The NORTH CAROLINA REGISTER

IN THIS ISSUE .....

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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. 0. 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 i temporary rules. Within 24 hours of submission to OAH, Codifier of Rules must review the agency's written statemer findings of need for the temporary rule pursuant to the provisio G.S. 150B-21.1. If the Codifier determines that the findings r the criteria in G.S. 150B-21.1, the rule is entered into the NCA the Codifier determines that the findings do not meet the crit the rule is returned to the agency. The agency may supplemer findings and resubmit the temporary rule for an additional re or the agency may respond that it will remain with its in position. The Codifier, thereafter, will enter the rule into NCAC. A temporary rule becomes effective either when Codifier of Rules enters the rule in the Code or on the s business day after the agency resubmits the rule without cha The temporary rule is in effect for the period specified in the ru 180 days, whichever is less. An agency adopting a temporary must begin rule-making procedures on the permanent rule a same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CO

The North Carolina Administrative Code (NCAC) compilation and index of the administrative rules of 25 agencies and 38 occupational licensing boards. The NC comprises approximately 15,000 letter size, single spaced pag material of which approximately 35% of is changed annu Compilation and publication of the NCAC is mandated by 150B-21.18.

The Code is divided into Titles and Chapters. Each state ag is assigned a separate title which is further broken dow chapters. Title 21 is designated for occupational licensing boar

The NCAC is available in two formats.

(1) Single pages may be obtained at a minimum co two dollars and 50 cents ($2.50) for 10 pages or plus fifteen cents ($0.15) per each additional page.

(2) The full publication consists of 53 volumes, totalin excess of 15,000 pages. It is supplemented mon with replacement pages. A one year subscription t full publication including supplements can purchased for seven hundred and fifty do ($750.00). Individual volumes may also be purch with supplement service. Renewal subscription supplements to the initial publication are available.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

FOR INFORMATION CONTACT: Office o Administrative Hearings, ATTN: Rules Division, P.O Drawer 27447, Raleigh, North Carolina 27611-7447, (91 733-2678.

NORTH CAROLINA REGISTER

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

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NORTH CAROLINA REGISTER
Publication Schedule
(May 1992 - December 1993)

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

EXECUTIVE ORDER NUMBER 168
NORTH CAROLINA INTERAGENCY COUNCIL FOR COORDINATING HOMELESS PROGRAMS

WHEREAS, the problem of homelessness denies a segment of our population their basic human need for adequate shelter; and

WHEREAS, several State agencies offer programs and services for homeless persons. To combat the problem of homelessness most effectively, it is critical that these agencies coordinate program development and delivery of essential services.

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

Section 1. ESTABLISHMENT

The North Carolina Interagency Council for Coordinating Homeless Programs (the "Interagency Council") is hereby established.

Section 2. MEMBERSHIP

The Interagency Council shall consist of the Deputy Secretary of the North Carolina Department of Human Resources and not less than 14 members who shall be appointed by the Secretary of the Department of Human Resources from the following organizations:

Department of Administration	1
Housing Finance Agency	1
Office of State Planning	1
Department of Community Colleges	1
Department of Cultural Resources	1
Department of Economic and Community Development	1
Department of Environment, Health, and Natural Resources	1
Department of Human Resources	1
State Board of Education or its designee from the Department of Public Instruction	1
Department of Insurance	1
Non-Profit Agency Concerned with Housing Issues and the Homeless	1
Non-Profit Agency Concerned with the Provision of Supportive Services to the Homeless	1
Member of N.C. Senate	1
Member of N.C. House	1
TOTAL	14

Section 3. TERMS OF MEMBERSHIP

The Deputy Secretary of the Department of Human Resources shall serve on the Interagency Council during his or her term of employment in that position. Terms of membership for the other members of the Interagency Council shall be staggered so that the terms of approximately one-half of the members shall expire in a single calendar year. Terms shall be staggered in the following manner for the first two years:

7 serving one year
7 serving two years

After the first two years, each appointment shall be for a term of two years.

Section 4. CHAIR

The Chair of the Interagency Council shall be the Deputy Secretary of the Department of Human Resources.

Section 5. MEETINGS

The Interagency Council shall meet quarterly and at other times at the call of the Chair or upon written request of at least (5) five of its members. All business meetings of the Interagency Council, its committees and subcommittees or special task forces shall be open to the public.

