of such system or portion. The State Personnel Commission determines if the system or system portion is equivalent. When requesting approval, the board of county commissioners shall submit a copy of all rules and regulations pertaining to the system. The State Personnel Commission shall conduct a review which may include staff audits of the system. If a system is ruled to be substantially equivalent, the Office of State Personnel shall conduct an annual review of county operations to determine that the substantially equivalent system is maintained. If at any time the State Personnel Commission finds that the system is no longer substantially equivalent, approval will be discontinued at that time.

Statutory Authority G.S. 126-11.

## .1403 CERTIFICATION; PERSONNEL ADMINISTRATION SYSTEM

(a) The chairman of the board of county commissioners (or appropriate governing body) shall submit to the Office of State Personnel certification that the jurisdiction is maintaining a system of personnel administration in conformance with the Federal Standards for a Merit System of Personnel Administration. Initial certifications are to be submitted on or before October 1, 1980. Subsequent certification shall be submitted when there is change in the incumbent chairman, a major re-organization of the jurisdiction's personnel system, or upon request from the Office of State Personnel.

(b) A certification form must be used. Before signing a certification, the chairman may request advice and assistance from the Office of State Personnel or the state program agency in order to determine whether the competitive service agencies under that jurisdiction are in compliance with the Standards.

Authority G.S. 126-4; Federal Standards for a Merit System of Personnel Administration.

## .1405 MERIT PRINCIPLE I: RECRUITMENT; SELECTION; ADVANCEMENT

General Requirement. Recruiting, selecting and advancing of employees will be on the basis of their relative ability, knowledge, and skills. This will include open consideration of qualified applicants for initial appointment.

### (1) Recruitment

(a) Requirement. There must be a planned and organized recruiting program, carried out in a manner that assures open consideration.

(b) Guide. The recruiting program should be an easily recognizable and structured part of the staffing design for the personnel function. All vacancies should be conspicuously posted in a regular location accessible to and frequented by employees. If efforts are to be extended outside the organization, posting should also occur in a prominently public location within the jurisdiction, and further utilization of radio and media advertisements, and listing with the Employment Security Commission should occur to broaden communications.

(c) Requirement. Special emphasis will be placed on efforts to attract minorities, women, the handicapped, or other groups that are substantially underrepresented in the jurisdiction work force to help assure they will be among the candidates from whom appointments are made.

(d) Guide. The filling of vacancies from within the existing work force should fairly consider and encourage workers of this group. Schools, community colleges, selective media, interest groups, and other organizations having special contacts with women, minorities, handicapped, and older groups should be informed of vacancies in order to particularly encourage potential applicants from underrepresented groups in the work force.

### (2) Selection

(a) Requirement. The selection of applicants for vacant positions will be through open competition. Advantage will be given to applicants determined most qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.

(b) Guide. Selection from within is logical where there is need to further career de-



- velopment, and the work force generally is adequately representative of all race, sex, ethnic and disadvantaged groups of the labor force. In many cases, it will be beneficial to select from a group of both internal and external applicants.
- (c) Requirement. Selection procedures will be job related and will be in accord with the stipulations, validity, reliability, and objectivity of the Uniform Guidelines on Employee Selection Procedures (1978)(Federal).
- (d) Guide
- (i) There are several selection approaches available. All should measure the important skills, knowledge, abilities, and work behaviors needed for a job. Validated written tests, assessment centers, structured interviews, and supplemental self-assessment applications are being successfully used. However, it may well be that no one approach will be suitable for all jobs of the jurisdictions. The "content validity" portion of the Uniform Guidelines appears to offer the greatest practical latitude for most jurisdictions. Adequate job analysis should insure the job relatedness of the approach(es) chosen.
- (ii) There is considerable leeway granted in determining a manageable number of eligibles to refer to hiring authorities; however, provisions which would result in random appointment from an entire list of eligibles, with disregard for relative abilities, knowledge, and skills, would not meet the requirement. Advantage should be given to the most qualified eligibles.
- (e) Requirement. Job related minimum requirements for entrance to a class will be established whenever practical, and will be met by all candidates examined, appointed or promoted.
- (f) Guide. Program directors should be recognized as a valuable resource, and used advantageously in determining minimum requirements. Regular minimum requirements and competitive procedures may be waived or limited to permit the hiring of handicapped persons who have physical or mental impairment substantially limiting a major life activity. Minimum qualifications and duties may also be modified to permit trainees.
- (g) Requirement. Prior to receiving a permanent appointment each employee will satisfactorily complete a reasonable, time limited probationary period.
- (h) Guide. A probationary time limit of less than three months would questionably give supervisors enough time to fairly assess new employees, while a period in excess of one year could be questionably lengthy. The employees performance should be closely reviewed during the probationary period and positive feedback given by supervisors on both accomplishments and areas needing attention, so that success is encouraged.
- (3) Career Advancement
- (a) Requirement. Policies and program affecting and effecting promotions will consider all eligible employees within the jurisdiction and adequately assure that all persons promoted are qualified.
- (b) Guide. Internal career paths and advancement need to be conscientiously attended. Persons may be advantageously recruited from outside the organization through open competition where this will provide abilities not available internally, the organization will be enriched, or opportunities for underrepresented groups will be improved.

Statutory Authority G.S. 126-11.

#### .1406 MERIT PRINCIPLE II:

##### CLASSIFICATION: COMPENSATION

General Requirement. A current, equitable, and adequate position classification and compensation plan will be provided.

##### (1) Position Classification

(a) Requirement. Job Evaluation (synonym - classification) plans will be based upon a soundly applied, professionally accepted job evaluation methodology which establishes the relative strength of related positions through consideration of the difficulty, responsibility, and other requirements of the work. System components and all relationships determined along with accompanying rationale will be fully documented.

##### (b) Guide.

(i) The job analysis process should be carried out so that it is equitably consistent in all applications. Job analysis, factors which normally should be included in addition to difficulty and responsibility, are working relationships and working conditions. Physical effort and other considerations of importance to employees and managers (and/or required to identify and measure the work) may need to be added for given job types.

- (ii) The rationale for class (synonyms - skill level, work level, etc.) relationships should be documented in detail sufficient to reconstruct the reasoning, on the basis of the job evaluation factors, which led to a logical analytical conclusion. Such documentation should also be constructed to serve the purpose of guiding future analytical efforts.
  - (iii) Current organizational charts, position description files, class history files, and related information needs to be maintained to aid job analysis.
- (2) Compensation
- (a) Requirement. The compensation plan will, within labor market constraints, have as its principal basis the class relationships (synonyms - skill level relationships, job relationships, work level relationship, etc.) discerned by the classification process.
  - (b) Requirement. Within the limits of local financial ability and fiscal policy, the level of compensation assigned to each class of the plan will, in conjunction with Rule 1406(2)(c)(iii)(B) of this Section, adequately take into consideration the competitive labor market within the geographical area of recruitment.
  - (c) Guide
    - (i) Where classes have been determined by the classification process to be significantly related in terms of recruitment-labor market requirements or work requirements, the compensation relationships between related classes should reflect vertical and horizontal relationships suggested by the classification analysis. Exceptions should occur only in those areas where statutory or organizational ceilings for appointed or elected officials, as an expression of fiscal policy, act to compress logical pay relationships at given levels, or where other circumstances might dictate reasonable compromise as necessary to avoid disproportionate damage to the overall integrity of the classification and pay plan.
    - (ii) Comprehensive salary surveys should be conducted at least annually to gather data on rates being paid for substantially similar work by competitors. Such surveys need to be designed with the geographical area of recruitment in mind. While clerical employees and some paraprofessional employees are recruited locally, it is usually necessary to recruit regionally, statewide or even nationally for other paraprofessional and many professional and managerial positions.
    - (iii) It should be recognized that the pay policy of the jurisdiction is ultimately represented by the position classification and salary plans. This pay policy must establish and maintain, insofar as feasible, a system of compensation which provides a viable basis for security and maintaining a sufficient effective work force from the labor market. Pay policy is established and maintained through assessment and reconciliation of several influencing factors, which may frequently relate as conflicting demands or constraints. These factors include:
      - (A) relationships among positions, as established through the process of job evaluation;
      - (B) external labor market dynamics, in terms of wages and salary rates, applicant sources, availability and supply;
      - (C) the jurisdiction's ability to pay and complete in terms of economic conditions and allocated financial resources for salaries and benefits;
      - (D) "public policy" as defined by the governing board; and
      - (E) criticalness of operations.
    - (d) Requirement. Logical and equitable practices will be established which guide salary administration in position and employee actions within the jurisdiction.
    - (e) Guide. Policies guiding salary administration for individual employees in salary range revisions, reclassification upward or downward, appointments, promotions, transfers, demotions, suspensions, or related actions should show fair and reasonable concern for the nature of the actions they cover, and reflect consideration of both employee and managerial interests. Interpretive consistency should be an objective in day-to-day applications.

Statutory Authority G.S. 126-11.

#### 1407 MERIT PRINCIPLE III: TRAINING

- (a) General Requirement. Employees will be trained as needed to assure high quality performance.
- (b) Guide. In addition to providing training to improve performance, training should be provided to prepare employees for more responsible assignments and to implement affirmative action plans for equal employment opportunity. Training programs should include systematic methods for assessing training needs, providing



training to meet priority needs; selecting personnel for training; and evaluating the training provided.

*Authority G.S. 126-11; Federal Standards for a Merit System of Personnel Administration.*

#### .1408 MERIT PRINCIPLE IV

**General Requirement.** Employees will be continued in good standing as long as they sustain satisfactory performance. Attempts will be made with employees to improve inadequate performance, and provisions will be made for separating employees whose inadequate performance cannot be corrected.

##### (1) Employee Performance

(a) **Requirement.** Employees who have acquired permanent status will not be discharged, suspended, or reduced in pay or position except for just cause.

##### (b) Guide

(i) Just cause would normally be related to a failing in work performance or personal conduct to the extent that the terms and objectives of employment are unfulfilled; or personal behavior is detrimental to the image and working relationships of the jurisdiction. The degree and kind of disciplinary action taken needs to be based upon the sound and well considered judgment of management.

(ii) No employee should be subject to separation or other disciplinary actions for disclosure, not prohibited by law, of violations of laws on rules or other improper actions. Prohibitions and protections against reprisals should be assured employees reporting wrongdoing or inefficiency.

(iii) Employees need to be evaluated periodically on a systematic and job related basis to provide needed information for supervisors to assess the adequacy of individual employee to recognize their own performance improvement needs, and as a basis for personnel actions including promotion, recognizing or rewarding superior performance, and correcting inadequate performance or separating employees in cases where inadequate performance cannot be corrected.

(c) **Requirement.** Policies will be developed which provide for fair and uniform procedures for demotion, transfer, suspension, or dismissal of employees whose performance continued to be inadequate after reasonable efforts have been made to correct it. Such policies shall specifically

provide that in the case of such disciplinary action, the employee will, before the action is taken, be given a statement in writing setting forth in numerical order the specific acts or omissions that are the reason for the disciplinary action, and the employee's appeal rights. A copy of this statement shall be filed with the county personnel director.

##### (d) Guide

(i) Adequate and specific notice of unsatisfactory performance should be given to an employee prior to disciplinary action so as to offer reasonable opportunity for correction. Multiple warning of progressive severity are recommended where inadequate performance is sustained. This might include a specific oral warning from the supervisor in the first instance, an oral warning with specific follow-up letter to the employee in the second, and a final written warning with full knowledge of the department head which might include a direct notice to the employee that a continuation of the practice may result in dismissal. Each level of warning should be accompanied by suggestions for corrections and the employee should be given an opportunity to give reasons for his actions.

(ii) An employee may be suspended without warning for causes related to personal conduct detrimental to county service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property, or for other serious reasons.

##### (2) Reduction In Force

(a) **Requirement.** Retention of employees in selected separations due to curtailment of work or lack of funds will be based upon systematic consideration of the type of appointment and other relevant factors, such as performance appraisals, which consider employee contribution.

##### (b) Guide

(i) No permanent employee of good standing should be separated upon reduction in force while there are emergency, intermittent, temporary, probationary, or trainee employees serving in the same class in the jurisdiction, unless the permanent employee is not willing to transfer to the position held by the non-status employee.

(ii) In addition to type of appointment, other important and relevant factors which should be uniformly considered are length of service and relative efficiency.



- (iii) It is desirable to provide reinstatement rights within a specific time period to employees separated due to reduction in force.

(3) Appeals

(a) Requirement.

- (i) Generally, in the event of disciplinary action, suspension, and dismissal, the county will provide permanent employees with the right to appeal through a timely and impartial process, the results of which may be recommendatory to or enforceable upon the appointing authority. The grievance procedure shall also give access to employees with non-disciplinary grievances which do not involve issues of inherent management prerogative, such as budgets, hours and conditions of work. Appeals of alleged discrimination in any personnel action on the basis of race, color, religion, sex, national origin, political affiliation, age, or handicap by any applicant or employee will result in timely, enforceable decisions.

- (ii) To assure impartiality, the county board of commissioners will create a county personnel commission, which among other areas of responsibility and authority that may be assigned, will hear and decide all appeals. The authority of the county personnel commission for effecting its decisions shall be in accordance with the provisions of Rule 1408(b)(1) of this Section. The membership of the commission will consist of persons appointed by the board of county commissioners with due regard to its nature and purpose, with the stipulation that at least one member be chosen to represent the employees of the county. Such appointments will not include the county manager, county attorney, incumbent county commissioners, department heads, or their family members or relatives.

- (iii) The county personnel commission will have access in its meetings and deliberations, to the counsel of a private attorney, not associated or engaged professionally in any transaction of the county.

- (iv) The county personnel commission will have the power to subpoena witnesses, principals, or other parties relevant to a fair and objective pursuit of an equitable decision.

- (v) Proceedings before the commission shall be recorded. At its discretion, the commission may furnish a transcript of the

recording or a copy of the recording upon request. Decisions of the commission shall be in writing and maintained by the Commission.

- (vi) An impartial grievance procedure which has as its objective the timely and logical resolutions of all grievances at the lowest practical point in the organization shall be established, with right of appeal assured at each step up to the county personnel commission. To the maximum extent possible, grievance procedures will include steps to resolve discrimination and all other types of employee grievances without recourse to the formal appeals process represented by the county personnel commission.

(b) Guide

- (i) Assurances should be provided which allow employees to present their problems or grievances in accordance with the procedures provided by the county, free from interferences, coercion, restraint, discrimination, or reprisal. All employees should be fully informed of the grievance procedures adopted and of their rights and obligations thereby.

- (ii) The composition of the county personnel commission might draw upon community resources in a nature consistent with its purpose. Persons selected from business or industry who are engaged in the current practice of personnel administration, instructors of public administration from institutions of higher learning, and persons whose professional orientation would lend objective understanding of employee concerns would be examples in keeping with this purpose. Membership also needs to be enhanced by minority and female representation.

- (iii) In the interest of avoiding stipulations which would work to curtail the employee's opportunity to present his version of the circumstances and events surrounding a grievance, it is suggested that the Rules of Evidentiary Presentation be used only if requested by the employee. In the absence of such request, the commission's evidentiary rulings should be effected in a manner favoring full disclosure of all pertinent facts.

- (iv) The commission should have at its disposal means for enabling reasonable witness expenses to be reimbursed as appropriate.

- (v) The relationship between the county personnel commission and the civil court

system as to powers, authority, and legal expectation should be explained and clarified to aggrieved persons appealing to the commission.

Statutory Authority G.S. 126-11.

#### .1409 MERIT PRINCIPLE V

**General Requirement.** Fair treatment of applicants and employees will be assured in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

##### (1) Equal Employment Opportunity

(a) **Requirement.** Equal employment opportunity will be assured for all persons.

##### (b) Guide

(i) Provisions of the personnel system should assure that no individual is deprived, or otherwise discriminated against, with respect to consideration for employment, compensation, and all other terms, conditions, or privileges of employment.

(ii) Equal opportunity applies to every individual and does not mean preferential treatment, unless exceptional remedies are necessary to correct the effects of discriminatory practices.

(c) **Requirement.** Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 as amended, the Rehabilitation Act of 1973 as amended, and other relevant statutes will be established and enforced.

(d) **Requirement.** Retaliation against those who protest alleged discrimination shall be prohibited.

##### (2) Affirmative Action

(a) **Requirement.** The governing body will adopt a written EEO/AA policy which clearly outlines the governing body's intent, actions and commitment in regard to EEO and AA. This policy statement shall ensure greater utilization of all persons by identifying previously underutilized groups in the work force, such as women, minorities and the handicapped, and making special efforts toward their recruitment, selection, appointment, promotion, development and upward mobility.

(b) **Guide.** The head of the governing body, (the chairman of the county commissioners), should sign the policy statement, copies of which should be disseminated internally and externally.

(c) **Requirement.** The jurisdiction shall develop and implement a continuing program of affirmative action in order to assure that all personnel policies and practices relevant to total employment in the jurisdiction will guarantee equal opportunity for all persons. Also, sufficient resources should be devoted to adequately implement an affirmative action program. The program should include:

(i) Identification and elimination of artificial barriers to equal employment opportunity.

(ii) Work force analysis to determine whether percentages of minorities and women employed in various job categories are substantially similar to percentages of those groups available in the relevant labor force. Where underrepresentation occurs, employment procedures will be analyzed to determine the cause.

(iii) Development of a systematic action plan, with goals and timetables, formulated to correct any substantial disparities or other problems identified in the work force and employment analysis.

(iv) Periodic evaluation of results to assess the effectiveness of the affirmative action programs in achieving affirmative action goals on a timely basis. The affirmative action plan should be updated at least every two years.

##### (d) Guide

(i) An EEO/AA officer should be designated for the jurisdiction who shall have primary responsibilities for the implementation and day to day operation of the affirmative action program.

(ii) Work force data can most meaningfully be obtained and presented by job category. Federal job categories, used in submitting EEO-4 reports, are suggested. The primary source for labor force data in North Carolina is the N.C. Employment Security Commission. It should be realized that labor force data from several different labor market areas (geographically) may be needed to measure progress, since the jurisdiction likely recruits on that basis for different types and levels of jobs.

(e) Agency work force analysis and problem identification normally needs to be based



on the percentage of qualified persons by race, sex, and ethnic group available in the relevant labor force. Where these data are not available, total labor force may be used. Work force analysis should give attention to individual job classification, classification series, or occupational groupings as appropriate.

- (f) Requirement. Management and supervisory personnel must be held accountable for progress toward affirmative action goals in appropriate circumstances.
- (g) Guide. A mechanism for reviewing each manager's unit of responsibility and each supervisor's unit, to discover whether progress toward improved representation of one or more protected groups needs to be made, and, if so, if such progress in fact being made, must be implemented. Use of annual performance reviews for this purpose is acceptable.
- (3) Employee Relations
  - (a) Requirement. Personnel administration within the jurisdiction will conscientiously recognize the dignity and value of the individual employee and promote means of communications, participation and understanding among all employees.
  - (b) Guide. Provisions and strategies within the personnel system should seek to effect mutual understanding, participation, and accord between management and employees in achieving the overall mission of the county. When, for whatever reasons, there may occur a breach of understanding in any area, efforts for empathetic resolution should be immediately effected.

Statutory Authority G.S. 126-11.

#### .1410 MERIT PRINCIPLE VI: POLITICAL ACTIVITY

- (a) General Requirement. Employees will be protected against coercion for partisan political purposes, and will be prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.
- (b) Guide. Policies on political activity need to assure that all employees have the right to express their views as citizens, to pursue their legitimate involvement in the political system, and to vote; that employees not engage in or be subject to coercion for political purposes, and not seek candidacy for public office in a partisan election.

Authority G.S. 126-11; Federal Standards for a Merit System of Personnel Administration.

#### .1411 PROCEDURE FOR SUBMISSION

At such time that a county has developed an overall system of personnel administration or a portion of such system which is felt to meet the stipulations set forth herein, and wishes to petition the State Personnel Commission for a delegation of authority to administer such system autonomously, the official request will include:

- (1) Requirement.
  - (a) The board of county commissioners will by resolution make known its desire for a delegation of authority to operate an autonomous system of personnel administration, or portion of a system, and will certify that the system or portion being offered is viewed to be substantially equivalent to that of the state regarding local employees subject to the State Personnel Act, and will be maintained in that manner.
  - (b) All documents and illustrations necessary to fully relate the rationale and substance of the personnel system or system portion being offered must be included.
  - (c) An organizational chart and such support narrative necessary to fully represent the staff complement and separate functional responsibilities of all individuals assigned to administer and maintain the personnel system or system portion will be included.
  - (d) Provisions and strategies which will assure the continued currency and responsiveness of the personnel system or system portion will be generally detailed, either by excerpts or additional documentation.
  - (e) The overall submission should be to the State Personnel Director, Office of State Personnel, Attn: Local Government Coordinator.
- (2) Guide. The Local Government Coordinator will coordinate the overall staff review of the proposed system or system portion within the Office of State Personnel prior to a recommendation to the State Personnel Commission for final action. Staff review by the Office of State Personnel will be pursued with a closely cooperative and informal relationship with the submitting jurisdiction as necessary to fully understand and explore the substance of the system or portion being offered; and to provide assistance as appropriate. This review will have as its purpose the following considerations:
  - (a) The resolve and commitment of the governing body.



- (b) The overall extent to which the proposed personnel system, or system portion may be reviewed as "substantially equivalent" in concept and substance to that of the state for local employees subject to the State Personnel Act, as represented by the requirements and guides of this document.
- (c) The staffing of the personnel function as it relates to the capability of the jurisdiction to successfully administer and maintain the system or portion proposed.
- (d) The adequacy of provisions and strategies which will assure the continued currency and responsiveness of an individual portion or several portions of the overall system.
- (e) Other factors and considerations that might have a strong direct or indirect bearing on the jurisdiction's success in assuring the efficacy of the proposed system or system portion.

*Authority G.S. 126-11; Federal Standards for a Merit System of Personnel Administration.*

#### .1412 AREAS NOT COVERED BY THE DELEGATION AGREEMENT

##### Coverage.

- (1) Requirement. Authority for final determination of the applicability of the State Personnel Act, and thereby these requirements, as concerns any local employee will continue to be vested in the Office of State Personnel.
- (2) Guide. Applicability is primarily contingent upon the limits of contractual agreements enabling the designated federal and state grant-in-aid to local government, the basic details of which are set forth in the State Personnel Act. Questions of coverage should be addressed to the Local Government Coordinator, Office of the State Personnel.

*Authority G.S. 126-11; Federal Standards for a Merit System of Personnel Administration.*

#### .1413 ONGOING CONDITIONS OF THE DELEGATION AGREEMENT

- (a) System Review. Subsequent to a delegation of authority by the State Personnel Commission for an autonomous local personnel system, or system portion, such system or portion will be subject to review annually by the Office of State Personnel. If at any time it is determined that the system is no longer substantially equivalent, the delegation agreement will be rescinded.

(b) Records and Reports. Appropriate personnel records will be maintained to assure the proper administration of the personnel system portion. Periodic reports, upon request, will be prepared for the Office of State Personnel as may be necessary to effect the information flow required to stay abreast of local operations.

(c) Records Privacy. Appropriate access and privileges for employees and appropriate limitations for other persons regarding the storage, utilization and disclosure of personnel records will be assured according to the provisions of the Records Privacy Act (N.C.G.S. 153A-08).

(d) Recertification of the agreement by the board of county commissioners to maintain a system or portion of a system of personnel administration in accordance with these requirements will be necessary from time to time in the following instances:

- (1) Upon significant change in the membership of the board of commissioners.
- (2) Upon passage of significant new legislation or policy which will apply to the local system or system portion.
- (3) Upon major reorganization or restructuring of the personnel system of the county.

(e) Future Stipulations. Changes or additions to the local personnel system, or system portion, will be necessary from time to time to reestablish substantial equivalency in regard to significant new personnel legislation or policy which may come to pertain to a Merit System of Personnel Administration.

*Statutory Authority G.S. 126-11.*

#### SECTION .1500 - FORMS

##### .1501 FORM PD-107

(a) Application for Employment. This form is completed by all interested applicants applying for employment. It may be submitted to the Office of State Personnel or directly to the agency having the vacancy.

(b) The forms may be obtained from the Office of State Personnel, 116 West Jones Street, Administration Building, Raleigh, North Carolina 27603.

(c) The information requested on this form includes biographical information. The education and experience should be accounted for in detail, especially items having a bearing upon the position for which the person is applying. The application must bear the signature of the applicant certifying the information to be accurate to the best of his or her knowledge.

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

.1502 FORM PD-1

(a) Request for Certification. This form is submitted to the Office of State Personnel by a competitive service appointing authority to request certification of eligible persons to be considered for appointment to a vacant position.

(b) These forms are not furnished by the Office of State Personnel but are typed and submitted by each agency.

(c) The information requested includes identification of the position and type of appointment and certification requested.

Statutory Authority G.S. 126-4.

.1503 FORMS PD-100 HR AND PD-100 CD

(a) Form PD-100 HR, "North Carolina Office of State Personnel, Personnel Action Form (Local Human Resources Agencies)," is the form that must be submitted to the Office of State Personnel by the local human resources agencies for requesting any personnel actions such as new appointments, extension of appointments, reinstatements, transfers of employees within or between local agencies, notices of separation, promotions and demotions, reallocations, salary adjustments and merit increments. The civil preparedness agencies use a form PD-100 CD for the same purpose.

(b) The PD-100 HR forms may be obtained from one of the appropriate regional personnel offices:

- (1) Western Regional Office  
Black Mountain, North Carolina 28711
- (2) North Central Regional Office  
720 Coliseum Drive  
Winston-Salem, North Carolina 27106
- (3) South Central Regional Office  
Wachovia Bank Building (Suite 503)  
225 Green Street  
Fayetteville, North Carolina 28301
- (4) Eastern Regional Office  
404 St. Andrews Drive  
Greenville, North Carolina 27834

The PD-100 CD forms may be obtained from the Office of Military and Veterans Affairs:

416 West Jones Street  
Administration Building  
Raleigh, North Carolina 27603

(c) The information requested includes the present status and/or requested status of employees, leave information upon separation and authorized signatures of approval.

Statutory Authority G.S. 126-4.

.1504 FORM PD-119 HR

(a) Form PD-119 HR, notification of "Change in Basic Salary Due to Range Revision" or General County Increase (Local Human Resources Agencies), is a form used for submitting changes in salaries due to a pay plan change or a range revision change for a large number of employees.

(b) These forms are typed and submitted by each local agency.

(c) The information requested is basically the same as is necessary on form PD-100 HR.

Statutory Authority G.S. 126-4.

.1505 FORM PD-3

(a) Form PD-3, "Certification of Employee for Permanent Status in Competitive Service," is the form that must be submitted to the Office of State Personnel for requesting the change of an employee's appointment from probationary to permanent anytime after three months satisfactory service and prior to the end of the maximum nine months probationary period.

(b) These forms are typed and submitted by each local agency.

(c) The information requested includes employee's name, classification and effective date of permanent status.

Statutory Authority G.S. 126-4.

.1506 FORM PD-118

(a) Form PD-118, "Procedure for Requesting Position Action" or its equivalent, is the basic form that must be submitted to the Office of State Personnel for requesting any personnel actions such as the establishment, reallocation, transfer or abolishment of a position or for changing codes or subheads.

(b) The forms may be obtained from the Office of State Personnel, 416 West Jones Street, Administration Building, Raleigh, North Carolina 27603 and should be submitted in accordance with provisions of Rules + NCAC 8C .0401; .0403 to .0405.

(c) The information requested on the form includes:

- (1) request for the proposed action;
- (2) reasons for the request;
- (3) budget information.

Statutory Authority G.S. 126-4.

.1507 FORM PD-102

(a) The position description form (PD-102), or its equivalent, is the basic document for providing information on individually covered posi-



tions in state and local government. The forms are required for the following:

- (1) reallocation of a position;
- (2) classification studies;
- (3) detailed information on any position as required by agency head or his representative.

(b) The information requested on the form includes identification of employee's position; description of work assignments; working conditions and job requirements; supervisor's statement and statement of the agency head or authorized representative.

(c) The PD-102 must be completed by the employee in accordance with the detailed instructions explained in form PD-103, or its equivalent.

(d) The immediate supervisor and personnel officer or agency head are responsible for the completeness and accuracy of the entries in form PD-102.

(e) Forms PD-102 and PD-103 may be obtained from the Office of State Personnel, 116 West Jones Street, Administration Building, Raleigh, North Carolina 27611.

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

#### .1508 FORM PD-103

Form PD-103, or its equivalent, "Instructions for Completing Position Descriptions," contains detailed instructions for the completion of form PD-102. Form PD-103 must be given the employee when a form PD-102 is to be completed.

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

### SECTION .1600 - PERSONNEL ADVISORY SERVICE TO LOCAL GOVERNMENT

#### .1601 PERSONNEL ADVISORY SERVICE TO LOCAL GOVERNMENT

The personnel advisory service to local government provides technical assistance to local jurisdictions over a range of personnel-related topics exclusive of position classification and pay plans. Technical assistance includes but is not limited to personnel management program analysis; personnel policy development; labor relations training; Fair Labor Standards Act compliance; fringe benefit programs; design and implementation of programs for recruitment; management training; performance appraisal; merit promotion and affirmative action for equal employment opportunity.

*Statutory Authority G.S. 126-10.*

#### .1602 DESCRIPTION OF REQUEST FOR

### TECHNICAL ASSISTANCE

A local jurisdiction requesting technical assistance must submit a letter to the personnel advisory service stating the nature of assistance desired and bearing a signature of a person with the authority to commit the jurisdiction's funds to pay the charges for the services involved in rendering the technical assistance requested.

*Statutory Authority G.S. 126-10.*

#### .1603 CHARGES

(a) Service charges will be based upon the nature and scope of the work requested, and the anticipated salary, travel, lodging, subsistence, printing, and overhead costs necessary to complete it. An individual proposal will be developed in response to each project request.

(b) Transferable products developed to meet a general need, such as personnel policy models, record system models, job evaluation models, etc., will be offered at a level the market will bear.

(c) The total funds received from all sources through charges will not exceed the actual operating costs of the service program.

*Statutory Authority G.S. 126-10.*

### SECTION .1700 - LOCAL GOVERNMENT EMPLOYMENT POLICIES

#### .1701 APPLICABILITY

State law (N.C.G.S. Chapter 126, "The State Personnel Act") provides for the establishment of a system of personnel administration applicable to certain local employees paid entirely or in part from federal funds. Local governing boards are authorized by G.S. 126 to establish personnel systems which will fully comply with the applicable federal standards and then may remove such employees from the state system to their own system.

*Statutory Authority G.S. 126-1; 126-11.*

#### .1702 EMPLOYMENT OF RELATIVES

(a) The employment of close relatives within the same department or work unit of a local government agency subject to G.S. Chapter 126 is to be avoided unless significant recruitment difficulties exist. If there are fewer than three other available eligibles for a vacancy and it is necessary for relatives to be considered for employment or if two individuals are already employed and marry, the following will apply:

Two members of an immediate family shall not be employed within the same department or work unit of a local government agency subject to G.S. Chapter 126 if such



employment will result in one supervising a member of his immediate family or where one member occupies a position which has influence over the other's employment, promotion, salary administration and other related management or personnel considerations.

(b) The term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems might be created within the work unit or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals would be violated. This would include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step, half and in-law relationships as appropriate based on the above listing. It includes others living within the same household or otherwise closely identified with each other as to suggest difficulty may develop.

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

#### **.1703 CONFLICTING EMPLOYMENT**

No employee shall hold any office or have other employment which may conflict with his employment in an agency which is subject to the State Personnel Act. Determination of conflict shall be made by the agency director.

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

#### **.1704 PERSONNEL RECORDS AND REPORTS**

Such personnel records as are necessary for the proper administration of a personnel service system and related programs will be maintained. Periodic reports will be prepared as necessary to indicate compliance with applicable state and local requirements and the federal and state standards:

- (1) Personnel Records. Each agency shall maintain a service record for each employee including name, position title, organization unit, all changes in status, performance evaluations and other information considered pertinent.
- (2) Payroll Records. An accurate copy of the payroll of each local social services, public health, mental health and civil preparedness unit shall be submitted to the agency, personnel and or budget offices within two weeks following each payroll period. The payroll information shall be used in reviewing conformity by local units to establish rules and regulations.

*Authority G.S. 126-4; 153A-98; Standards for a Merit System of Personnel Administration.*

### **SECTION .1800 - GENERAL PROVISIONS**

#### **.1801 AUTHORITY FOR CLASSIFICATION PLAN**

(a) The State Personnel Director is authorized to allocate and reallocate individual positions consistent with the basic established classification and pay plan.

(b) The State Personnel Director is authorized to modify the classification plan for local government positions subject to Chapter 126 of the North Carolina General Statutes pending final approval of the State Personnel Commission and the Governor.

*Statutory Authority G.S. 126-3; 126-4(1); 126-5(a).*

#### **.1802 POLICY ON ESTABLISHING MINIMUM QUALIFICATION STANDARDS**

(a) It shall be the policy of the state to establish job-related minimum qualification standards wherever they are practical for each class of work in the position classification plan. The standards will be based on the required skills, knowledges and abilities common to each classification. The qualification standards and job-related skills, knowledges and abilities shall serve as guides for the selection and placement of individuals.

(b) The training and experience statements serve as indicators of the possession of identical skills, knowledges and abilities and as guides to primary sources of recruitment; reasonable substitutions of formal education and job-related experience, one for the other, will be made. The State Personnel Commission recognizes that a specific quantity of formal education or number of years experience does not always guarantee possession of the identified skills, knowledges and abilities for every position in a class. Qualifications necessary to perform successfully may be attained in a variety of combinations. Management is responsible for determining specific job-related qualifications that are an addition to minimum standards. Management shall be responsible for any adverse effects resulting from the use of selection standards that have not been established or approved by the State Personnel Director.

(c) The State Personnel Director is authorized to modify training and experience requirements for established classifications consistent with this policy and to report such changes to the Board.

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

**.1803 CLASSIFICATION METHOD**

All positions are defined by the types and levels of work involved and evaluated based on the application of accepted job analysis techniques and according to common job factors and the relative importance of the presence or absence of such job factors in the positions.

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

**.1804 ALLOCATION OF POSITIONS TO CLASSIFICATION PLAN**

Every covered position in local government shall be allocated to an appropriate class in the classification plan. The allocation of a position is its assignment to a class containing all positions which are sufficiently similar in duty assignments to justify common treatment in selection, compensation and other employment processes. A class may consist of a single unique position or of many like positions.

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

**.1805 TENTATIVE AND FLAT-RATE PROVISIONS FOR TEMPORARY CLASS.**

The State Personnel Director is authorized to establish temporary classifications with tentative pay grades or flat-rate salaries when insufficient information is available to make permanent classification and pay recommendations to the State Personnel Commission. When sufficient information is available, the Director will make a recommendation to the State Personnel Commission which will incorporate the temporary class and pay into the permanent classification plan and pay plan. Such temporary classes, tentative pay grades and flat-rate salaries shall be administered according to all applicable rules and regulations approved by the State Personnel Commission.

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

**.1806 NEW AND ADDITIONAL PERMANENT: FULL OR PART-TIME POSITIONS**

The duties of a budgeted position must be defined and the position must be assigned to an official classification in the salary plan.

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

**SECTION .1900 - RECRUITMENT AND SELECTION**

**.1901 RECRUITMENT**

Local departments and agencies will meet their workforce needs through systematic recruitment and career support programs which identify, at-

tract, select, and develop the human resources necessary for present and future work.

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

**.1902 POSTING AND ANNOUNCEMENT OF VACANCIES**

(a) Vacant positions to be filled will be publicized by the agency having the vacancy to permit an open opportunity for all interested employees and applicants to apply.

(b) Vacancies which will be filled from within the agency workforce will be prominently posted in an area known to employees, and will be described in an announcement which includes at minimum the title, salary range, key duties, knowledge and skill requirements, minimum training and experience standard, and contact person for each position to be filled. An exception to this posting requirement will be permissible where a formal, pre-existing "understudy" arrangement has been established by management.

(c) Any vacancy for which an agency wishes to consider outside applicants or outside applicants concurrently with the internal workforce shall be listed with the local Job Service Office of the Employment Security Commission. Listings will include the appropriate announcement information and vacancies so listed shall have an application period of not less than seven work days.

(d) If an agency makes an effort to fill a vacancy from within, and is unsuccessful, the listing with the Employment Security Commission would take place when the 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.

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

**.1903 APPLICANT INFORMATION AND APPLICATION**

(a) The primary source of public information and referral for vacancies in subject local government programs is the Employment Security Commission. Interested persons may contact their local ESC Job Service Office. Other sources may also be designated by local departments and agencies.

(b) Persons applying for a local vacancy must complete and submit the official application form designated by the hiring authority and approved by the reviewing state agency. It is not necessary for local agencies to accept official application forms in the absence of an actual vacancy under active recruitment.



(c) Each agency shall be responsible for evaluating the accuracy of statements made in an application, and may seek job-related evidence of the applicant's suitability for employment.

(d) An applicant may be disqualified if he:

- (1) lacks any of the preliminary qualifications established for the class of the position being applied for;
- (2) has been convicted of a crime of a nature which would raise serious public doubt about suitability for the responsibilities of the specific position being applied for;
- (3) has made a false statement of material fact in the application process;
- (4) used or attempted to use political pressure or bribery to secure an advantage in the selection process;
- (5) fails to submit an application correctly or within the prescribed time limits;
- (6) has directly or indirectly obtained information concerning any required selection procedure to which an applicant is not entitled;
- (7) lacks the physical or mental ability to perform the essential duties of the position even with reasonable accommodation;
- (8) holds an office or has other employment which would constitute a conflict of interest with the public responsibility vested in the position being sought.

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

#### .1904 VETERAN'S PREFERENCE

Persons entitled to veterans' preference must so indicate on any application filed. Verifying documentation may be required by the agency.

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

#### .1905 SELECTION

(a) Selection of Applicants:

- (1) The selection of applicants for appointment will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be best qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection.
- (2) Selection procedures and methods will be validly related to the duties and responsibilities of the vacancy to be filled. In any vacancy instance, the same selection process will be used consistently with all the applicants. Equal employment consideration will be afforded. Reference

checking and other means of verifying applicant qualifications may be employed as necessary. It should be recognized and explained to persons selected that the probationary period is a required extension of the selection process.

(b) Minimum Qualifications:

- (1) The employee or applicant must possess at least the training and experience requirements, or their minimum equivalent, set forth in the state class specification for the class of the position to be filled. This shall apply in new appointments, promotions, demotions, transfers, and reinstatements.
- (2) The training and experience requirements serve as indicators of the possession of the skills, knowledges, and abilities which have been shown through job evaluation to be important to successful performance, and as a guide to primary sources of recruitment. It is recognized that a specific quantity of formal education or numbers of years experience does not always guarantee possession of the necessary skills, knowledges, and abilities for every position. Qualifications necessary to perform successfully may be attained in a variety of combinations. In evaluating qualifications, reasonable substitutions of formal education and job-related experience, one for the other, will be made upon request by the local appointing authority to the appropriate state review agency.
- (3) Management is responsible for determining the vacancy-specific qualifications that are an addition to minimum class standards. Such qualification requirements must bear a logical and job-related relationship to the minimum standard. Management shall be accountable for the adverse effects resulting from the use of qualification standards that are unreasonably construed.
- (4) The review authority for qualifications in questionable selection situations rests first with the respective Regional Personnel Office and Central Office of the Department of Human Resources, or in the state Office of Crime Control and Public Safety, and finally with the Office of State Personnel.