Section 6. FUNCTIONS

The Interagency Council shall have the following duties:

1. To identify state level programs and services which address the needs of the homeless.
2. To negotiate a definition of specific state agency responsibilities with regard to services for the homeless.
3. To develop policies and procedures and interagency memoranda of agreement to:
   a. Facilitate sharing of information and resources among involved agencies.
   b. Facilitate interagency referrals.
   c. Reduce and eliminate barriers to service.
   d. Target and maximize the effective utilization of existing resources.
   e. Facilitate cost sharing among agencies.
4. To coordinate the provision of information regarding the extent and scope of problems of the homeless in North Carolina for the purposes of planning and implementing programs and services.

5. To assist agencies in identifying and obtaining new sources of funding for the enhancement of current programs and services, and for new programs.
6. To review the current funding of programs and services to assure:
   a. the cost effectiveness of programs and funding utilization; and
   b. the maximum utilization of federal funding.
7. To prepare an annual report which identifies:
   a. the needs of the homeless;
   b. the current status of programs and services for the homeless;
   c. the adequacy of current funding for programs and services for the homeless;
   d. the priorities of state level programs and services; and
   e. recommendations for fiscal, programmatic, and legislative actions to address recognized priorities.

Section 7. TRAVEL AND SUBSISTENCE EXPENSES

Members of the Interagency Council shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1 or 138-5.

Section 8. STAFF ASSISTANCE

The Division of Economic Opportunity of the Department of Human Resources shall provide administrative and staff support services required by the Interagency Council.

Section 9. EFFECTIVE DATE AND EXPIRATION

This Executive Order shall become effective immediately and will expire in accordance with North Carolina law two years from the date it is signed. It is subject to reissuance at expiration.

Done in the Capital City of Raleigh, this the 29th day of May, 1992.

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

U.S. Department of Justice
Civil Rights Division

JRD:MAP:EMP:tlb
DJ 166-012-3
92-1786

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

June 9, 1992

Z. Creighton Brinson, Esq.
Taylor & Brinson
P. O. Drawer 308
Tarboro, North Carolina 27886-0308

Dear Mr. Brinson:

This refers to the annexation (Ordinance No. 91-15) to the Town of Tarboro in Edgecombe 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 April 13, 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).

We note that a proper submission of a voting change for Section 5 review should be addressed to the Chief, Voting Section, Civil Rights Division, P. O. Box 66128, Washington, D.C. 20035-6128. The envelope and first page should be marked: Submission under Section 5 of the Voting Rights Act. Transmittal or your correspondence to any other office may delay the processing of your request.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

TITLE 4 - DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Banking Commission intends to amend rule(s) cited as 4 NCAC 3E .0101, .0201, .0302, .0601; repeal rule(s) cited as 4 NCAC 3E .0106, .0603; adopt rule(s) cited as 4 NCAC 3E .0204.

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

The public hearing will be conducted at 9:00 a.m. on August 11, 1992 at the North Carolina Banking Commission, 430 North Salisbury Street, Suite 6210, Raleigh, North Carolina.

Reason for Proposed Action:

Adoptions:

Subchapter 3E (Consumer Finance)

.0204 *Transfer of License and Change of Location -- This is a new rule. It provides in Paragraph (a) for transfer or assignment application in writing together with a $100 fee for each license. Additionally, it provides that transfers will not be approved other than to existing licensees. Paragraph (b) provides for an application for change of location and a fee of $25.*

Amendments:

Subchapter 3E (Consumer Finance)

.0101 *Application -- Address and statutory cite changes only.*

.0201 *Operation of other Business in Same Office -- This rule has been rewritten into four Paragraphs: (a) prohibiting other business without approval, (b) requiring other loan business to be conducted in a separate corporate entity, (c) providing for an application procedure and a fee of $25, and (d) requiring an other business license to be posted in public view. It also provides for address changes and includes another appropriate statutory cite.*

.0302 *Annual Report -- This is merely address changes and a revision of statutory cite.*

.0601 *Books and Records -- Subpart (3) dealing with "Individual Account Records" has been revised to require disclosure of the cash advance and finance charges, require allocation of payments between principal and interest, identification of insurance origination fees and the amount of insurance premiums on consumer finance loans, identification of non-filing insurance charges, and disclosure of the contract interest rate and the annual percentage rate (APR) as computed under Regulation Z. Also, a new subpart (5) requires a statement on the loan contract which identifies the loan as one regulated by the provisions of Chapter 53, Article 15 of the North Carolina General Statutes. It does allow a transition period for compliance. A new subpart (6) requires detailed judgments to be maintained in the local office for judgment accounts and a new subpart (7) requires substantially the same information to be kept in a local office for repossession accounts. Finally, a new subpart (8) requires certain records to be maintained on insurance claims.*

Rule .0601 has also been revised to adopt modern accounting terminology and recognize the authority of licensees to maintain their records by means of electronic storage and retrieval systems.