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

#### SECTION .2000 - APPOINTMENT AND SEPARATION



**.2001 APPOINTMENT**

An appointment is the approved employment of an applicant or employee to perform the duties and responsibilities of an established position subject to the provisions of the State Personnel Act. The selection and appointment of persons to all subject positions shall be by the action of the appointing authority.

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

**.2002 TYPES OF APPOINTMENTS AND DURATION**

**(a) Probationary Appointment:**

- (1) Individuals receiving original appointments to permanent positions must serve a probationary period. Persons being rehired after leaving employment in a subject position, and employees voluntarily accepting promotions, transfers or demotions in another county, social services department, mental health program, district health program or emergency management program may be required to serve a probationary period by their new employer. This period is an essential extension of the selection process, and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards.
- (2) The length of the probationary period shall not be less than three nor more than nine months of either full-time or part-time employment. The length is dependant upon the complexity of the position and the rapidity of progress made by the particular individual in the position. When the employee's performance meets the required standard of work, after at least three months and not more than nine months in the position, the employee shall be given permanent status unless in a trainee appointment. If the desired level of performance is not achieved within nine months after initial appointment, the employee shall be separated from service unless in trainee status; an employee with a trainee appointment is expected to make a satisfactory progress, but is not permanent until he has completed the training period.
- (3) At any time during a probationary period an employee may be separated from service for causes related to performance of duties or for personal conduct detrimental to the agency without right of appeal or

hearing. The employee must be given notice of dismissal, including reasons.

- (4) Employment in a temporary appointment may be toward the probationary period at the discretion of the appointing authority. Employment in an intermittent or emergency appointment shall not be credited toward the probationary period.

**(b) Trainee Appointment:**

- (1) A trainee appointment may be made to a position in any class for which the specification includes special provisions for a trainee progression leading to a regular appointment. An individual may not be appointed as a trainee if he/she possesses the acceptable training and experience for the class.
- (2) The specification for each class in which a trainee appointment is authorized will define the minimum qualifications for the trainee appointment and the minimum qualifications for a regular probationary appointment. It is, of course, expected that the individual will progress through supervised experience to a minimum level of satisfactory performance in the position during a period of time indicated by the difference between the amounts of experience required for the two types of appointments. This limit does not include time spent on educational leave or additional time required to participate in a work-study program designed to meet educational requirements for the class. An employee may not remain on a trainee appointment beyond the time he meets the educational and experience requirements for the class. After the employee has successfully completed all educational and experience requirements he shall be given probationary or permanent status in the position or shall be separated. If the period of the trainee appointment equals or exceeds nine months, the employee must be given permanent status or be separated at the completion of the trainee period.
- (3) If an employee with permanent status in another class accepts a trainee appointment, the permanent status will be waived for the duration of the trainee appointment. The employee can regain permanent status either through successful completion of the trainee appointment, by reinstatement to the class in which he previously held status, or by transfer to a position in a class for which he/she would

have been eligible based on previous permanent status.

- (4) A former employee who does not meet the minimum requirements of the class to which he is being appointed shall be given a trainee appointment. All requirements for the trainee appointment must be satisfied prior to attaining permanent status.

(c) Permanent Appointment. A permanent appointment is an appointment to a permanently established position when the incumbent is expected to be retained on a permanent basis. Permanent appointments follow the satisfactory completion of a probationary and or trainee appointment, or may be made upon reinstatement of a qualified employee.

(d) Time-Limited Appointment. A time-limited appointment may be made to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less; or

- (2) to a permanent position that has an established duration of no more than two years. Such appointment shall not be made for less than six months. If at the end of the two year time-limited appointment, the work is expected to continue and the position becomes permanent, the employee should be given a permanent appointment. A time-limited appointment is distinguished from a temporary appointment by the greater length of time, and from the regular permanent appointment by its limited duration.

(e) Temporary Appointment. A temporary appointment may be made to a permanent or temporary position. The appointment shall be limited to a maximum duration of 12 months.

(f) Pre-Vocational Student Appointment. This appointment is to be used to enable students to gain practical knowledge of their particular occupational area of interest. A suitable plan for training under close supervision must be developed for the individual. In the case of a cooperative, work study, internship, or similar appointment, the time schedule for work must be determined. The basis of eligibility and selection for such an appointment shall be outlined in a formal plan developed by the participating agencies for each type and level of student involvement. Upon successful completion of their training, individuals may be considered for any vacant position for which qualified.

(g) Emergency Appointment:

- (1) An emergency appointment may be made when an emergency situation exists re-

quiring the services of an employee before it is possible to identify a qualified applicant through the regular selection process. When it is determined that an emergency appointment is necessary, all other requirements for appointments will be waived.

- (2) An emergency appointment may be made for a period of up to 60 work days (consecutive or non-consecutive), or a total of 480 hours "in pay status". Any one individual may not receive successive emergency appointments with the same department or agency. At least three calendar months must elapse before that department or agency can give the same individual another emergency appointment.

(h) Appointment of Incumbents in Newly-Covered Programs:

- (1) Upon extension of State Personnel Act requirements to a program, position, or group of positions, the incumbent(s) may be appointed with permanent status in his classifications under any of the following circumstances:

(A) The employee is qualified for reinstatement on the basis of previous permanent status in a comparable position; or

(B) The employee has at least three months of satisfactory service in the program or agency, as certified by the appointing authority, and the appointing authority recommends that the employee be granted permanent status.

- (2) If the agency fails to grant permanent status within nine months from the initial coverage then the incumbent must be terminated. Employees given trainee appointments will be given permanent status consistent with other trainee appointments.

- (3) Incumbents who have less than three months of service with the agency shall be continued with no status until they are granted permanent status or terminated as required in this Rule. Employees with more than three months but less than nine months services in the agency may be continued without status until nine months have elapsed. At the end of nine months, however, the incumbent must be granted permanent status or terminated.

(i) Work-Against Appointment. When qualified applicants are unavailable and there is no trainee provision for the classification of the vacancy, the appointing authority may appoint an



employee below the level of the regular classification in a work-against situation. A work-against appointment is for the purpose of allowing the employee to gain the qualifications needed for the full class through on-the-job experience. The appointee must meet the minimum training and experience standard of the class to which initially appointed. A work-against appointment may not be made when applicants are available who meet the training and experience requirements for the full class, and for the position in question.

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

#### **.2003 PROMOTION**

(a) A promotion is a change to a classification at a higher level. This may result from movement to another position or by the present position being reallocated to a higher classification as a result of increases in the level of duties and responsibilities.

(b) When it is feasible, a vacancy should be filled by promotion of a qualified permanent employee. Selection should be based upon demonstrated capacity, and quality of services. If promotion results from movement to another position, the candidate must possess the minimum training and experience for the class. If the promotion results from the present position being reallocated to a higher classification, the employee may be promoted by waiver of the stated training and experience requirements if he has satisfactorily performed for a minimum of three months prior to the reallocation.

(c) An employee in a work-against appointment cannot be promoted, upon reallocation of his position, by waiver of training and experience requirements until he has served at least one year in the work-against class or until qualified for the new class. The incumbent in a work-against situation must be promoted as soon as he meets the qualifications for the higher class or the position must be reallocated to the lower class.

(d) An employee in probationary or trainee status may be promoted to another position in a higher classification if the person is qualified for such an appointment. The employee's probationary period will continue until performance meets the required standard, as certified by the appointing authority, except that in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).

(e) An employee in probationary status occupying a position at the time it is reallocated upward may be promoted to the new class if the person possesses the minimum training and ex-

perience requirements; if not qualified the employee shall remain at the former level working against the higher classification or be separated. If promoted during the probationary period, the employee will continue in probationary status until performance meets the required standard, but in no case shall the duration be longer than nine months after initial probationary appointment (unless the person is in trainee status).

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

#### **.2004 DEMOTION OR REASSIGNMENT**

Demotion or reassignment is a change in status resulting from assignment of a position to a lower classification level. It may result from the choice of the employee, reallocation of a position, inefficiency in performance, unacceptable conduct, reduction-in-force, or better utilization of individual resources. If the change results from inefficiency in performance or as a disciplinary action, the action is considered a demotion. If the change results from a mutually agreed upon arrangement, the action is considered a reassignment. When an employee in permanent, probationary or trainee status is demoted, it is expected that he will possess the minimum qualifications required for the new class at the respective level of appointment.

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

#### **.2005 SEPARATION**

Separation occurs when an employee leaves the payroll for reasons indicated in this Rule or because of death. Employees who have acquired permanent status will not be subject to involuntary separation or suspension except for cause or reduction-in-force.

- (1) Resignation or Retirement. An employee may terminate his services with the agency by submitting a resignation or request for retirement to the appointing authority. It is expected that an employee will give at least two weeks notice prior to his last day of work.
- (2) Dismissal. Dismissal is involuntary separation for cause, and shall be made in accordance with the provisions of the Policy on Suspension and Dismissal.
- (3) Reduction-in-Force. For reasons of curtailment of work, reorganization, or lack of funds the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No permanent employee shall be separated while



there are emergency, intermittent, temporary, probationary, or trainee employees in their six months of the trainee progression serving in the same or related class, unless the permanent employee is not willing to transfer to the position held by the non-permanent employee, or the permanent employee does have the knowledge and skills required to perform the work of the alternate position within a reasonable period of orientation and training given any new employee. A permanent employee who was separated by reduction-in-force may be reinstated at any time in the future that suitable employment becomes available. The employer may choose to offer employment with a probationary appointment. The employee must meet the current minimum education and experience standard for the class to which he is being appointed.

- (4) Voluntary Resignation Without Notice. Any employee voluntarily terminates employment by failing to report to work without giving written or verbal notice to the employing agency. Such a failure shall be deemed to be a voluntary resignation from employment without notice when the employee is absent without approved leave for a period of at least three consecutive, scheduled workdays. Separation pursuant to this policy should not occur until the employing agency has undertaken reasonable efforts, to locate the employee and determine when or if the employee is intending to return to work. This provision also applies when the employee is absent for at least three consecutive, scheduled workdays, has been instructed verbally or in writing of a specific manner of reporting by management, and does not report in to the appropriate supervisory personnel on a regular basis satisfactory to the employing agency. Such separations as described in this Subparagraph are voluntary separations from agency employment and create no right of grievance or appeal pursuant to the State Personnel Act (G.S. Chapter 126).

- (5) Separation Due to Unavailability When Leave is Exhausted. An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits and benefits have been exhausted and agency management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include but are not limited to, lack of suitable temporary assistance, criticality of the position, bud-

etary constraints, etc. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed. Prior to separation the employing agency shall meet with or at least notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. The employee shall have the opportunity in this meeting or in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this. Involuntary separation pursuant to this policy may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations. Agencies should make efforts to place an employee so separated pursuant to this policy when the employee becomes available, if the employee desires, consistent with other employment priorities and rights. However, there is no mandatory requirement placed on an agency to secure an employee, separated under this policy, a position in any agency.

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

## SECTION .2100 - COMPENSATION

### .2101 COMPENSATION PLAN

(a) The compensation plan shall include a schedule of salary ranges and rules for salary administration. Within basic policies and rules established by the State Personnel Commission, local jurisdictions may establish and administer compensation plans which provide a level of pay based upon financial ability, fiscal policy, and local prevailing rates.

(b) A compensation plan shall be maintained which provides a salary rate structure or structures adequate to appropriately compensate all positions subject to the State Personnel Act. This structure may be revised in composition, or the total structure moved upward or downward, in response to labor market trends and to legislative actions affecting salaries; such action is dependent on the availability of funds.

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

## **.2102 ESTABLISHMENT OF SALARY SCHEDULE**

(a) Local jurisdictions shall establish and administer salary schedules which meet basic approval requirements of the State Personnel Commission as follows:

- (1) The schedule must consist of series of salary ranges with minimum, maximum, and intermediate rates of pay.
- (2) There must be a vertical increase between consecutive salary ranges within the schedule.

(b) The State Personnel Director shall make available salary schedule models which meet these basic criteria and make available staff resources to advise and consult with local jurisdictions in the development of acceptable schedules. Boards of county commissioners or municipal governing boards may adopt and use a model or, as an alternative, may submit a modified schedule for review and approval by the State Personnel Commission. Schedules may be modified in order to provide a structure deemed more suitable to local fiscal policy and financial ability so long as the other basic requirements are met. Modified schedules shall be accompanied by data and statements of explanation supporting the need for the modification because of local financial ability and fiscal policy.

(c) Proposed local salary schedules shall be designated or submitted to the State Personnel Director by the beginning date of each fiscal year, and at the time of significant change during interim periods. In submitting, the following requirements shall prevail:

- (1) For the programs of a single county, the board of county commissioners shall establish and submit a proposed salary schedule.
- (2) When a municipality is performing a subject activity, the governing board of the municipality shall establish and submit the proposed schedule.
- (3) When two or more counties are combined into a district or area for the performance of an activity, the boards of county com-

missioners of the counties must jointly establish and submit a proposed schedule; the district or area schedule is established independently of the salary schedule for any of the individual counties.

(d) An approved salary schedule must be in effect within a jurisdiction at all times. The approved schedule shall be applicable to both existing classes and to classes which may be established during its effective period.

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

## **.2103 SALARY RATES**

(a) New Appointments. The entrance salary rate for an employee shall be at the minimum of the range or at a salary rate within the salary range assigned to the class unless an employee is hired in a trainee appointment. Discretion should be exercised by boards of county commissioners or their designees on new appointments salaries above the minimum of the range to avoid creating salary inequities within the jurisdiction.

(b) Promotion. When a promotion occurs, the employee's salary shall be increased, if it is below the new minimum, to at least the minimum rate of the salary range assigned to the class to which the employee is promoted. If an employee's current salary is already above the new minimum salary rate, his salary may be adjusted upward or left unchanged at the discretion of local management, provided that the adjusted salary does not exceed the maximum of the assigned salary range. If the salary falls between steps in the salary range, it may be adjusted to the next higher step in the range.

(c) Demotion. When an employee's current salary falls above the maximum of the range for the lower class, his salary may remain the same until general schedule adjustments or range revisions bring it back within the lower range or may the salary be reduced to any step in the lower salary range, as long as the reduced salary does not fall below the minimum salary rate of that range. If the employee's current salary falls between steps in the lower range, it may be reduced to the next lower step.

(d) Salary Adjustments; Salary Plan Revisions. When the salary rates in the salary plan are changed or a class is moved to a higher or lower salary grade, the following adjustments shall be made in incumbents' salary rates:

- (1) When it is an upward revision and the employee's current salary is less than the minimum salary rate of the salary range for the classification, the employee's salary shall be adjusted to at least the minimum



of the range. If the employee's salary is already at or above the new minimum of the range, management may elect to increase the salary to another step within the range. An employee's salary may not, however, exceed the maximum of the range.

- (2) If there is a downward revision, management may elect to reduce each employee's salary rate by a corresponding amount or allow the salary rates to remain the same.

(c) Trainee Adjustments. During a trainee appointment an evaluation of the individual's performance and progress on the job is to be made at frequent intervals. As a general guide, salary increases are provided at specified intervals. These increases are not automatic, and are not necessarily limited to the full elapse of specified intervals. Salary adjustments may be either advanced or delayed depending upon the progress of the employee. In cases where salary adjustments have been advanced, the trainee's salary will not be adjusted to the minimum of the range for the regular classification until the employee meets all education and experience requirements for the appointment. Adjustments are to be given upon recommendations by the appointing authority and the supervisor that the employee has earned an increase. When the employee with a trainee appointment has successfully completed the training and experience requirements for the classification, he must be given a regular appointment to that classification and his salary increased at least to the minimum of the salary range.

(f) An employee's salary cannot be raised by merit increases to exceed the maximum salary rate of the salary range assignment to his class.

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

#### .2104 PAY STATUS

An employee is in pay status when working, when exhausting vacation or sick leave, or when drawing worker's compensation for a period not to exceed 12 months. An employee is not in pay status after his last day of work when separated because of resignation, dismissal, death, retirement or reduction in force.

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

#### .2105 OTHER PAY

(a) For those cities or counties in which all employees are covered by a plan for a form of pay, in addition to base salary, for services performed, the coverage may be approved for agencies subject to these policies. The local

authorities shall submit the plan to the State Regional Personnel Office through their Department of Human Resources Office or State Office of Crime Control and Public Safety, and certify that it is computed on a consistent basis for all employees.

(b) Where there are two or more local jurisdictions comprising a single departmental unit, the jurisdictions shall operate as one unit in establishing any special pay forms; the action shall be independent of provisions for other employees of either jurisdiction.

*Statutory Authority G.S. 126-4; 126-5; 126-9.*

#### .2106 ASSIGNMENT OF CLASSES WITHIN SALARY SCHEDULE

(a) Within an approved salary schedule, local jurisdictions may determine salary range assignments for competitive service classes. The following basic requirements shall be adhered to in making salary range assignments:

- (1) The use of appropriate class relationships based upon differences in the difficulty and responsibility of the work. In this regard, the relative difference between and among classes in a class series, and between significantly related classes within an occupational grouping, must be maintained as reflected by the official classification plan. Exception requests may occasionally arise as a matter of local fiscal policy. Such requests, accompanied by supporting data and staff recommendation, will be presented to the State Personnel Commission for approval;
- (2) Each class will retain the same salary range assignment in its use in all subject programs of the jurisdiction;
- (3) The current salary of each employee, except under specific circumstances included in the approved rules for salary administration, must fall between the minimum and maximum steps of the salary range of the class to which his position is assigned;
- (4) A final factor to be used in making salary range assignments is consideration of the local financial ability and fiscal policy.

(b) It is not the intent of these provisions that the individual salaries of competent employees be threatened.

(c) The State Personnel Director shall provide information and guidance on questions of class relationships, labor market influence, fiscal policy considerations, and other matters pertinent to the determination of equitable and competitive salary range assignment.



(d) Salary Plan for Employees of the Area Authority. The area mental health program authority shall establish a salary plan which shall set the salaries for employees of the area authority. The salary plan shall be in compliance with Chapter 126 of the General Statutes. In a multi-county area mental health program, the salary plan shall not exceed the highest paying salary plan of any member county. In a single county area, the salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this Section may be exceeded only if the area authority and board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

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

#### **.2107 PROCEDURES FOR SUBMISSION AND APPROVAL**

(a) By the beginning date of each fiscal year and at times of any change during interim periods, a designated or modified salary schedule, and a list of salary range assignments to classes will be submitted to the State Personnel Director. The State Personnel Director shall review the proposed schedule and salary range assignments, determine that approval requirements have been met and certify jurisdictions meeting these requirements to the State Personnel Commission. The State Personnel Commission will then review and either grant or withhold approval of the proposed plan in each case. In cases where opposition to a proposed plan is unresolved locally, the State Personnel Commission will hear the opposing arguments in public session prior to making a final decision.

(b) An approved salary schedule and salary range assignment plan must be in effect within a jurisdiction at all times.