Repeals:

Subchapter 3E (Consumer Finance)

.0106 *Motor Vehicle Lenders -- Repealed.*

.0603 *Deferment Charges -- Repealed.*

Comment Procedures: Comments must be submitted in writing not later than Friday, August 7, 1992. Written comments should be directed to:

L. McNeil Chestnut, General Counsel
North Carolina Banking Commission
Post Office Box 29512
Raleigh, North Carolina 27626-0512

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 3E - LICENSEES UNDER NORTH CAROLINA CONSUMER FINANCE ACT

SECTION .0100 - LICENSING

.0101 APPLICATION

(a) No person shall make loans under the provisions of the North Carolina Consumer Finance Act without first obtaining a license from the Commissioner of Banks. Application for a consumer finance license shall be accomplished by the execution of Form NCCF 2 and the payment of the statutory fee. That form contains a request for a license to operate a business under the North Carolina Consumer Finance Act and incorporates all statutory requirements and criteria. The form may be obtained from and should be filed with:

The Commissioner of Banks
~~P.O. Box 951~~
~~Raleigh, North Carolina 27602.~~
Post Office Box 29512
Room 6210, Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27626-0512.

(b) Upon receipt of an application for a consumer finance license, the Commissioner of Banks shall give written notice of the application to all licensees operating within the community proposed to be served as described in the application. Where a licensee holds two or more licenses the notification is to be mailed to the home office of such licensee. The notification may be by copy of acknowledgement to the applicant.

(c) Following an investigation of the application the Commissioner of Banks shall decide as to:

(1) approval of the application,
(2) denial of the application.

Statutory Authority G.S. 53-92; 53-95; 53-104; 53-168; 53-185; 150B-21.2.

.0106 MOTOR VEHICLE LENDERS

~~A motor vehicle lender, as defined by G.S. 53-176.1, must be licensed by the Commissioner of Banks in the same manner as prescribed in Rule .0101 of this Section. Appropriate forms and instructions incorporating all statutory requirements and criteria can be obtained from and should be filed with:~~

~~The Commissioner of Banks~~
~~P.O. Box 951~~
~~Raleigh, North Carolina 27602.~~

Statutory Authority G.S. 53-92; 53-176.1; 53-185; 150B-11(1).

SECTION .0200 - ACTIONS REQUIRING APPROVAL OF COMMISSIONER OF BANKS

.0201 OPERATION OF OTHER BUSINESS IN SAME OFFICE

(a) No licensee shall operate any other business in the same office ~~except as shall be approved in writing by~~ with its consumer finance business except upon written approval of the Commissioner of Banks. ~~A request for such approval shall be made by the execution of Form NCCF 5 and the payment of the statutory investigation fee. That form contains a request to operate the business of making loans under the Consumer Finance Act in the same office some other business is solicited or engaged in. The~~

(b) Any other loan business conducted at the same location where a licensee makes loans pursuant to Chapter 53, Article 15 of the North Carolina General Statutes, must be operated through a separate corporate entity.

(c) Application for other business authority shall be made upon Form NCCF 5 and shall be accompanied by a fee of one hundred dollars ($100.00). An NCCF 5 form can be obtained from and ~~should~~ shall be filed with:

The Commissioner of Banks
~~P.O. Box 951~~
~~Raleigh, North Carolina 27602.~~
Post Office Box 29512
Room 6210, Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27626-0512.

(d) Upon approval of the application, the Commissioner of Banks will issue a Certificate of Authority which shall be posted in a public area of a licensee's office.

Statutory Authority G.S. 53-92; 53-122(3); 53-168; 53-172; 53-185; 150B-21.2.