*Statutory Authority G.S. 126-4; 122C-156(a).*

#### **SECTION .2200 - HOURS OF WORK AND OVERTIME COMPENSATION**

##### **.2201 HOURS OF WORK AND OVERTIME COMPENSATION**

The state policy on "hours of work and overtime compensation" as outlined in 25 NCAC 1D .1900 is intended to provide guidance in complying with federal regulations; however, each county, district, or area jurisdiction is responsible for compliance directly to the U.S. Department of Labor.

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

#### **SECTION .2300 - DISCIPLINARY ACTION: SUSPENSION, DISMISSAL AND APPEALS**

##### **.2301 CAUSES**

(a) Any employee, regardless of occupation, position or profession may be warned, demoted, suspended or dismissed by the appointing authority. The degree and type of action taken shall be based upon the sound and considered judgment of the appointment authority in accordance with the provisions of this policy.

(b) The basis for any disciplinary action taken in accordance with this policy falls into one of the two following categories:

- (1) Discipline imposed on the basis of job performance;
- (2) Discipline imposed on the basis of personal conduct.

Note: The Job Performance category is intended to be used in addressing performance-related inadequacies for which a reasonable person would expect to be notified of and allowed an opportunity to improve. Personal Conduct discipline is intended to be imposed for those actions for which no reasonable person could, or should, expect to receive prior warnings.

*Statutory Authority G. S. 126-35.*

##### **.2302 DISMISSAL: CAUSES RELATING TO THE PERFORMANCE OF DUTIES**

(a) This category covers all types of performance-related inadequacies. This policy does not require that progressive warnings all concern the same type of unsatisfactory performance. Warnings related to personal conduct may be included in the progressive system for performance-related dismissal provided that the employee receives at least the number of warnings, regardless of the basis of the warnings, required for dismissal on the basis of inadequate performance. Warnings administered under this policy are intended to bring about a permanent improvement in job performance; should the required improvement later deteriorate, or other inadequacies occur, the supervisor may deal with this new unsatisfactory performance at the next level of discipline.

(b) Employees who are dismissed for unsatisfactory job performance shall receive at least three warnings: First, one or more oral warnings; second, a written warning to the employee documenting all relevant points covered in the disciplinary discussion; third, a final written warning which notifies the employee that failure to make

the required performance improvements may result in dismissal.

(c) In administering this policy, supervisors should be aware that, in part, the intent of this policy is to assist and promote improved employee performance, rather than to punish.

(1) Oral Warning:

(A) The supervisor is responsible for assuring the satisfactory performance work assigned to his unit. When, in the judgment of the supervisor, unsatisfactory performance occurs, then use of the disciplinary process may be appropriate.

(B) In a private discussion with the employee, the supervisor or designated management representative shall do the following:

(i) Inform the employee that this is a warning, and not some other non-disciplinary process such as counseling;

(ii) Inform the employee of the specific performance deficiencies that are the basis for the warning;

(iii) Tell the employee what specific improvements must be made to correct the unsatisfactory performance;

(iv) Let the employee know what time is being allowed to make the required improvements;

(v) Tell the employee of the consequences of failing to make the required improvements.

**Note:** It is a recommended personnel practice to allow the employee to respond to the specific reasons for the warning. In some cases this may affect the supervisor's decision on whether to discipline an employee. Supervisors should also record the date and specifics of the warning for possible future use.

(2) Written Warning. In a private meeting with the employee the supervisor or designated management representative shall:

(A) Conduct a disciplinary conference with the employee; this disciplinary conference should follow the same steps as set forth for an oral warning;

(B) Tell the employee he will receive a written warning covering all significant points of this conference;

(C) Prepare and send to the employee a written warning covering significant points of the disciplinary conference; care should be taken to include the specific reasons for the warning.

**Note:** Reference may be made in this warning to document an earlier oral warning.

(3) Final Written Warning:

(A) Before issuing the final written warning, the supervisor and appropriate agency management should review the contents of the warning. The following steps shall be taken in issuing a final written warning:

(i) Prepare a final written warning to the employee; care should be taken to include the specific reasons for the warning;

(ii) In private, conduct a disciplinary conference with the employee; at this conference, the specific reason for the action, the necessary improvements and the time allowed to make improvements should be discussed;

(iii) Present the warning to the employee at the end of the conference; the employee should be informed, either orally in the warning, that failure to correct the unsatisfactory performance may result in dismissal.

(B) During the period after the final written warning has been given, management, in its discretion, may choose to counsel with the employee concerning his employment status before a decision to dismiss is made. Such counseling should involve a discussion of the necessity for the employee's commitment to improve performance. As a part of this counseling, management may request the employee to take up to a day's leave with pay to consider whether or not the employee wishes to continue his employment with the agency. This time away from the job site shall not be charged to the employee's vacation or sick leave; it shall be considered as the employee's assignment for that time not at the normal job site. It should be stressed to the employee that a decision to continue employment with the agency will require a commitment to improve performance, and that a lack of improvement will lead to dismissal. Clearly, such a procedure is not suitable in all situations; management is expected to use its discretion to determine where such a procedure would benefit the employee and the agency.

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

.2303 DISMISSAL

Before an employee may be dismissed, the following shall occur:

(1) The Supervisor recommending dismissal shall discuss the recommendation with appropriate agency management and receive



management's authorization to hold a pre-dismissal conference with the employee. The purpose of the pre-dismissal conference is to review the recommendation with the affected employee, and by listening to and considering information put forth by the employee, to insure that such a significant personnel action is not based on mistaken or erroneous information and conclusions.

(2) The designated management representative shall schedule and conduct a pre-dismissal conference with the employee. Advance notice of the pre-dismissal conference must be given to the employee. A second management representative or security personnel may be present at management's discretion. No attorneys representing either side may attend the conference. In the conference, the Supervisor shall give the employee oral or written notice of the recommendation for dismissal, including specific reasons for the proposed dismissal and a summary of the information supporting that recommendation. The employee shall have an opportunity to respond to the proposed dismissal, to refute information supporting the recommended dismissal action and to offer information or arguments to support his position. Every effort shall be made by the Supervisor or the designated management representative to assure that the employee has had a full opportunity to set forth any information in his possession in opposition to his dismissal prior to the end of the conference.

(3) Following the conference, management shall review and consider the response of the employee and reach a decision on the proposed recommendation. If management's decision is to dismiss the employee, a written letter of dismissal shall be prepared containing the specific reasons for dismissal, the effective date of the dismissal and the employee's appeal rights. To minimize the risk of dismissal upon erroneous information, and to allow time following the conference for management to review all necessary information, the decision to dismiss should normally not be communicated to the employee prior to the beginning of the next business day following the conclusion of the pre-dismissal conference. The employee shall be informed of the decision and furnished, either in person or by mail, a copy of the letter of dismissal, receipt of which shall constitute dismissal. A management decision not to dismiss the employee may be communicated to the employee at any

time following the conclusion of the conference.

(4) The effective date of a dismissal for unsatisfactory job performance shall be determined by management. A permanent employee who is to be dismissed for unsatisfactory job performance may, at management's discretion, be given up to two weeks' working notice of his dismissal. Instead of providing up to two weeks' working notice and at the discretion of management, an employee may be given up to two weeks' pay in lieu of the working notice. Such working notice or pay in lieu of notice is applicable only to dismissals for unsatisfactory job performance. The effective date of the dismissal shall not be earlier than the letter of dismissal nor more than 14 calendar days after the notice of dismissal.

*Statutory Authority G.S. 126-4(7a).*

#### .2304 DISMISSAL: CAUSES RELATING TO PERSONAL CONDUCT

(a) Employees may be dismissed, demoted, suspended or warned on the basis of unacceptable personal conduct. Discipline may be imposed, as a result of unacceptable conduct, up to and including dismissal without any prior warning to the employee. Oral or written warnings given for unacceptable personal conduct according to this Rule cannot be used to shorten the progressive warning process required to dismiss an employee on the basis of unsatisfactory job performance.

(b) Disciplinary demotions, suspensions or dismissals for personal conduct require written notification to the employee. Such notification must include specific reasons for the discipline and notice of the employee's right of appeal.

(c) Prior to dismissal of a permanent employee on the basis of personal conduct, there shall be a pre-dismissal conference between the employee and the person recommending dismissal. This conference shall be held in accordance with the provision of 25 NCAC 11 .2303.

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

#### .2305 SUSPENSION

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

(1) An employee who has been suspended for either investigatory or disciplinary reasons must be placed on compulsory leave of absence without pay.



- (2) Investigatory suspension without pay may be used to provide time to investigate, establish facts, and reach a decision concerning an employee's status in those cases where it is determined the employee should not continue to work pending a decision. Investigatory suspension without pay may be appropriately used to provide time to schedule and hold a pre-dismissal conference. Also, management may elect to use investigatory suspension in order to avoid undue disruption of work or to protect the safety of persons or property. An investigatory suspension without pay shall not exceed 45 calendar days. However, an agency may, in the exercise of its discretion, extend the period of investigatory suspension without pay beyond the 45-day limit. The employee must be informed in writing of the extension, the length of the extension, the specific reasons for the extension and his right of appeal. If no action has been taken by management by the end of 45 calendar days, and no extension has been made, one of the following must occur: Reinstatement of the employee with full backpay; appropriate disciplinary action based on the results of the investigation; reinstatement of the employee with up to three days pay deducted from the backpay.
- (3) Investigatory suspension of an employee shall not be used for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.
- (4) An employee who has been suspended for investigatory reasons may be reinstated with up to three days pay deducted from his salary. Such determination is to be based upon management's determination of the degree to which the employee was responsible for or contributed to the reasons for the suspension. This period constitutes a disciplinary suspension without pay and must be effected in accordance with Paragraphs (5) and (6) of this Rule.
- (5) An employee may be suspended without pay for disciplinary purposes for causes relating to any form of personal conduct or in conjunction with a final written warning for performance of duties. However, a disciplinary suspension without pay must be for at least one full working day, but not more than three working days. Prior to placing an employee on disciplinary suspension without pay, a management representative

shall conduct a pre-suspension conference with the employee. This conference shall be carried out in the same fashion as a pre-dismissal conference.

- (6) An employee who has been suspended without pay must be furnished a statement in writing setting forth the specific acts or omissions that are the reasons for the suspension and the employee's appeal rights. A pre-suspension conference is required only when the employee is suspended without pay for a disciplinary reason; a pre-suspension conference is not required where an employee is suspended without pay for the purpose of an investigation.

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

#### **.2306 DEMOTION**

(a) Any employee may be demoted as a disciplinary measure. Demotion may be made on the basis of either unsatisfactory job performance or unacceptable personal conduct.

- (1) Job Performance. An employee may be demoted for unsatisfactory job performance after the employee has received at least two prior warnings on his performance. At least one of the warnings prior to demotion must be in writing.

- (2) Personal Conduct. An employee may be demoted for unacceptable conduct without any prior warning. Cause for demotion on the basis of personal conduct does not have to be as serious as cause for dismissal.

- (3) Notice. An employee who is demoted must receive written notice of the specific reasons for the demotion, as well as notice of his appeal rights.

(b) Disciplinary demotions may be accomplished in several ways. The employee may be demoted to a lower classification with or without a loss in pay. Or, the employee may be reduced to a lower step in the same pay grade with a corresponding loss of pay. In no event shall an employee's pay be lowered below step one of his current pay grade, unless the employee is demoted to a lower classification. Prior to the decision to demote an employee for disciplinary reasons, a management representative must conduct a pre-demotion conference with the employee. This pre-demotion conference shall be accomplished in the same fashion as the pre-dismissal conference.

*Statutory Authority G.S. 126-4(6); 126-35.*

#### **.2307 SPECIAL PROVISIONS - CREDENTIALS**

(a) By statute, some duties assigned to positions may be performed only by persons who are duly licensed, registered or certified as required by the relevant law.

(b) Employees in such classifications are responsible for maintaining current, valid credentials as required by law. Failure to maintain the required credentials is a basis for immediate dismissal without prior warning. An employee who is dismissed shall be given a written statement of the reason for the action and his appeal rights.

*Statutory Authority G.S. 126-4(3).*

#### 2308 APPEALS

(a) A permanent employee who has been demoted, suspended or dismissed shall have 15 calendar days from the date of his receipt of written notice of such action to file an appeal with his agency/county grievance procedure. Grievances which do not allege discrimination must follow the agency or county grievance procedure. An appeal of a final agency decision must be filed in accordance with G.S. 150B-23 and within 30 calendar days of receipt of the final agency decision.

(b) Grievances which allege discrimination may, at the election of the employee, proceed through the agency or county procedure or proceed directly to the State Personnel Commission (SPC) for a hearing by the Office of Administrative Hearings (OAH) and a decision by the SPC. A direct appeal to the SPC (such appeal involving a contested case hearing by the OAH and a recommended decision by that agency to the SPC) alleging discrimination must be filed in accordance with G.S. 150B-23 and must be filed within 30 calendar days of receipt of notice of the alleged discriminatory act.

(c) Grievances filed on an untimely basis (see G.S. 126-35, G.S. 126-36 and G.S. 126-38) must be dismissed. Allegations of discrimination, if raised more than 30 calendar days after the party alleging discrimination became aware or should have become aware of the alleged discrimination, must be dismissed.

*Statutory Authority G.S. 126-35; 126-36; 126-38; 150B, Article 3; 150B-23.*

#### SECTION 2400 - BASIC REQUIREMENTS FOR A "SUBSTANTIALLY EQUIVALENT" PERSONNEL SYSTEM

##### 2401 SYSTEM PORTION I: RECRUITMENT, SELECTION, AND ADVANCEMENT

General Requirement. Recruiting, selecting and advancing employees will be on the basis of their

relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

##### (1) Recruitment:

(a) Requirement. There must be a planned and organized recruiting program, carried out in a manner that assures open competition.

(Guide. The recruiting program should be an easily recognizable and structured part of the staffing design for the personnel function. All vacancies should be conspicuously posted in a regular location accessible to and frequented by employees. If efforts are to be extended outside the organization, posting should also occur in a prominently public location within the jurisdiction, and further utilization of radio and media advertisements, and listing with the Employment Security Commission should occur to broaden communications.)

(b) Requirement. Special emphasis will be placed on efforts to attract minorities, women, the disabled, or other groups that are substantially underrepresented in the jurisdiction work force to help assure they will be among the candidates from whom appointments are made.

(Guide. Filling from within should fairly consider and encourage workers of this group. For underrepresented groups in the work force, schools, community colleges, selective media, interest groups and other organizations having special contacts with women, minorities, disabled, and older groups should be informed of vacancies in order to particularly encourage potential applicants.)

##### (2) Selection:

(a) Requirement. The selection of applicants for vacant positions will be through open competition.

(Guide. Selections from within is logical where there is need to further career development, and the work force generally is adequately representative of all race, sex, ethnic and disadvantaged groups of the labor force. In many cases, it will be beneficial to select from a group of applicants gained through internal and external competition.)

(b) Requirement. Selection procedures will be job related and will be in accord with the stipulations, validity, reliability, and objectivity of the Uniform Guidelines on Employee Selection Procedures (1978) (Federal).



(Guide. (1) There are several selection approaches available. All should measure the important skills, knowledges, abilities, and work behaviors needed for a job. Validated written tests, assessment centers, structured interviews, and supplemental self-assessment applicants are being successfully used. However, it may well be that no one approach will be suitable for all jobs of the jurisdiction. The "content validity" portion of the Uniform Guidelines appears to offer the greatest practical latitude for most jurisdictions. Adequate job analysis should insure the job relatedness of the approach(es) chosen. (2) There is considerable leeway granted in determining a manageable number of eligibles with disregard for relative abilities, knowledges, and skills, would not meet the requirement. Advantage should be given to the most qualified available eligibles.)

- (c) Requirement. Job related minimum requirements for entrance to a class will be established wherever practical, and will be met by all candidates examined, appointed or promoted.

(Guide. Program directors should be recognized as a valuable resource, and used advantageously in determining minimum requirements. Regular minimum requirements and competitive procedures may be waived or limited to hire disabled persons who have physical or mental impairment substantially limiting a major life activity. Minimum qualifications and duties may also be modified to permit trainees.)

- (d) Requirement. Prior to receiving a permanent appointment, each employee will satisfactorily complete a reasonable, time limited probationary period.

(Guide. A probationary time limit of less than three months would questionably give supervisors enough time to fairly assess new employees, while a period in excess of one year could be questionably lengthy. The employees' performance should be closely reviewed during the probationary period and positive feedback given by supervisors on both accomplishments and areas needing attention, so that success is encouraged.)

- (3) Career Advancement Requirement. Policies and program affecting and effecting promotions will consider all eligible employees within the jurisdiction and adequately

quately assure that all persons promoted are qualified.

(Guide. Internal career paths and advancement need to be conscientiously attended. Persons may be advantageously recruited from outside the organization through open competition where this will provide abilities not available internally, the organization will be enriched, or opportunities for underrepresented groups will be improved.)

Statutory Authority G.S. 126-11.

## 2402 SYSTEM PORTION II:

### CLASSIFICATION/COMPENSATION

General Requirement. A current, equitable, and adequate position classification and compensation plan will be provided.

- (1) Position Classification Requirement. Job Evaluation (syn. classification) plans will be based upon a soundly applied, professionally accepted job evaluation methodology which establishes the relative strength of related positions through consideration of the difficulty, responsibility, and other requirements of the work. System components and all relationships determined along with accompanying rationale will be fully documented.

(Guide. (1) The job analysis process should be carried out so that it is equitably consistent in all applications. Job analysis factors which normally should be included in addition to difficulty and responsibility, are working relationships and working conditions. Physical effort and other considerations of importance to employees and managers (and/or required to identify and measure the work) may need to be added for given job types. (2) The rationale for class (syn. skill level, work level, etc.) relationships should be documented in detail sufficient to reconstruct the reasoning, on the basis of the job evaluation factors, which led to a logical analytical conclusion. Such documentation should also be constructed to serve the purpose of guiding future analytical efforts. (3) Current organizational charts, position description files, class history files, and related information needs to be maintained to aid job analysis.)

- (2) Compensation:

- (a) Requirement. The compensation plan will, within labor market constraints, have as its principal basis the class relationships (syn. skill level relationships, job relationships, work level relationship, etc.) discerned by the classification process.

- (b) Requirement. Within the limits of local financial ability and fiscal policy, the level of compensation assigned to each class of the plan will, in conjunction with Subparagraph (2)(a) of this Rule, adequately consider the competitive labor market within the geographical area of recruitment.

(Guide. (1) Where classes have been determined by the classification process to be significantly related in terms of recruitment/labor market requirements or work requirements, the compensation relationships between related classes should reflect vertical and horizontal relationships suggested by the classification analysis. Exceptions should occur only in those areas where statutory or organizational ceilings for appointed or elected officials, as an expression of fiscal policy, act to compress logical pay relationships at given levels, or where other circumstances might dictate reasonable compromise as necessary to avoid disproportionate damage to the overall integrity of the classification and pay plan. (2) Comprehensive salary surveys should be conducted at least annually to gather data on rates being paid for substantially similar work by competitors. Such surveys need to be designed with the geographical area of recruitment in mind. While clerical employees and some paraprofessional employees are recruited locally, it is usually necessary to recruit regionally, statewide, or even nationally for other paraprofessional and many professional and managerial positions. (3) It should be recognized that the pay policy of the jurisdiction is ultimately represented by the position classification and salary plans. This pay policy must establish and maintain, insofar as feasible, a system of compensation which provides a viable basis for securing and maintaining a sufficient, effective work force from the labor market. Pay policy is established and maintained through assessment and reconciliation of several influencing factors, which may frequently relate as conflicting demands or constraints. These factors include: (a) relationships among positions, as established through the process of job evaluation; (b) external labor market labor dynamics, in terms of wage and salary rates, applicant sources, availability and supply; (c) the jurisdiction's ability to pay and compete, in terms of economic con-

ditions and allocated financial resources for salaries and benefits; (d) "public policy" as defined by the governing board; and (e) criticality of operation.)

- (c) Requirement. Logical and equitable practices will be established which guide salary administration in positions and employees actions within the jurisdiction.

(Guide. Policies guiding salary administration for individual employees in salary range revisions, reclassification upward or downward, appointments, promotions, transfers, demotions, suspensions, or related actions should show fair and reasonable concern or the nature of the actions they cover, and reflect consideration of both employee and managerial interests. Interpretive consistency should be an objective in day-to-day applications.)

*Statutory Authority G.S. 126-11.*

#### .2403 SYSTEM PORTION III: TRAINING

General Requirement. Employees will be trained as needed to assure high quality performance.

(Guide. In addition to providing training to improve performance, training should be provided to prepare employees for more responsible assignments and to implement affirmative action plans for equal employment opportunity. Training programs should include systematic methods for assessing training needs, providing training to meet priority needs, selecting personnel for training, and evaluating the training provided.)

*Statutory Authority G.S. 126-11.*

#### .2404 SYSTEM PORTION IV: EMPLOYEE RELATIONS

General Requirement. Employees will be continued in good standing as long as they sustain satisfactory performance. Attempts will be made with employees to improve inadequate performance, and provisions will be made for separating employees whose inadequate performance cannot be corrected.

- (1) Employee Performance:

- (a) Requirement. Employees who have acquired permanent status will not be discharged, suspended, or reduced in pay or position except for just cause.

(Guide. (1) Just cause would normally be related to a failing in work performance or personal conduct to the extent that the



terms and objectives of employment are unfulfilled, or personal behavior is detrimental to the image and working relationships of the jurisdiction. The degree and kind of disciplinary action taken needs to be based upon the sound and well considered judgment of management. (2) No employee should be subject to separation or other disciplinary actions for disclosure, not prohibited by law, of violations of laws, rules, or regulations, or other improper actions. Prohibitions and protections against reprisals should be assured employees reporting wrongdoing or inefficiency. (3) Employees need to be evaluated periodically on a systematic and job related basis to provide needed information for supervisors to assess the adequacy of individual employees to recognize their own performance improvement needs and as a basis for personnel actions including promotion, recognizing or rewarding superior performance, and correcting inadequate performance cannot be corrected.)

- (b) Requirement. Policies will be developed which provide for fair and uniform procedures for demotion, transfer, suspension, or dismissal of employees whose performance continues to be inadequate after reasonable efforts have been made to correct it. Such policies shall specifically provide that in the case of such disciplinary action, the employee will, before the action is taken, be given a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action, and the employee's appeal rights. A copy of this statement shall be filed with the county personnel director.

(Guide. (1) Adequate and specific notice of unsatisfactory performance should be given to employees prior to disciplinary action so as to offer reasonable opportunity for correction. Multiple warnings of progressive severity are recommended where inadequate performance is sustained. This might include a specific oral warning from the supervisor in the first instance, an oral warning with specific follow-up letter to the employee in the second, and a final written warning with full knowledge of the department head which might include a direct notice to the employee that a continuation of the practice may result in dismissal. Each level of warning should be accompanied by

suggestions for corrections and the employee should be given an opportunity to give reasons for his actions. (2) An employee may be suspended without warning for causes related to unacceptable personal conduct, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property, or for other serious reasons.)

- (2) Reduction In Force. Requirement. Retention of employees in selected separations due to curtailment of work or lack of funds will be based upon systematic consideration of the type of appointment and other relevant factors which consider employee contribution.

(Guide. (1) No permanent employee of good standing should be separated upon reduction in force while there are emergency, intermittent, temporary, probationary, or trainee employees serving in the same class in the jurisdiction, unless the permanent employee is not willing to transfer to the position held by the non-status employee.

(2) In addition to type of appointment, other important and relevant factors which should be uniformly considered are length of service and relative efficiency. (3) It is desirable to provide reinstatement rights within a specific time period to employees separated due to reduction in force.)

- (3) Appeals:

- (a) Requirement. Generally, in the event of disciplinary action, suspension, and dismissal, the county or area authority shall provide permanent employees with the right to appeal through a timely and impartial process, the results of which may be recommendatory to or enforceable upon the appointing authority. The grievance procedure shall also give access to employees with non-disciplinary grievances which do not involve issues of inherent management prerogative, such as budgets, and hours and conditions of work. Appeals of alleged discrimination in any personnel action on the basis of race, color, religion, sex, national origin, political affiliation, age, or disability by any applicant or employee shall result in timely, enforceable decisions.

- (b) Requirement. To assure impartiality, the county board of commissioners or area mental health authority shall create an appeals board, which among other areas of responsibility and authority that may be assigned shall decide all alleged dis-

crimination appeals. The authority of the appeals board for effecting its decisions shall be in accordance with the provisions of Subparagraph (3)(a) of this Rule. The membership of the appeals board shall consist of persons appointed by the board of county commissioners or area authority with due regard to its nature and purpose, with the stipulation that at least one member be chosen to represent the employees of the jurisdiction. Such appointments shall not include the county attorney, incumbent county commissioners, incumbent members of the area board, or their family members or relatives. A county manager or area authority director may serve as a voting member of an appeals board but shall not serve as chairperson.

- (c) Requirement. The appeals board shall have access in its meetings and deliberations to the counsel of a private attorney, not associated or engaged professionally in any transaction of the jurisdiction which would create a potential conflict of interest.
- (d) Requirement. The deliberations of the appeals board shall be preceded by an evidentiary hearing, to be conducted by a qualified hearings examiner appointed by the jurisdiction, who shall submit a written disclosure of findings and facts to the Board, along with his/her recommendation.
- (e) Requirement. Proceedings of appeals board shall be recorded. At its discretion, the board may furnish a transcript of the hearing upon request. Decisions of the board shall be in writing and shall be maintained in the county or authority personnel office.
- (f) Requirement. An impartial grievance procedure which has as its objective the timely and logical resolution of all grievances at the lowest practical point in the organization shall be established, with right of appeal assured at each step up to the county manager or area director for all appeals not alleging discrimination, and to the appeals board for all appeals alleging discrimination. To the maximum extent possible grievance procedures shall include steps to resolve discrimination and all other types of employee grievances without recourse to the formal appeals process represented by the county manager or appeals board.

(Guide. (1) Assurances should be provided which allow employees to present their problems or grievances in accordance with the procedures provided by the county or area authority, free from interference, coercion, restraint, discrimination, or reprisal. All employees should be fully informed of the grievance procedures adopted and of their rights and obligations thereby. (2) The composition of the county or area authority appeals board might draw upon community resources in a nature consistent with its purpose. Persons selected from business and industry who are engaged in the current practice of personnel administration, instructors of public administration from institutions of higher learning, and persons whose professional orientation would lend objective understanding of employee concerns would be examples in keeping with this purpose. Membership also needs to be enhanced by sex and ethnic diversity. (3) In the interest of avoiding stipulations which would work to curtail the employee's opportunity to present his version of the circumstances and events surrounding a grievance, it is suggested that the Rules of Evidentiary Presentation be used during hearings only if requested by the employee. In the absence of such a request, the appeals board's evidentiary rulings should be effected in a manner favoring full disclosure of all pertinent facts. (4) The appeals board should have at its disposal, means for enabling reasonable witness expenses to be reimbursed as appropriate. (5) The relationship between the county or area authority appeals board and the civil court system as to powers, authority, and legal expectation should be explained and clarified to aggrieved persons appealing to the appeals board.)

Statutory Authority G.S. 126-11.

#### .2405 SYSTEM PORTION V: EQUAL EMPLOYMENT OPPTY/AFFIRMATIVE ACTION

General Requirement. Fair treatment of applicants and employees will be assured in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, or handicap and with proper regard for their privacy and constitutional rights as citizens. This "fair treatment" principle includes



compliance with the federal equal employment opportunity and nondiscrimination laws.

(1) Equal Employment Opportunity:

(a) Requirement. Equal employment opportunity will be assured for all persons.

(Guide. (1) Provisions of the personnel system should assure that no individual is deprived, or otherwise discriminated against, with respect to consideration for employment, compensation, and all other terms, conditions, or privileges of employment. (2) Equal opportunity applies to every individual and does not mean preferential treatment, unless exceptional remedies are necessary to correct the effects of longstanding discrimination practices.)

(b) Requirement. Prohibitions against discrimination consistent with the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967 as amended, the Rehabilitation Act of 1973 as amended, and other relevant statutes will be established and enforced.

(c) Requirement. Retaliation against those who protest alleged discrimination shall be prohibited.

(Guide. (1) The Civil Rights Act of 1964 as amended in 1972 (Equal Employment Opportunity Act of 1972) prohibits discrimination based on race, color, sex, or national origin and applies directly to state and local governments. The Equal Pay Act of 1963 requires equal pay for equal levels of work regardless of sex. The Age Discrimination in Employment Act of 1967 as amended protects individuals over 40, and the Americans with Disabilities Act of 1990 gives assurances to the disabled. The Uniform Guidelines on Employee Selection Procedures (1978) is also important as an interpretive document. (2) Federal law provides for an exception from the general rule prohibiting discrimination in cases where religion, sex, national origin, or age is a bona fide occupational qualification for employment. However, court tests and other interpretations indicate there are few, if any, jobs covered here to which this exception may be applied.)

(2) Affirmative Action:

(a) Requirement. The governing body will adopt a written EEO AA policy which clearly outlines the governing body's intent, actions and commitment in regard to EEO and AA. This policy statement shall

ensure greater utilization of all persons by identifying previously underutilized groups in the work force, such as women, minorities and the disabled, and making special efforts toward their recruitment, selection, appointment, promotion, development and upward mobility.

(Guide. The head of the governing body, e.g., the chairperson of the county commissioners or chairperson of the area authority, should sign the policy statement, copies of which should be disseminated internally and externally.)

(b) Requirement. The jurisdiction shall develop and implement a continuing program of affirmative action in order to assure that all personnel policies and practices relevant to total employment in the jurisdiction will guarantee equal opportunity for all persons. Also, sufficient resources should be devoted to adequately implement an affirmative action program. The program should include:

(i) Identification and elimination of artificial barriers to equal employment opportunity.

(ii) Work force analysis to determine whether percentages of minorities and women employed in various job categories are substantially similar to percentages of those groups available in the relevant labor force. Where underrepresentation occurs, employment procedures will be analyzed to determine the cause.

(iii) Development of a systematic action plan, with goals and timetables, formulated to correct any substantial disparities or other problems identified in the work force and employment analysis.

(iv) Periodic evaluation of results to assess the effectiveness of the affirmative action programs in achieving affirmative action goals on a timely basis. The affirmative action plan should be updated at least every two years.

(Guide. (1) An EEO AA officer should be designated for the jurisdiction who shall have primary responsibilities for the implementation and day to day operation of the affirmative action program. (2) Work force data can most meaningfully be obtained and presented by job category. Federal job categories, used in submitting EEO-4 reports, are suggested. The primary source for labor force data in North Carolina is the N.C. Employment Security Commission. It should be realized that labor force data from several

different labor market areas (geographically) may be needed to measure progress, since the jurisdiction likely recruits on that basis for different types and levels of jobs. Agency work force analysis and problem identification normally need to be based on the percentage of qualified persons by race, sex, and ethnic group available in the relevant labor force. Where these data are not available, total labor force may be used. Work force analysis should give attention to individual job classification, classification series, or occupational groupings as appropriate.)

- (c) Requirement. Management and supervisory personnel must be held accountable for progress toward affirmative action goals in appropriate circumstances.

(Guide. A mechanism for reviewing each manager's unit of responsibility and each supervisor's unit, to discover whether progress toward improved representation of one or more protected groups needs to be made, and if so, if such progress is in fact being made, must be implemented. Use of annual performance reviews for this purpose is acceptable.)

- (3) Workforce Relations Requirement. Personnel administration within the jurisdiction will conscientiously recognize the dignity and value of the individual employee and

promote means of communications, participation and understanding among all employees.

(Guide. Provisions and strategies within the personnel system should seek to effect mutual understanding, participation, and accord between management and employees in achieving the overall mission of the county or area program. When, for whatever reasons, there may occur a breach of understanding in any area, efforts for empathetic resolution should be immediately effected.)

*Statutory Authority G.S. 126-11.*

#### **.2406 SYSTEM PORTION VI: POLITICAL ACTIVITY**

General Requirement. Employees will be protected against coercion for partisan political purposes, and will be prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

(Guide. Policies on political activity need to assure that all employees have the right to express their views as citizens, to pursue their legitimate involvement in the political system, and to vote; that employees not engage in or be subject to coercion for political purposes, and not seek candidacy for public office in a partisan election.)

*Statutory Authority G.S. 126-11.*



*This section contains rules filed for publication in the North Carolina Administrative Code where a notice was not required for publication in the Register. Also, the text of final rules will be published in this section upon request of any adopting agency.*

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 45 - COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL  
DISABILITIES AND SUBSTANCE ABUSE SERVICES**

**SUBCHAPTER 45H - DRUG TREATMENT FACILITIES**

**SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES**

**.0206 SCHEDULE V**

(a) Schedule V shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated, listed in this Rule.

(b) Narcotic Drugs Containing Nonnarcotic Active Medicinal Ingredients. Any compounds, mixture or preparation containing any of the following limited quantities or narcotic drugs or salts thereof which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams,
- (2) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams,
- (3) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams,
- (4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit,
- (5) not more than 100 milligrams of opium per 100 milliliters or per 100 grams,
- (6) not more than 0.5 milligrams of difenoxin and not less than 25 micrograms atropine sulfate per dosage unit.

(c) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers: Pyrovalerone - 1485.

*History Note: Statutory Authority G.S. 90-88; 90-93; 143B-147;*

*Eff. June 30, 1978;*

*Amended Eff. April 1, 1992; August 1, 1988; December 1, 1987; April 1, 1983.*

## 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).*

### AGRICULTURE

#### Plant Industry

2 NCAC 48E .0101 - Definitions	RRC Objection	10/17/91
Agency Revised Rule	RRC Objection	10/17/91
Agency Responded	No Action	12/19/91
Agency Withdrew Rule		02/20/92

### CRIME CONTROL AND PUBLIC SAFETY

#### State Highway Patrol

14A NCAC 9H .0304 - Notifying Registered Owner	RRC Objection	12/19/91
No Response from Agency	No Action	01/24/92
Agency Withdrew Rule		02/20/92

### ECONOMIC AND COMMUNITY DEVELOPMENT

#### Community Assistance

4 NCAC 19L .0403 - Size and Use of Grants Made to Recipients	RRC Objection	04/16/92
4 NCAC 19L .0407 - General Application Requirements	RRC Objection	04/16/92

#### Credit Union Division

4 NCAC 6C .0407 - Business Loans	RRC Objection	01/24/92
Agency Revised Rule	Obj. Removed	02/20/92

### 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 .0301 - Who is Entitled to a Contested Case Hearing	RRC Objection	02/20/92
Rule Returned to Agency		03/19/92
Agency Filed Rule with OAH	Eff.	03/31/92
15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing	RRC Objection	03/19/92
Rule Returned to Agency		03/19/92
Agency Filed Rule with OAH	Eff.	04/01/92
15A NCAC 7J .0302 - Petition For Contested Case Hearing	RRC Objection	02/20/92
Rule Returned to Agency		03/19/92
Agency Filed Rule with OAH	Eff.	03/31/92
15A NCAC 7J .0302 - Petition For Contested Case Hearing	RRC Objection	03/19/92
Rule Returned to Agency		03/19/92
Agency Filed Rule with OAH	Eff.	04/01/92
15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications	RRC Objection	10/17/91



## RRC OBJECTIONS

<i>15A NCAC 7M .0201 - 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>
<i>15A NCAC 7M .0202 - Policy Statements</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>
<i>15A NCAC 7M .0303 - Policy Statements</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>
<i>15A NCAC 7M .0403 - Policy Statements</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>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/20/92</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>

### Environmental Management

<i>15A NCAC 2E .0107 - Delegation</i>	<i>RRC Objection</i>	<i>03/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</i>

### Governor's Waste Management Board

<i>15A NCAC 14B .0002 - Definitions</i>	<i>RRC Objection</i>	<i>03/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</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>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/20/92</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>
	<i>Obj. Removed</i>	<i>02/20/92</i>

## HUMAN RESOURCES

### Facility Services

<i>10 NCAC 3J .2801 - Supervision</i>	<i>RRC Objection</i>	<i>04/16/92</i>
<i>10 NCAC 3J .2905 - Personal Hygiene Items</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>10 NCAC 3L .1202 - Case Review and Plan of Care</i>	<i>RRC Objection</i>	<i>04/16/92</i>
<i>10 NCAC 3U .0102 - Definitions</i>	<i>RRC Objection</i>	<i>03/19/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</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>
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## **RRC OBJECTIONS**

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<i>Agency Responded</i>	<i>No Action</i>	<i>02/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</i>
<i>10 NCAC 42E .0906 - Personnel: Day Care Homes: /Staff Person/Op</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>02/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</i>
<i>10 NCAC 42E .1207 - Procedure</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>02/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</i>
<i>10 NCAC 42Z .0604 - Staff Requirements</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>02/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</i>
<i>10 NCAC 42Z .0901 - Procedure</i>	<i>RRC Objection</i>	<i>01/24/92</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>02/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/19/92</i>
 <b>Mental Health: General</b>		
<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>

### **LABOR**

Elevator and Amusement Device

<i>13 NCAC 15 .0402 - Responsibility for Compliance</i>	<i>RRC Objection</i>	<i>04/16/92</i>
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### **LICENSING BOARDS AND COMMISSIONS**

Certified Public Accountant Examiners

<i>* 21 NCAC 8G .0313 - Firm Name</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>Agency Responded</i>	<i>No Action</i>	<i>12/19/91</i>



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

**25 NCAC 1B .0414 - SITUATIONS IN WHICH ATTORNEYS FEES MAY BE AWARDED**

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 25 NCAC 1B .0414 void as applied in *William Paul Farrington, Petitioner v. University of North Carolina at Chapel Hill, Respondent* (91 OSP 0905).