.0204 TRANSFER OF LICENSE AND CHANGE OF LOCATION

(a) Transfer or assignment. Before a licensee may transfer or assign its license to another entity, the licensee shall apply to the Commissioner of Banks for authority to do so. Application shall be by letter which shall set forth the name, address and telephone number of the proposed transferee or assignee, the reasons for the transfer or assignment and the date upon which the licensee proposes to make the transfer or assignment. The application letter shall also be ac-

companied by a fee of twenty five dollars ($25.00) payable to the Commissioner of Banks for each license proposed for transfer or assignment together with written acknowledgement of the proposed transaction by the transferee or assignee. Transfer or assignments to other than existing licensees will not be approved. If the application is approved, the licensee shall immediately surrender to the Commissioner of Banks its consumer finance license for reissuance to the transferee or assignee.

(b) Change of Location. Prior to any change in the business location of a licensee, the licensee shall apply to the Commissioner of Banks for authority to do so. Application shall be by letter setting forth the address and telephone number of the new location and shall be accompanied by a fee of twenty five dollars ($25.00) payable to the Commissioner of Banks. If the application is approved, the licensee shall immediately submit to the Commissioner of Banks its license for amendment.

Statutory Authority G.S. 53-122(3); 53-168(e); 53-170(a); 150B-21.2.

SECTION .0300 - REPORTS REQUIRED BY COMMISSIONER OF BANKS

.0302 ANNUAL REPORT

Each licensee under the North Carolina Consumer Finance Act shall file an annual report with the Commissioner of Banks on or before March 31 each year. Such report shall be filed on Form NCCF 1. That form contains various schedules which reflect the financial condition of the licensee as well as the results of its operations. The form along with necessary instructions relative to its execution may be obtained from and should be filed with:

The Commissioner of Banks
~~P.O. Box 951~~
~~Raleigh, North Carolina 27602.~~
Post Office Box 29512
Room 6210, Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27626-0512.

Statutory Authority G.S. 53-92; 53-184(b); 53-185; 150B-21.1.

SECTION .0600 - CONSUMER FINANCE OFFICES

.0601 BOOKS AND RECORDS

Each consumer finance office licensed by the Commissioner of Banks shall keep in its place of business the following books and accounting records. (see exception in Item "2," General Ledger) These records shall be maintained in each office and be readily available to the Commissioner of Banks or his authorized agent. No books or records of the licensee may show any account or reflect any transaction other than those directly related to the making and collecting of loans within the provisions of the Consumer Finance Act.

Where a licensee is also an installment paper dealer, completely separate books and records shall be maintained, including a separate cash account. Allocation of expenses shall be made monthly according to appropriate and reasonable accounting principles.

All books and records covered by these rules must be retained for a period of not less than three years:

(1) Cash Book. The cash book shall be the book of original entry in which all transactions of receipts and disbursements of any nature or amount whatsoever shall be itemized. Each transaction made in connection with a loan shall be identified with the loan by the name and account number of the borrower and shall clearly define the nature of each charge, collection, or refund made in connection with such loan. All entries shall be made as of the exact date the transactions occur.

(2) General Ledger. The general ledger shall be double entry, showing in full detail the total of assets, liabilities, capital, income, and expenses. Each account shall be clearly and appropriately designated. No net or "wash" entries shall be made to any account. The general ledger shall be posted at least once each month and such posting shall include all transactions through the last business day of the month. The actual posting must be completed by the 20th day of each ensuing month for the previous month's business. In instances where an organization operates two or more offices, the general ledger may be maintained in a central accounting office of the organization, provided a certified trial balance shall be made as of the last business day of each month and shall be on file in each office within 20 days from that time. Each debit or credit entry appearing on the general ledger each month shall appear on the trial balance. A detailed description of each general ledger entry originating outside of a local office and not reflected on the cash book of that office shall be on file in each office to support such entries appearing on the general ledger. This shall include ad-

justing and closing entries. If any account on the general ledger does not agree with the corresponding account on the annual report to the Commissioner of Banks, a supplement to the annual report shall be furnished which reconciles or explains any differences.