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.*

### KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	EDC	Department of Public Instruction
BDA	Board of Dental Examiners	EHR	Department of Environment, Health, and Natural Resources
BME	Board of Medical Examiners	ESC	Employment Security Commission
BMS	Board of Mortuary Science	HAF	Hearing Aid Dealers and Fitters Board
BOG	Board of Geologists	HRC	Human Relations Commission
BON	Board of Nursing	IND	Independent Agencies
BOO	Board of Opticians	INS	Department of Insurance
CFA	Commission for Auctioneers	LBC	Licensing Board for Contractors
COM	Department of Economic and Community Development	MLK	Milk Commission
CPS	Department of Crime Control and Public Safety	NHA	Board of Nursing Home Administrators
CSE	Child Support Enforcement	OAH	Office of Administrative Hearings
DAG	Department of Agriculture	OSP	Department of State Personnel
DCC	Department of Community Colleges	PHC	Board of Plumbing and Heating Contractors
DCR	Department of Cultural Resources	POD	Board of Podiatry Examiners
DCS	Distribution Child Support	SOS	Department of Secretary of State
DIIR	Department of Human Resources	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOA	Department of Administration	WRC	Wildlife Resources Commission
DOJ	Department of Justice		
DOL	Department of Labor		
DSA	Department of State Auditor		
DST	Department of State Treasurer		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alyce W. Pringle v. Department of Education	88 OSP 0592 88 EEO 0992	Morgan	03 27/92
Susie Woodle v. Department of Commerce, State Ports Authority	88 OSP 1411	Mann	03 25/92
Fernando Demeco White v. DIIR, Caswell Center	89 OSP 0284	West	01 10/92
Cathy Faye Barrow v. DIIR, Craven County Health Department	89 DIIR 0715	Morgan	03 09 92
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01 13.92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01, 13, 92
Jolene H. Johnson v. DHHR, Division of Medical Assistance	90 DHR 0685	Morgan	02, 21, 92
Joseph F. Nunes v. DHR, Division of Social Services, CSE	90 CSE 1036	Morgan	04, 15, 92
Sgt. Carl Edmunds v. DHHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02, 04, 92
Rafael Figueroa v. DHHR, Division of Social Services, CSE	90 CSE 1138	Morgan	03, 30, 92
Sammie L. Frazier v. DHHR, Division of Social Services, CSE	90 CSE 1167	Morgan	03, 24, 92
Richard A. Boyett v. DHHR, Division of Social Services, CSE	90 CSE 1184	Morgan	03, 30, 92
Lance McQueen v. DHHR, Division of Social Services, CSE	90 CSE 1204	Morgan	03, 30, 92
Kermit Linney v. Department of Correction	90 OSP 1380	Morrison	02, 12, 92
Larry D. Oates v. Department of Correction	90 OSP 1385	Becton	04, 06, 92
Fernando Guarachi v. DHHR, Division of Social Services, CSE	90 CSE 1393	Morgan	04, 07, 92
Jerry Odell Johnson v. Sheriffs' Education & Training Standards Comm	90 DOJ 1411	Morgan	01, 09, 92
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHHR 0003	West	01, 06, 92
Gloria Jones Medbill v. Children Special Health Services	91 EHHR 0142	Morgan	03, 11, 92
Willie C. Rorie v. DHHR, Division of Social Services, CSE	91 CSE 0166	Morgan	04, 13, 92
Thomas Such v. EHHR and William W. Cobey Jr.	91 OSP 0202	Becton	02, 20, 92



**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
N.C. Human Relations Comm. on behalf of Deborah Allen v. Charles Watkins	91 HRC 0204	Morrison	03/17/92
Cindy Gale Hyatt v. Department of Human Resources	91 DIIR 0215	Morgan	02/27/92
Gliston L. Morrissey v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0232	West	02/03/92
Anthony Caldwell v. Juvenile Evaluation Center	91 OSP 0259	Morgan	03/12/92
Kenneth R. Downs, Guardian of Mattie M. Greene v. Teachers' & St Emp Comp Major Medical Plan	91 DST 0261	Gray	02/20/92
Deborah W. Clark v. DIIR, Dorothea Dix Hospital	91 OSP 0297	Nesnow	01/16/92
Wade R. Bolton v. DHR, Division of Social Services, CSE	91 CSE 0312	Mann	01/14/92
Betty L. Rader v. Teachers' & St Emp Major Medical Plan	91 DST 0330	Morgan	01/10/92
Marcia Carpenter v. UNC - Charlotte	91 OSP 0346	Mann	03/12/92
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Michael Darwin White v. Department of Environment, Health, & Natural Resources	91 OSP 0413	Morrison	02/14/92
Curtis Wendell Bigelow v. CCPS, Division of State Highway Patrol	91 OSP 0418	West	03/10/92
Alcoholic Beverage Control Commission v. Hilsinger Enterprises, Inc., t/a The Waterin Hole	91 ABC 0442	Gray	01/10/92
Penny Whitfield v. Pitt County Mental Health Center	91 OSP 0465	Gray	01/08/92
Senior Citizens' Home Inc. v. DIIR, Division of Facility Services, Licensure Section	91 DIIR 0467	Gray	02/18/92

# CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alcoholic Beverage Control Commission v. Everett Lee Williams Jr., t/a Poor Boys Gameroom	91 ABC 0531	Morrison	01 31 92
Jonathan Russell McCravey, t/a Encore v. Alcoholic Beverage Control Commission	91 ABC 0534	Morrison	02 04 92
Dorothy "Cris" Crissman v. Department of Public Instruction	91 OSP 0581	Morrison	04 03 92
Horace Britton Askew Jr. v. Sheriffs' Education & Training Standards Comm	91 DOJ 0610	Reilly	01 22 92
Roy L. Keever v. Department of Correction	91 OSP 0615	West	02 26 92
Ten Broeck Hospital (Patient #110587, Medicaid #124-24-4801-C) Ten Broeck Hospital (Patient #110538, Medicaid #240334254S) Ten Broeck Hospital (Patient #110788, Medicaid #900-12-6762-T) v. DHR, Division of Medical Assistance	91 DHR 0618 91 DHR 0429 91 DIIR 1265	Morrison	04 08 92
Larry Madison Chatman, t/a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02 20 92
Cecil Leon Neal v. Department of Economic & Community Development	91 OSP 0648	Mann	02 07 92
DAG, Food & Drug Protection Div, Pesticide Section v. D. Carroll Vann	91 DAG 0654	Morrison	01 15 92
Kidd's Day Care and Preschool v. Child Day Care Section	91 DIIR 0666 91 DIIR 0666	Becton	03 25 92 04 10 92
Mary Tisdale v. Hyde County Health Department and EHR	91 EHR 0679	Morgan	03 23 92
Alcoholic Beverage Control Commission v. Kenneth Richard Cooper, t/a Silvers	91 ABC 0680	Becton	02 26 92
Sarah Linda Hankins v. Alcoholic Beverage Control Commission	91 ABC 0688	Mann	02 27 92
Keith Hull v. DHR - Division of Medical Assistance	91 DIIR 0707	Chess	02 27 92

**CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
John E. Canup v. DHR, Division of Social Services, CSE	91 CSE 0759	Reilly	01/13/92
Falcon Associates, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0767 91 EHR 0768	West	01/06/92
Michael F. Stone v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 0771	West	02/24/92
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Bobby McEachern v. Fayetteville State University	91 OSP 0839	Gray	02/06/92
Singletree, Inn v. EHR, and Stokes County Health Department	91 EHR 0840	Nesnow	01/16/92
Henry B. Barnhardt v. Mt Pleasant Vol Fire Dept, St Auditor/Firemen's Rescue Squad Workers' Pension Fund	91 DSA 0843	Reilly	01/29/92
Mackey L. Hall v. DHR, Division of Social Services, CSE	91 CSE 0854	Reilly	01/17/92
Gloria J. Woodard v. Division of Motor Vehicles	91 OSP 0855 91 OSP 0855	Mann	04/09/92 04/13/92
Kay Long v. Department of Human Resources	91 DHR 0873	Reilly	03/17/92
Alcoholic Beverage Control Commission v. Mack Ray Chapman, t/a Ponderosa Lounge	91 ABC 0887	Morrison	01/31/92
Joseph W. Devlin Jr., Johnson Brothers Carolina Dist v. Alcoholic Beverage Control Commission	91 ABC 0890	West	02/11/92
Ossie Beard v. EHR & Wastewater Treatment Plant Certification Comm.	91 EHR 0893	Nesnow	03/12/92
Alcoholic Beverage Control Commission v. Trinity C. C., Inc., t/a Trinity College Cafe	91 ABC 0915	West	02/11/92
N.C. Alcoholic Beverage Control Commission v. Jessie Pendergraft Rigsbee, T/A Club 2000	91 ABC 0919	West	03/12/92



# CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t/a Great, American Food Store	91 ABC 0923	Becton	02/26/92
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01/09/92
Betty Davis d b/a ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 0955	Morrison	01/31/92
Thomas J. Hailey v. EHR and Rockingham County Health Department	91 EHR 0957	Becton	01/15/92
Ronald Waverly Jackson v. EHR, Division of Maternal & Child Health, WIC Section	91 EHR 0963	Gray	02/24/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0981	Gray	03/24/92
Herbert R. Clayton v. DHR, Division of Social Services, CSE	91 CSE 1000	Mann	04/02/92
Roy Shealey v. Victims Compensation Commission	91 CPS 1002	Morrison	01/31/92
Willie Brad Baldwin v. DHR, Division of Social Services, CSE	91 CSE 1020	Reilly	01/28/92
Clinton Dawson v. N.C. Department of Transportation	91 OSP 1021	Mann	03/05/92
Benjamin C. Dawson v. Department of Correction	91 OSP 1025	West	02/18/92
Paulette R. Smith v. DHR, Division of Social Services, CSE	91 CSE 1026	Reilly	02/27/92
Scot Dawson v. Department of Labor	91 DOL 1031	West	02/24/92
Luis A. Rosario v. DHR, Division of Social Services, CSE	91 CSE 1046	Morrison	03/03/92
Randy Quinton King v. CCPS, State Highway Patrol	91 OSP 1064	Gray	03/24/92
William H. Hogsed v. DHR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92

# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
David L. Brown v. DHR, Division of Social Services, CSE	91 CSE 1074	Morrison	03/31/92
Donald M. Washington v. DHR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
Melvin L. Miller Sr. v. DHR, Division of Social Services, CSE	91 CSE 1084	Morrison	03/16/92
Bobby G. Evans v. DHR, Division of Social Services, CSE	91 CSE 1094	Reilly	01/13/92
William Louis Timmons v. DHR, Division of Social Services, CSE	91 CSE 1104	Mann	02/18/92
Raymond Junior Cagle v. DHR, Division of Social Services, CSE	91 CSE 1123	Mann	03/30/92
Richard E. Murray v. Department of Human Resources	91 CSE 1134	Reilly	01/13/92
Pathia Miller v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1135	Mann	03/31/92
Atlantic Enterprises, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1136	Reilly	01/23/92
Theresa M. Sparrow v. Criminal Justice Education & Training Standards Comm	91 DOJ 1138	Mann	02/04/92
Darrel D. Shields v. DHR, Division of Social Services, CSE	91 CSE 1141	Morgan	03/30/92
James A. Hinson v. DHR, Division of Social Services, CSE	91 CSE 1154	Mann	02/18/92
George H. Parks Jr. v. DHR, Division of Social Services, CSE	91 CSE 1157	Morrison	01/27/92
Adrian Chandler Harley v. DHR, Division of Social Services, CSE	91 CSE 1180	Nesnow	02/10/92
Billy J. Hall v. DHR, Division of Social Services, CSE	91 CSE 1182	Nesnow	02/10/92
Donaldson L. Wooten v. DHR, Division of Social Services, CSE	91 CSE 1189	Reilly	03/13/92

# CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
William P. Reid v. DHIR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02/04/92
Ronald G. Bolden v. DHIR, Division of Social Services, CSE	91 CSE 1208	Gray	02/26/92
Wayne Phillip Irby v. DHIR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02/04/92
Tony Hollingsworth v. DHIR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02/10/92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02/14/92
Angela McDonald McDougald v. DHIR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02/28/92
Sering O. Mbye v. DHIR, Division of Social Services, CSE	91 CSE 1228	Mann	03/11/92
Arthur Thomas McDonald Jr. v. DHIR, Division of Social Services, CSE	91 CSE 1252	Morrison	03/31/92
Stanford Earl Kern v. DHIR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02/04/92
Gene Weaver v. DHIR, Division of Social Services, CSE	91 CSE 1264	Reilly	03/25/92
James T. White v. DHIR, Division of Social Services, CSE	91 CSE 1271	Gray	02/27/92
Ronald Brown and Regina Brown v. DHIR, Division of Facility Services	91 DHIR 1278	Becton	02/25/92
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92
Enos M. Cook v. DHIR, Division of Social Services, CSE	91 CSE 1303	Morrison	04/13/92
Raymond Vaughan v. DHIR, Division of Social Services, CSE	91 CSE 1304	Reilly	03/09/92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01/14/92



# **CONTESTED CASE DECISIONS**

CASE NAME	CASE NUMBER	ALJ	FILED DATE
David Martin Strode v. DIIR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
D. C. Bass v. Department of Crime Control and Public Safety	91 OSP 1341	Chess	04/07/92
Steveason M. Bailey v. McDowell Technical Community College	91 OSP 1353	Morrison	01/28/92
Gary N. Rhoda v. Department of Correction	91 OSP 1361	Nesnow	01/31/92
William A. Sellers v. DHR, Division of Social Services, CSE	91 CSE 1395	Gray	04/01/92
Marc D. Walker v. CCPS, Division of State Highway Patrol	91 OSP 1399	Morrison	03/16/92
Serena Gaynor v. DHR, Division of Vocational Rehabilitation	91 OSP 1403	Gray	03/02/92
Betty Davis, D/B A ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DIIR 1408	Chess	03/30/92
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Charley Joe Milligan v. Bd of Trustees, Local Gov't Emp Retirement Sys	91 DST 1424	Gray	02/27/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	91 OSP 1429 91 OSP 1430	Gray	03/13/92
James R. Fath v. Crime Victims Compensation Commission	91 CPS 1451	Morrison	04/15/92
Ollie Robertson v. Crime Victims Compensation Commission	92 CPS 0002	Morrison	04/15/92
New Bern-Craven County Board of Education, a Statutory Corporation of North Carolina v. The Honorable Harlan E. Boyles, State Treasurer, The Honorable Fred W. Talton, State Controller, The Honorable William W. Cobey, Jr., Sec. of EHR, Dr. George T. Everett, Dir., Div. of Environmental Mgmt.	92 EHR 0003	Reilly	03/13/92

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**CONTESTED CASE DECISIONS**

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Ellen Allgood, The Red Bear Lounge, Inc., 4022 North Main St., High Point, NC 27265 v. Alcoholic Beverage Control Commission	92 ABC 0007	Chess	04 07 92
Private Protective Services Board v. Robert R. Missildine, Jr.	92 DOJ 0025	Becton	03 23 92
Cindy G. Bartlett v. Department of Correction	92 OSP 0029	Reilly	03 16 92
Mr. Kenneth L. Smith, Pitt County Mart, Inc. v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0085	Becton	04 15 92
Kurt Hafner v. N.C. Retirement System et al.	92 DST 0094	Gray	03 04 92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03 13 92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02 26 92

## CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA  
COUNTY OF WAYNE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
90 OSP 1385

LARRY D. OATES,  
Petitioner

v.

N.C. DEPARTMENT OF CORRECTION,  
Respondent

**RECOMMENDED DECISION**

This matter was heard before Brenda B. Becton, Administrative Law Judge, on November 5, 1991 and November 6, 1991, in Raleigh, North Carolina. At the conclusion of the hearing, the parties elected to exercise their right to file written submissions as provided in N.C. Gen. Stat. 150B-34(b). The record closed on February 21, 1992, when the parties filed their post-hearing submissions.

### APPEARANCES

Petitioner: John R. Keller, Attorney, Eastern Carolina Legal Services, Goldsboro, North Carolina

Respondent: Deborah L. McSwain, Associate Attorney General, North Carolina Department of Justice, Raleigh, North Carolina

Lavee Jackson, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina

### ISSUE

Whether the Respondent had just cause to dismiss the Petitioner from his employment with the Department of Correction.

### EXHIBITS

Exhibits list is omitted from this publication. A copy may be obtained by contacting the Office of Administrative Hearings.

### FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

1. Central Prison is a maximum security prison serving an inmate population of approximately 1100 and employing approximately 675 staff.
2. The Petitioner, at the time of his suspension and subsequent dismissal, was a Correctional Sergeant on the second shift in Unit Three at Central Prison, and he was responsible for the supervision of five Correctional Officers and 260-275 inmates. Correctional staff, particularly supervisors, must lead by example. The integrity and credibility of staff are critical to maintaining inmate control.
3. The Petitioner was first employed by the Respondent beginning July 1, 1985 as a Correctional Officer. He worked in that capacity through July 31, 1988.
4. The Petitioner was promoted to Correctional Sergeant effective August 1, 1988. He worked in that capacity through the date of his termination, August 28, 1990.



5. The Petitioner received regular performance appraisals on July 1, 1988; July 11, 1989; and January 29, 1990. These appraisals were performed by the Petitioner's supervisory lieutenant. The Petitioner received an overall performance rating of "Meets Expectations" or "Exceeds Expectations" in all three appraisals. The latter two appraisals were performed by Lt. J.A. Moore, the Petitioner's supervisor at the time of his dismissal.
6. Central Prison has a kitchen and adjacent inmate dining area. The kitchen staff arrive at approximately 3:30 a.m. and leave between 7:00 to 7:30 p.m. The kitchen is accessible to correctional staff when the kitchen staff are present. When the kitchen staff are not present, the kitchen is considered closed. Correctional staff have access to the kitchen when it is closed by requesting a key from the Correctional Officer assigned to Station C-4.
7. On May 7, 1990, Lt. J.A. Moore was "Acting Unit Three Manager" and the Petitioner's supervisor. Lt. Moore worked 8:00 a.m. to 5:00 p.m. It was reported to Lt. Moore that the second shift staff were sending inmates to get food from the kitchen for the staff's consumption.
8. Lt. Moore wrote a memorandum to his staff stating that it was strictly against policy for staff to send inmates to the kitchen to get food for the staff's consumption and such conduct would subject anyone caught to disciplinary action. The memorandum was placed in each staff member's mail box and was also posted in Unit Three.
9. Lt. Moore did not report the information he received about staff taking food from the kitchen for their personal consumption to his superiors. Although Lt. Moore had the authority to initiate an investigation or disciplinary action, he believed it was a sufficient response that the practice, if occurring, merely cease. Lt. Moore felt that it was acceptable that if some officers had been engaging in wrongful conduct, these officers should be given a chance to stop their actions.
10. The Petitioner received a copy of Lt. Moore's memorandum in his mailbox. The Petitioner interpreted the memorandum to mean that taking food from the kitchen for personal consumption was wrong and was to cease.
11. The practice of taking food from the kitchen for personal consumption by correctional personnel did not originate with the Petitioner.
12. The Petitioner has observed Correctional Officers being sent to the kitchen when the kitchen was closed to get food for the personal consumption of correctional staff. While a Correctional Officer, the Petitioner, was sent by his superiors to the kitchen when the kitchen was closed to bring food to his unit.
13. As a Correctional Officer, the Petitioner did not consider this practice to be wrong because he never gave it any thought at all. It appeared to be a common practice, and he was unaware of any prohibitions against this practice or of any disciplinary actions being taken against anyone engaging in the practice.
14. The Petitioner first ate prison food himself without paying for it in the Spring of 1990.
15. Prior to May 7, 1990, the Petitioner directed his Correctional Officers to bring food to the Unit for personal consumption, went himself to the kitchen to bring food back to the Unit for personal consumption, and ate food brought from the kitchen. This food was obtained when the kitchen was closed and was not purchased. This practice occurred three to four times a week.
16. The Petitioner was aware of the Respondent's regulation that states that "No employee will consume or use equipment, facilities, or supplies, including scrap material, except as he may be legally entitled to do." 5 NCAC 2A .0202(e)(2).
17. The Petitioner was never informed prior to May 7, 1990 that taking food from the kitchen for personal consumption violated 5 NCAC 2A .0202(e)(2).

18. Prior to May 7, 1990, the Petitioner did not believe that food constituted a "supply" as used in 5 NCAC 2A .0202(e)(2).
19. The Petitioner used specific inmates to perform special assignments or janitorial tasks within the unit. The Petitioner would reward these inmates with food: sandwich meats and salads. The Petitioner would go to the kitchen to get these food items for the inmates. The food was brought to the unit office. The Petitioner gave these food rewards approximately once a week. This conduct continued to occur after May 7, 1990.
20. Because "O" and "K" dorms received new admissions and housed medical outpatients, inmates were arriving at Unit 3 during all hours of the second shift. Inmates who missed the evening meal at Central Prison were permitted to eat their meal upon returning to the prison. New admissions were also fed in the unit.
21. The receiving department was responsible for determining if an inmate needed to receive a meal. The Petitioner would take responsibility for feeding any inmate who arrived in Unit 3 who stated that he had not had his evening meal.
22. Several inmates in Unit 3 ate their evening meals in the unit. On average, eight inmates ate their meals in the unit daily.
23. The Petitioner ordered meals from the kitchen for the inmates who ate in the unit. The Petitioner routinely ordered extra dinner trays in anticipation of inmates who would require a meal after the kitchen closed.
24. These meals were distributed to the inmates by the Correctional Officers from the Correctional Officers' office. Dinner trays not distributed were placed in the office the Petitioner shared with other sergeants.
25. Correctional Officer Sorrell testified that on one occasion after May 7, 1990, he accompanied an inmate to the kitchen to pick up juice for the inmates in Unit 3. While in the kitchen the inmate requested that he be permitted to take a watermelon. Sorrell offered no testimony that the Petitioner authorized this request or knew about this request.
26. The Petitioner did not authorize this inmate to get a watermelon. The Petitioner did not know that this inmate had requested that he be allowed to get a watermelon.
27. Officer Sorrell testified that on the same evening that the inmate requested to take a watermelon, watermelon was eaten by the inmates at the bottom of the steps near Station C-3. Sorrell offered no testimony that the Petitioner ate any of this watermelon or knew about the watermelon being eaten by the inmates.
28. The Petitioner did not eat any watermelon at any time during the incident described by Sorrell. The Petitioner had no knowledge that watermelon was being eaten by inmates near Station C-3.
29. Correctional Officer Butler testified that he accompanied an inmate to the kitchen on one occasion after May 7, 1990. On that occasion the inmate took a prepared tray from the kitchen and brought it to the sergeant's office. Butler offered no testimony the Petitioner instructed the inmate to pick up this tray. Butler did not know why the tray was brought to the sergeant's office. Butler did not know who was in the sergeant's office at that time. Butler did not know what happened to that tray that evening. Butler did not see the Petitioner eat the food on that tray.
30. The Petitioner did not instruct the inmate to get the tray. The Petitioner did not take this tray for his personal consumption.
31. Officer Butler testified that on one or two occasions after May 7, 1990, he saw the Petitioner eating a sandwich in his office. Butler testified that he believed the sandwiches were from the kitchen because of the size of the sandwiches.

32. The size of a sandwich is not competent evidence that the sandwich was more likely to have been taken from the Central Prison kitchen than brought from home or purchased elsewhere.
33. The Petitioner did not consume any sandwiches taken from the Central Prison kitchen after May 7, 1990.
34. Correctional Sergeant McLaughlin testified that on one occasion he discovered watermelon rinds in the trash basket in the sergeant's office after May 7, 1990. McLaughlin did not see the Petitioner at any time during the evening he discovered the watermelon rinds, not did he know whether the Petitioner was even working that evening.
35. The Petitioner did not participate in eating watermelon in the sergeant's office. The Petitioner had no knowledge of watermelon being eaten in the sergeant's office or watermelon rinds being placed in the trash basket in the sergeant's office.
36. Sgt. McLaughlin testified that on several occasions he saw lunch meats and cheese in the sergeant's office. These meats and cheese were unwrapped in styrofoam containers similar to the containers used by the Central Prison kitchen.
37. Sgt. McLaughlin did not know who brought the meats and cheese into the sergeant's office. McLaughlin did not testify that he saw the Petitioner eat any of the meats or cheese.
38. Lunch meats and cheese were used by the Petitioner to reward inmates for completing special assignments and janitorial tasks. The Petitioner did not take lunch meats or cheese from the kitchen for his own personal consumption after May 7, 1990. The Petitioner did not eat any lunch meats or cheese taken from the kitchen after May 7, 1990.
39. Sgt. McLaughlin and Correctional Officer Ricky Bell testified that on one occasion in June, 1990, the Petitioner offered each of them a salad. The salad appeared to be from the Central Prison kitchen. Neither officer testified that the Petitioner was eating any of the salads.
40. The Petitioner did not take a salad from the kitchen for his own personal consumption. The Petitioner did not eat a salad taken from the kitchen after May 7, 1990.
41. Officer Bell testified during rebuttal testimony that on the same night that the Petitioner offered a salad to Sgt. McLaughlin, the Petitioner appeared to be finishing eating a sandwich that was constructed from prison food, and there were also many sandwiches stored in an opened chest in the sergeant's office.
42. Sgt. McLaughlin did not mention seeing any sandwiches in the sergeant's office the night he was offered a salad by the Petitioner.
43. Based upon the inconsistencies in his recollection and upon his demeanor while testifying, the undersigned finds that Bell was not a credible witness and his testimony that he saw the Petitioner eating a sandwich which was made from supplies taken from the Central Prison kitchen was not believable.
44. Lt. Donald R. Salmon, Internal Affairs Officer at Central Prison, received information about the second shift staff taking food from the kitchen after it was closed in August of 1990. He was instructed by Bobby R. Watson, then Deputy Warden, to investigate.
45. Lt. Salmon talked with the Petitioner on August 24, 1990. The Petitioner admitted during his discussion with Lt. Salmon that he had eaten food brought from the kitchen after the kitchen was closed and had instructed staff to get food from the kitchen for personal consumption. In his discussion with Lt. Salmon, the Petitioner did not clarify that the conduct admitted to occurred before May 7, 1990. Lt. Salmon's report summarizing the Petitioner's statements makes no distinction about whether this conduct occurred before or after May 7, 1990.



46. Lt. Salmon offered no testimony that the Petitioner admitted to him that he had eaten food, gone to get food, or instructed staff to get food after May 7, 1990.
47. The Petitioner never stated to Lt. Salmon that after May 7, 1990, he ate food from the kitchen, took food from the kitchen for personal consumption, or instructed staff to take food from the kitchen for personal consumption.
48. Lt. Salmon completed his investigation on August 27, 1990 and submitted his report to Warden Dixon that same day.
49. Warden Dixon circulated Lt. Salmon's report to Watson and management services administrator, Bobby L. Reardon. They decided that the Petitioner should be called into a conference with them the following day.
50. The Petitioner was called to Warden Dixon's office on August 28, 1990. The Petitioner was not informed about the purpose of the meeting prior to meeting with Warden Dixon. This meeting was the Petitioner's predissmissal conference. Present for the meeting were Dixon, Watson, Reardon, and the Petitioner.
51. Upon entering the Warden's office, the Petitioner was immediately aware that the meeting involved a serious matter because the three highest ranking individuals at Central Prison were present. The Petitioner felt nervous and became increasingly scared and upset as the conference progressed.
52. Warden Dixon asked the Petitioner about the taking of food from the kitchen for personal consumption. The Petitioner readily admitted that he had taken food from the kitchen and that he had instructed staff to take food from the kitchen. The Petitioner acknowledged that what he had done was wrong, and he was apologetic.
53. Dixon, Watson, and Reardon testified that Warden Dixon asked the Petitioner if he had taken food from the kitchen for personal consumption after May 7, 1990. These three witnesses testified that the Petitioner admitted that he had.
54. The Petitioner testified that he did not recall Warden Dixon asking him about Lt. Moore's May 7, 1990 memorandum or asking him to distinguish acts occurring before and after May 7, 1990. The Petitioner also testified that he did not recall ever admitting to taking food after May 7, 1990 while in conference with Dixon, Watson, and Reardon.
55. If the Petitioner did admit to taking food for personal consumption after May 7, 1990, such an admission was unintentional and the result of his emotional state upon finding himself unexpectedly in the midst of a predissmissal conference.
56. The Petitioner was asked to leave the room. Dixon, Watson, and Reardon then discussed what disciplinary action to take. Warden Dixon believed that the minimum sanction should be a final written warning. He also considered demotion. Watson and Reardon also considered the option of demotion rather than dismissal.
57. Warden Dixon believed that the practice of taking food from the Central Prison kitchen for personal consumption had resulted in the Petitioner losing control of his staff and the inmate population he supervised. Warden Dixon also believed that the Petitioner had lost his credibility as a supervisor of staff and inmates and, therefore, the Petitioner would be unable to fulfill his duties as a Correctional Sergeant. Because Warden Dixon believed that the Petitioner had lost his credibility with the staff and inmates, demotion was eliminated as an option.
58. There is no competent evidence that the Petitioner had lost the ability to supervise his staff or the inmate population prior to August 28, 1990. Warden Dixon had not received any reports from either Lt. Moore or any Correctional Officer in Unit 3 that the Petitioner had lost his ability to control his unit.

59. The Petitioner had not been counseled by his superiors prior to August 28, 1990 that he was losing control of Unit 3 or that he had lost his credibility. The Petitioner did not experience any disrespect from prison inmates or instances when he was unable to control his inmate population prior to August 28, 1990.
60. Warden Dixon's belief that the Petitioner had lost his credibility and ability to control his unit was a personal opinion.
61. Warden Dixon recalled the Petitioner to his office and informed the Petitioner that he was to be suspended with recommendation for dismissal.
62. On October 10, 1990, the Petitioner was notified that the recommendation to dismiss him based on unacceptable personal conduct, misuse of state supplies, and insubordination was approved effective August 28, 1990.
63. The Respondent's dismissal letter states that the Petitioner was terminated because of unacceptable personal conduct. First, taking food for personal consumption prior to May 7, 1990 and directing staff to take food for personal consumption prior to May 7, 1990, in violation of department policy 5 NCAC 2A .0202(e)(2). Second, taking food for personal consumption after May 7, 1990, violated Lt. Moore's memorandum and constituted insubordination.
64. Each Correctional Officer in Unit 3 who took food from the kitchen for his personal consumption prior to May 7, 1990 received an oral counseling rather than dismissal as an appropriate disciplinary measure.
65. Central Prison staff violated 5 NCAC 2A .0202(e)(2) on two prior occasions. In neither instance was the employee terminated.
66. At the time Warden Dixon made his decision to recommend the Petitioner's dismissal, the only information he had that the Petitioner had violated Lt. Moore's May 7, 1990 memorandum was the Petitioner's alleged admission during the predissmissal conference.
67. There is no evidence that after May 7, 1990 anyone ever saw the Petitioner consume food that was taken from the Central Prison kitchen.
68. There is no evidence that after May 7, 1990, the Petitioner instructed any member of his staff or any inmates under his supervision to get food from the Central Prison kitchen for the Petitioner's personal consumption.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. At the time of the Petitioner's dismissal, section 126-35 of the North Carolina General Statutes provided in pertinent part, as follows:

No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause.
2. The Respondent failed to show that as a result of the Petitioner's actions, he can no longer function effectively as a supervisor of inmates and or subordinate staff.
3. The Respondent did not meet its burden of proving by the greater weight of the substantial evidence that the Petitioner's conduct prior to May 7, 1990 justifies his termination from employment.

## CONTESTED CASE DECISIONS

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4. The Respondent did not meet its burden of proving by the greater weight of the substantial evidence that the Petitioner violated Lt. Moore's May 7, 1990 memorandum.
5. The Respondent did not have just cause to dismiss the Petitioner from his employment.

### RECOMMENDED DECISION

The State Personnel Commission will make the Final Decision in this contested case. It is recommended that the Commission adopt the Findings of Fact and Conclusions of Law set forth above and order the Respondent to reinstate the Petitioner, compensate the Petitioner for lost wages and benefits, and pay the Petitioner reasonable attorney's fees.

### ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes section 150B-36(b).

### NOTICE

Before the agency makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the Parties' attorney of record.

This the 6th day of April, 1992.

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Brenda B. Becton  
Administrative Law Judge



## CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA  
COUNTY OF CATAWBA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

TEN BROECK HOSPITAL (PATIENT #110587, MEDICAID #124-24-4801-C), Petitioner	) ) )	91 DIIR 0618
TEN BROECK HOSPITAL (PATIENT #110538, MEDICAID #240334254S), Petitioner	) ) )	91 DIIR 0429
TEN BROECK HOSPITAL (PATIENT #110788, MEDICAID #900-12-6762-T), Petitioner	) ) )	91 DIIR 1265
v.	) )	
N.C. DEPARTMENT OF HUMAN RESOURCES, DIVISION OF MEDICAL ASSISTANCE, Respondent	) ) )	

### RECOMMENDATION OF SUMMARY DISPOSITION IN CASE NO. 91 DIIR 0618

#### STATEMENT OF THE CASE

The Petitioner, Ten Broeck Hospital, instituted these contested cases to challenge the claims of the Respondent, North Carolina Department of Human Resources, Division of Medical Assistance (hereafter referred to as the "Agency" or "DMA") for recoupment from Ten Broeck of Medicaid payments for services Ten Broeck provided to individual Medicaid patients.

These three cases were consolidated by Order of Consolidation entered by the Chief Administrative Law Judge on January 14, 1992.

Prior to the date of consolidation, Ten Broeck Hospital had filed a Motion for Recommendation of Summary Disposition in Case No. 91 DIIR 0618 on November 1, 1991. The Agency filed its response to the Petitioner's Motion for Recommendation of Summary Disposition on December 9, 1991 to which Ten Broeck Hospital filed a reply on January 8, 1992. Oral argument was heard on January 28, 1992. This recommendation of summary disposition is limited to the claim for recoupment in Case No. 91 DIIR 0618.

#### APPEARANCES

The Agency was represented by Jane T. Friedensen, Assistant Attorney General, who appeared for Lacy E. Thornburg, Attorney General for the State of North Carolina. Ten Broeck was represented by Robert V. Bode, Diana E. Ricketts, and S. Todd Hemphill, of the law firm of Bode, Call & Green.

#### ISSUE

Whether there is any genuine issue as to any material fact and whether any party is entitled to a summary disposition as a matter of law in Case No. 91 DIIR 0618.

#### BURDEN OF PROOF

The moving party has the burden of establishing that there is no genuine issue as to any material fact and that it is entitled to summary disposition as a matter of law.

EXHIBITS

Editor's Note: Exhibit list has been omitted from this publication. A copy may be obtained by contacting the Office of Administrative Hearings.

UNDISPUTED FACTS

Based on the uncontroverted evidence appearing of record, to which consideration may be given under G.S. 150B-33(3a), 26 NCAC 3.0001, 3.0005(6), and Rule 56, N.C.R.Civ.P., including the pleadings, depositions, answers to interrogatories, documents produced, affidavits, and admissions on file, together with the testimony and affidavits previously admitted in connection with the proceedings on the Motion for Stay held July 24, 1991, which were incorporated by the parties in support of or in opposition to the motion, and having considered the legal memoranda submitted by the parties and the oral argument of January 28, 1992, the Administrative Law Judge has concluded that there is no genuine issue as to any material fact and makes the following findings of undisputed, material fact:<sup>1</sup>

1. The petitioner, Ten Broeck Hospital, is a psychiatric hospital in Hickory, North Carolina. Under a Medicaid Hospital Participation Agreement with the Agency, Ten Broeck provides "acute" (i.e., in-patient hospital) psychiatric care to Medicaid patients, for which it is paid through the state Medicaid plan.

2. In 1991, DMA conducted a postpayment review, and advised Ten Broeck that acute care for one of its previous Medicaid patients was, on reflection, inappropriate, and that the patient could have been treated at a lower level of care in a residential treatment center or in a wilderness camp program.

3. DMA has made no claim of fraud or misrepresentation by Ten Broeck. (DMA Admission 31).<sup>2</sup> Nor has there been any claim or showing that the services for which Medicaid was now being denied were not performed.

4. It is undisputed that (1) the Burke County Department of Social Services, (2) the preadmission certification review agency acting under contract with and as the agent of the State Medicaid agency, and (3) the District Court of Catawba County each either sought or approved the patient's admission to Ten Broeck.

5. In October 1989, the Burke County Department of Social Services ("DSS"), as legal custodian, initiated the transfer of the patient from a residential treatment center to Ten Broeck psychiatric hospital. DSS had been appointed by the court in 1986 as legal custodian for the patient. The patient was in the legal custody of DSS when DSS referred her to Ten Broeck. (DMA Admission 9).

6. In 1988, the year before her admission to Ten Broeck, during a temporary placement with her biological mother, the patient had deliberately set fire to and destroyed her mother's trailer home, resulting in her adjudication as a delinquent juvenile for felonious arson (DMA Admission 27c).

7. For several months immediately preceding her admission to Ten Broeck, the patient had resided at Baptist Children's Home, where she reportedly had engaged in "major inappropriate behaviors" and exhibited "a threatening attitude toward peers and staff." [See Baptist Children's Home Discharge Summary, DMA Exh. 13, p. 5, Stay Hearing, quoted in part in DMA Admission 27(k).] When she ran away from Baptist Children's Home in September 1989, the home discharged her to emergency care and declined to be involved after discharge. [Id.; Dr. Philip Schmitt Affidavit, SD Exh. 7(A), at p. 3.]

8. After running away in September 1989, she was placed in 72-hour detention in the Wilkes County Juvenile Detention Center (DMA Admission 27e).

9. She was subsequently placed in the Rainbow Center, as an emergency placement.

10. Immediately preceding her referral by DSS to Ten Broeck, she reportedly made threats to set fire to Rainbow Center (DMA Admission 27b), and threats of injury, which were reported to DSS,

prompting DSS to seek to have the patient admitted to a psychiatric hospital for evaluation and treatment (see DMA Admissions 10-11; Bridges Depo, Tr. 6-8, 59, 99-103 and Depo. Exh. 9, SD Exh. 8).

11. Prior to the patient's admission to Ten Broeck, there had been extensive efforts to treat her at a lower level of care. She had been treated in a variety of settings, both residential and institutional, including detention centers, group homes, residential treatment centers, the state juvenile training center and wilderness camp, and Broughton state mental hospital (DMA Admissions 26a-h).

12. Specifically, her history during the period from September 1985 until October 1989 included admissions to Broughton state mental hospital, Phoenix Home, South Mountain Children's Home, DHR Division of Youth Services Juvenile Evaluation Center, JEC Wilderness Camping Program, Baptist Children's Home, Wilkes Regional Juvenile Detention Center, and the Rainbow Center (DMA Admissions 26a-26h).

13. Physician consultants employed by DMA later found based on their review of medical records that the patient had "severe behavior problems," (Dr. Thomas Cornwall's Report, DMA Exh. 11, Stay Hearing, attached to his deposition as Exh. E, SD Exh. 5); and that she had "chronic behavior problems that made it difficult for DSS Juvenile Justice to place her appropriately," *id.* (Dr. Luann Leidy's Report, attached to her deposition as Exh. 4, SD Exh. 6).

14. DMA has admitted that the patient exhibited numerous behavioral problems. These included frequent running away (DMA Admission 27d), aggression and oppositional behavior (DMA Admission 27i), substance abuse including alcohol and LSD (DMA Admission 27f, 27g), arson (DMA Admission 27a), threats of fire-setting (DMA Admission 27b), stealing (DMA Admission 27j), and sexual abuse (DMA Admission 27h).

15. On October 17, 1989, a social worker for DSS requested that Ten Broeck Hospital accept this patient for inpatient psychiatric evaluation and treatment of mental illness (DMA Admission 10 and Exh. B to DMA Admissions).

16. In requesting that the patient be admitted to Ten Broeck, DSS represented to Ten Broeck that DSS had knowledge "that the patient was suffering from a condition requiring hospital care" (DMA Admission 11 and Exh. B to DMA Admissions).

17. Before Ten Broeck accepted the patient for admission, an independent medical team for Medical Review of North Carolina, Inc. ("MRNC"), acting under contract with and as the agent of DMA, conducted a preadmission review to determine the medical necessity for the patient's admission to Ten Broeck, as presently required by the state's Medicaid plan (DMA Admissions 2, 36).

18. On October 17, 1989, MRNC approved the admission of the patient to Ten Broeck (DMA Admission 3).

19. The approval was given after consultation by MRNC with an MRNC physician consultant, Alan Krueger, M.D., a licensed psychiatrist (DMA Admissions 4, 6). Dr. Krueger approved of the admission of the patient to Ten Broeck (DMA Admission 5). Dr. Krueger consulted with the attending physician, Dr. Philip Schmitt, and determined, *inter alia*, that "proper treatment of the patient's psychiatric condition requires services on an inpatient basis under the direction of a physician." (October 17, 1989 Certification of Need by Independent Team, Medical Review of North Carolina, Inc.; DMA Admission 7 and DMA Admission Exh. A.)

20. The form generated by MRNC in the preadmission review, attached as Exh. A to the DMA Admissions and signed by Dr. Krueger, states in pertinent part:

INDICATION FOR HOSPITALIZATION: 15 ...[year old white female] with long hx [history] of previous psychiatric admissions now exhibiting assaultive behavior including arson. Has additional history of runaway behavior.

...



Physician Consultant's comments: Dr. Schmidt [sic Schmitt] confirms above hx. Pt. is considered at risk to self & others & meets criteria for in-pt [inpatient] treatment with probable long term placement.

CERTIFICATION

I hereby certify the following:

1. I do not have an employment or consultant relationship with the admitting facility.
2. Ambulatory care resources available in the community do not meet the treatment needs of this recipient.
3. Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician.
4. The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed.
5. I have knowledge of the patient's situation and competence in diagnosis and treatment of mental illness.

Alan L. Krueger M.D., 17 Oct 89, Signature of Physician Consultant, Date

This admission was reviewed and approved in a telephone discussion with the above named physician consultant on 10/17/89.

Pam Denning  
Signature, MRNC Preadmission Review Nurse

Date time decision called to recipient's physician/staff:  
10/17/89 2:45

Exh. A to DMA Admissions; see DMA Admission 7.

21. MRNC thus concluded that the patient met the screening criteria for medical need for admission (DMA Admission 38), criteria that were approved by DMA (DMA Admission 40) and that comply with the State Medicaid plan (DMA Admission 41).

22. MRNC then advised the provider of its approval of the admission on October 17, 1989 (DMA Admission 8).

23. DMA has admitted that "in conducting the preadmission review for the patient, MRNC acted as an agent of the respondent" (DMA Admission 42).

24. The patient was admitted to Ten Broeck the next day, on October 18, 1989.

25. Shortly after admission, the DSS filed a petition with the Catawba County District Court seeking its concurrence in the admission, as required for psychiatric hospitalization for minors pursuant to G.S. Ch. 122C, Art. 5, Part 3, §§ 122C-221 et seq. (DMA Admission 13; DMA Admission 32 and DSS Notice of Hearing, DMA Admissions Exh. D).

26. As admitted by DMA, the Burke County "DSS is a governmental agency authorized pursuant to G.S. 108A-25 to administer the program of medical assistance [Medicaid] under rules and regulations adopted by the Department of Human Resources." DMA Admission 25; G.S. 108A-25.

27. On October 30, 1989, within 12 days of the patient's admission to Ten Broeck, the court held an evidentiary hearing pursuant to G.S. 122C-224 and 122C-224.3 on the DSS petition, presided over by Catawba County District Court Judge Jonathan L. Jones (DMA Admission 14). The DSS had custody of the patient, and represented to the court, and the court so found, that DSS consented to the admission as guardian for the patient (DMA Admission 23). The patient was present and represented by counsel at the hearing on October 30, 1989 (DMA Admission 24). The record of the voluntary commitment hearing for the patient made at or about the time of the hearing (DMA Admission 33) indicates that, in addition to the patient and her attorney, the patient's physician, the Clerk of Court, the guardian (DSS social worker), and Judge Jones were in attendance. (See DMA Admission 13 and DMA Admissions Exh. E; Affidavit of Philip Schmitt, M.D., SD Exh. 7A, ¶ 7.)

28. The North Carolina statutes provide for judicial hearings to determine the necessity for admission of minors to inpatient psychiatric hospitalization. The statutes governing voluntary admission hearings provide that before any minor may continue to be admitted in a psychiatric hospital, a district court must make the following findings:

§122C-224.3. Hearing for review of admission.

....

(f) For an admission to be authorized beyond the hearing, the minor must be (1) **mentally ill or a substance abuser** and (2) **in need of further treatment at the 24-hour facility to which he has been admitted**. Further treatment at the admitting facility should be undertaken **only when lesser measures will be insufficient**. It is not necessary that the judge make a finding of dangerousness in order to support a concurrence in the admission.

(g) The court shall make one of the following dispositions:

(1) If the court finds by **clear, cogent, and convincing evidence** that the requirements of subsection (f) have been met, the court shall concur with the voluntary admission and set the length of the authorized admission of the minor for a period not to exceed 90 days; or

....

....

(h) The decision of the District Court in all hearing and rehearings is **final**. Appeal may be had to the Court of Appeals **by the State or by any party** on the record as in civil cases

....

G.S. 122C-224.3(f)(g) (emphasis added).

29. On October 30, 1989, the date of the hearing, the court entered a written order concurring in the admission of the patient to Ten Broeck pursuant to G.S. 122C-224.3. (DMA Admission 17.) A true copy of the order was admitted as Exh. C to the DMA Admissions (DMA Admission 18).

30. The court's order specifically found that the patient was mentally ill and in need of further treatment at Ten Broeck Hospital (DMA Admission 19 and DMA Admissions Exh. C). The court further found specifically that the patient suffered from a conduct disorder and alcohol and polysubstance abuse (DMA Admission 20 and Exh. C to DMA Admissions).

31. The order of the district court set a period not to exceed 60 days from October 30, 1989, to review the admission to Ten Broeck (DMA Admission 21 and DMA Admissions Exh. C).

32. The statute provides that the court's determination is "final" and allows direct appeal "by the State or by any party ..." G.S. 122C-224.3(h). There is no dispute that neither the State nor any party appealed.

33. After admission of the patient, "a re-evaluation of her treatment needs was planned and implemented by Ten Broeck Hospital . . ." (see DMA Exh. 11, DMA Consultant Dr. Lu Ann Leidy's Report, introduced at Stay Hearing and attached as Exhibit 4 to Dr. Leidy's Deposition, SD Exh. 6).

34. The patient was discharged from Ten Broeck on November 27, 1989 (DMA Admission 22), after 40 days of care at the hospital and within the 60-day period of treatment allowed by the judge's order. She was discharged to Park Ridge Hospital's long-term care unit. Dr. Schmitt Affidavit, SD Exh. 7, ¶ 8.

35. On November 3 and 17, and December 1, 1989, Ten Broeck submitted claims for Medicaid reimbursement to cover the services for this patient. DMA reimbursed Ten Broeck for these services in the total amount of \$11,350.04, by two payments reflected on DMA's Remittance and Status Reports for November 6, 1989 (\$3,775.72 paid for 14 days) and February 5, 1990 (\$7,574.32 paid for 26 days). SD Exh. 2(d). There is no dispute that this is the correct amount for the services at the Medicaid per diem rates established for Ten Broeck.

36. On March 5, 1991, approximately 15 months after the patient's discharge, DMA wrote to Ten Broeck that:

Our review of the medical records of [the patient] indicates that acute hospital care was unnecessary from 10/18/89 through 11/27/89 (40 days). This patient appears to have been treatable at a residential level of care.

DMA Letter of March 5, 1991, DMA Exh. 12, Stay Hearing.

37. The letter demanded repayment of the entire \$11,350.04 paid for the services to this patient. Id.

38. By letter of April 3, 1991, Ten Broeck requested reconsideration (DMA Exh. 13, Stay Hearing).

39. DMA received the request for reconsideration on April 4, 1991. (DMA Stay Hearing Exhs. 10, 13.)

40. By letter dated May 23, 1991, DMA confirmed its decision. DMA noted in its reconsideration letter that the patient's physician reported that the patient had made "threats related to arson and potential runaway" and also took note of "the court order remanding her for up to 60 days." (DMA Letter of May 23, 1991, DMA Exh. 14, Stay Hearing.) However, the letter noted, two outside psychiatric consultants employed by DMA had reviewed the information and "[t]hey felt she was in need of residential treatment or wilderness camp type program as opposed to acute inpatient care." The DMA letter concluded that:

Based on the medical records reviewed, I find that I must uphold the original decision that acute hospital care was unnecessary for the period of October 18 through November 27, 1989. The unavailability of residential treatment is not sufficient reason to reimburse for acute care.

Id. The letter demanded repayment of the entire amount of \$11,350.04. Id.

41. This petition for contested case, filed on July 3, 1991, followed.

42. DMA has admitted that: "The DMA decision to seek recoupment in this case was not based upon any allegations of fraud or material misrepresentation by petitioner." (DMA Admission 31.) To the same effect, DMA employee Linda Connelly, Assistant Director for Program Integrity, testified that: "In this case, there is no fraud." (Connelly Tr. 141, Stay Hearing, July 24, 1991, SD Exh. 4.)



43. G.S. 108A-55 provides, in pertinent part, that:

The Department [of Human Resources] may authorize within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care.

44. State Medicaid regulations currently provide that:

All medical services performed must be medically necessary ... Medical necessity is determined by generally accepted North Carolina community practice standards as verified by independent Medicaid consultants.

10 NCAC 26C .0005. [This rule was first adopted effective March 9, 1990. See 4 N.C.Reg. 808 (Nov. 15, 1989); *id.* at 1153 (Mar. 1, 1990).]

45. Inpatient psychiatric hospital services are covered under the North Carolina Medicaid plan pursuant to 10 NCAC 26B .0111. This rule currently provides, *inter alia*, that "the admitting hospital is responsible for obtaining certification [of the necessity of such care] for persons under age 21 in accordance with Subpart D of 42 C.F.R. 441." 10 NCAC 26B .0111 (adopted effective February 1, 1991).

46. The federal rules for certification of necessity of care, referred to in 10 NCAC 26B .0111, require, *inter alia*, that the state rules provide for an independent team, including a physician, with competence in diagnosis and treatment of mental illness, preferable in child psychiatry, and with knowledge of the individual situation, to certify that:

- (1) Ambulatory care resources available in the community do not meet the treatment needs of the recipient;
- (2) Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician;
- (3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed.

42 C.F.R. 441.152(a)(1-3); see 42 C.F.R. 441.152-153; 42 U.S.C. 1396a(a)(26,44); 1396d(h)(1)(B). The state plan must also provide that the services be under a physician's direction in a psychiatric facility accredited by the Joint Commission on Accreditation of Healthcare Organizations. 42 C.F.R. 441.151. The federal rules provide that the foregoing preadmission certification of need for inpatient psychiatric services for persons under age 21 under Part 441 satisfies the utilization control requirement of physician certification of need for care. 42 C.F.R. 441.152(b), 456.481.

47. In a Medicaid Bulletin published in 1986, DMA advised providers that the preadmission review program for elective admission to inpatient psychiatric hospitals "is managed by Medical Review of North Carolina, Inc. in accordance with the policies set forth by the Division of Medical Assistance." Medicaid Bulletin, at p. 1 (1986) Attachment F to DMA's Response To Request For Production served September 9, 1991, SD Exh. 2(c) [20,180]. In another publication, DMA similarly advised that: "The State has found it cost efficient and operationally beneficial to contract the services of private companies to process claims and to perform utilization review; prior approval and other related functions." Physician's Medicaid Manual (March 1980), SD Exh. 3(c) [20,561]. DMA thereby expressly identified MRNC as the state's agent to providers. DMA has also expressly admitted in this case that MRNC was DMA's agent in performing the preadmission certification (DMA Admission 42).

CONCLUSIONS OF LAW

Based on the foregoing facts, the Administrative Law Judge makes the following conclusions of law:

1. There is no genuine issue of material fact and, based upon the pertinent Medicaid authorities and contract law, Ten Broeck is entitled to summary disposition as a matter of law.
2. DMA's claim for recoupment of payments in this case is beyond its authority and would breach its contractual duties to Ten Broeck. The authorities leading to this conclusion are discussed in detail below. The Administrative Law Judge's review of those authorities leads to the following conclusion. The Medicaid provisions regarding inpatient psychiatric services contemplate an independent preadmission certification of necessity for inpatient psychiatric services for patients under age 21, conducted here by Medical Review of North Carolina, Inc. ("MRNC"), an agent of the State. Such certification satisfies the Medicaid utilization control requirements. State statutes further provide a judicial mechanism for determining necessity of inpatient psychiatric care for adolescents. These MRNC and judicial determinations of need are not subject to postpayment, *de novo* review and reversal by DMA at least in the absence of fraud or material misrepresentation, and the recoupment of Medicaid payments is not allowed for in such cases in the absence of fraud or material misrepresentation.
3. The Agency disputes that admission of this patient to hospital care was medically necessary. This dispute does not rise to a genuine issue as to a material fact because, in the absence of an allegation of fraud or material misrepresentation, the Agency as a matter of law is bound by the determination of its agency, MRNC, that the hospital admission was medically necessary and otherwise met the criteria for hospital admission under the State Medicaid plan. This is especially so where the DSS, another governmental agency, affirmatively requested and consented to the admission and where the district court, on petition of DSS, made a legally final decision pursuant to G.S. 122C-224.3, finding by clear, cogent and convincing evidence that the patient was mentally ill, that she was in need of further treatment at Ten Broeck, and that lesser measures were insufficient. This conclusion of law is limited to psychiatric hospital services for patients under age 21 provided for under 10 NCAC 26B .0111 and 42 CFR 441, Subpart D.

DISCUSSION

**Editor's Note:** Discussion has been omitted from this publication of the Decision. A copy (19 pages) may be obtained by contacting the Office of Administrative Hearings.

CONCLUSION

For all of the above reasons, DMA has no right, as a matter of law, to recoup Medicaid funds paid to Ten Broeck for the inpatient psychiatric services provided to this patient. Those services were indisputably provided at the request of the Burke County Department of Social Services, an agent of the State. MRNC, also an agent of the State, approved those services as medically necessary prior to the patient's admission. Additionally, after an evidentiary hearing was held regarding the need for the patient's admission to Ten Broeck, in which DSS appeared as the petitioner, the court concluded in an order which by statute is "final" that inpatient psychiatric services at Ten Broeck Hospital were medically necessary. Under the applicable statutes and regulations, as well as general contract law, DMA is not allowed retroactively to determine this issue *de novo*, absent any allegation of fraud or misrepresentation on the part of Ten Broeck.

Any other result would force providers such as Ten Broeck constantly to second guess the admission of Medicaid-eligible patients, and possible to refuse to admit patients, even though admission was approved as medically necessary, on the fear that DMA would later change its mind regarding the need for hospitalization. Such a result would leave health care facilities with absolutely no way to know whether the state's promise to pay for those patients will be honored. Such a finding would undercut the intent of the Medicaid program to enlist providers by making timely, reliable payment for services and to make covered services available to Medicaid patients "at least to the extent those services are available to the general population." 10 NCAC 26H .0207.<sup>10</sup>

Based on the foregoing conclusions of law, the Administrative Law Judge recommends that the Agency grant summary disposition for Ten Broeck Hospital on this claim for recoupment.

NOTICE

The Agency making the final decision in Case No. 91 DHR 0618 is required to give each party the opportunity to file exceptions to this recommendation and to present written arguments to those in the Agency who will make the final decision. G.S. 150B-36(a).

The Secretary of the North Carolina Department of Human Resources or his designee will make the final decision in Case No. 91 DHR 0618.

Based upon the representations of counsel for the parties in a telephone conference with the undersigned on March 27, 1992, the undersigned notes that the parties agreed that in the event the undersigned granted the Petitioner's Motion for Summary Disposition in Case No. 91 DHR 0618, this case should proceed separately for final decision by the Agency, rather than being retained in the Office of Administrative Hearings pending resolution of the other two above-captioned consolidated cases. The parties have accordingly filed a written stipulation regarding severance of Case No. 91 DHR 0618 from the other two consolidated cases. Upon entry of an order for severance by the Chief Administrative Law Judge as stipulated to by the parties, based upon this Recommendation for Summary Disposition, Case No. 91 DHR 0618 may proceed to the Agency for final decision.

This the 8th day of April, 1992.

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Fred G. Morrison, Jr.  
Senior Administrative Law Judge Presiding

FOOTNOTES

<sup>1</sup> The Administrative Law Judge recognizes that the appellate courts, in review of summary judgments in superior court under Rule 56, have indicated that "finding facts in a judgment entered on a motion for summary judgment is unnecessary and ill advised simply because to do so indicates that a fact question is presented." Carroll v. Rountree, 34 N.C.App. 167, 171, 237 S.E.2d 566 (1977); see Summey Outdoor Adv. v. Henderson County, 96 N.C.App. 533, 386 S.E. 2d 439, 442 (1989) (while not advisable to make findings of fact, such findings do not invalidate summary judgment). On the other hand, it has been observed that "it is helpful to the parties and the courts for the trial judge to articulate a summary of the material facts which he considers are not at issue and which justify entry of judgment." Ilvde Ins. Agency, Inc. v. Dixie Leasing Corp., 26 N.C.App. 138, 142, 215 S.E.2d 162 (1975); Rodgers v. Davis, 27 N.C.App. 173, 178, 218 S.E.2d 471 (1975) (trial court should not make findings of fact in ruling on summary judgment but may properly list the material, uncontroverted facts which are the basis of conclusions of law and judgment). The Administrative Procedure Act requires that "Except as provided in G.S. 150B-36(c), in each contested case the Administrative Law Judge shall make a recommended decision that contains findings of fact and conclusions of law." G.S. 150B-34. G.S. 150B-36(c) concerns certain final decisions made by the Administrative Law Judge. This case is not such a decision but is a recommendation of summary disposition of a part of this consolidated case as provided for in 26 NCAC 3 .0005(6). This decision sets forth the material facts as to which there is no genuine issue, and will also discuss some matters that were disputed, but as to which the Administrative Law Judge has concluded that the dispute either did not present a "genuine" issue or did not involve a "material" fact.

<sup>2</sup> References to "DMA Admission" and to DMA Admission Exhibits are to DMA's September 9, 1991 and October 8, 1991 Responses to Ten Broeck's Requests for Admissions and to documents attached to and authenticated by DMA's response to admissions. The admissions are in two sets,



numbered consecutively, and were attached as Exh. 1 to Ten Broeck's Motion for Summary Disposition.

References herein to "SD Exh. #" are to exhibits listed in and attached to Ten Broeck's Motion for Summary Disposition. References to "DMA Stay Hearing Exh. #" are to exhibits introduced by DMA at the hearing on Ten Broeck's Motion for Stay held July 24, 1991, which were listed and incorporated by reference in Ten Broeck's Motion for Summary Disposition. References to 5-digit numbers [20,000] are to numbers previously stamped on pages of some of the exhibits and included herein to aid in locating a particular page.

Footnotes 3 - 9 were contained in the Discussion section.

<sup>10</sup> In light of the foregoing, there is no need to reach the question of the medical necessity of the hospitalization other than to note that based on Ten Broeck's showing and DMA's response there did not appear to be a "genuine" issue as to any material fact on this issue, and Ten Broeck would be entitled to judgment as a matter of law. It did not appear that DMA could forecast that it would be able to present substantial evidence which would allow DMA to prevail on its claim.

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

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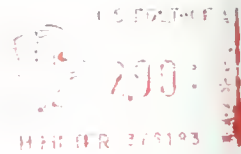
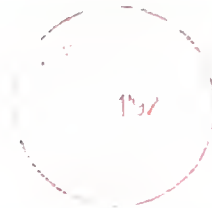
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