(3) Individual Account Card. A separate account card shall be maintained for each loan made. Each account card shall provide the following information which may be shown on the front or back of the account card:

(a) name and address of borrower, spouse's name, and name of any other person obligated directly or indirectly on the loan;

(b) cross reference to other loans of the borrower, or spouse, or endorser, guarantor, or surety, or to any joint obligation of the borrower;

(c) account number;

(d) date of loan and maturity;

(e) length of contract;

(f) the cash advance, finance charge, number of payments and amount of each;

(g) date and amount of each payment, ~~and each default charge collected;~~ an allocation between principal and interest for each payment, and the remaining loan balance after each payment;

(h) date of previous loan;

(i) brief description of security;

~~(j) amount of charge;~~

(j) ~~(k)~~ type of insurance, ~~and amount of premiums;~~ insurance origination fees and amount of insurance premium for each coverage written;

(k) ~~(l)~~ amount of recording fee or non-filing charges;

(l) ~~(m)~~ amount of any other charge whatsoever made in connection with the loan;

(m) ~~(n)~~ amount of ~~refund;~~ unearned insurance premium refunded for each coverage written;

(n) ~~(o)~~ if refunds are paid by cash or check, acknowledgment of receipt of refund by signature of borrower; and

(o) contract interest rate and annual percentage rate as computed under Regulation Z.

(4) Index of Borrowers. Each office shall keep an index record on which all loans to each individual shall be entered in order, showing date made, account number, amount of loan, and date of cancellation. This record shall be maintained on individual index cards or on the face of the borrower's individual file, "shuck," "jacket," or folder and shall be filed alphabetically or by account number, provided where the account number is used an alphabetical cross index be available to the examiner.

(5) Loan Documents. Loans made by a licensee shall on the loan contract contain the following statement printed in a conspicuous manner: "This loan is regulated by the provisions of Chapter 53, Article 15 of the North Carolina General Statutes."

(6) Judgments. When a loan has been reduced to judgment, all of the following provisions shall be complied with:

(a) the individual account card maintained pursuant to Subpart (3) of this Rule shall clearly be designated a judgment account;

(b) payments received shall be identified and applied on the judgment account card;

(c) the licensee shall maintain in the office from which the judgment account originated a copy of the judgment and any other court documents which are necessary to disclose the following information:

(i) judgment date;

(ii) name of licensee;

(iii) judgment debtor's name;

(iv) date suit was filed;

(v) nature of the suit;

(vi) name and location of the court;

(vii) amount of the judgment, specifying principal, interest charges, and court costs; and

(viii) disposition of the case;

(d) a licensee which charges a borrower for court costs it incurred on a judgment account shall itemize such costs on the individual account card and retain a receipt or other document substantiating the costs;

(e) a licensee shall retain a copy of the sheriff's return of execution issued when property is sold pursuant to a judgment.

(7) Repossessions. When property is taken in accordance with the terms of a security agreement or by judicial process or abandonment, the individual account card shall be clearly designated as a repossession account and shall state when and how possession of the security was obtained and shall identify the proceeds of the sale of the property. The licensee shall also retain in the office in which the repossession account originated, all of the following:

(a) a copy of any agreement entered into with the borrower with respect to the terms of surrender;

(b) a copy of the notice of sale, together with evidence of mailing or personal delivery;

(c) an inventory of the property taken, unless it otherwise appears in detail on the notice of sale;
(d) a signed statement from the purchasers, or from the auctioneer if the sale was public, describing the collateral purchased and showing the amounts paid;
(e) evidence that the sale took place on the date set forth in the notice of sale, including a notice of any bids received;
(f) copy of a detailed final accounting sent to the borrower setting forth the disposition of the proceeds of sale and the principal balance due, if any, on the account; and
(g) paid receipts evidencing costs incurred in the repossession and sale of the security which have been charged to the borrower.

(8) Insurance Records. A licensee shall maintain in each office where a loan account originated, a record of any claims paid under insurance written in connection with a consumer finance loan. The records shall include:
(a) the loan number and name of debtor;
(b) description of the insurance claim, i.e., whether death claim, property damage, or claim for benefits under accident and health insurance; and
(c) in the case of claims under credit life insurance, a copy of the certified death certificate.

Statutory Authority G.S. 53-92; 53-104; 53-184; 53-185; 150B-21.2.

.0603 DEFERMENT CHARGES

~~If the contract so provides, and the payment dates of all wholly unpaid installments are deferred for one or more full months, and the maturity date of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge.~~

~~The deferment charge shall not exceed the difference between the refund that would be required under the "rule of 78's" or sum of the digits principle for prepayment in full as of the scheduled due date of the first deferred installment and the refund which would be required for prepayment in full as of one month prior to such date, multiplied by the sum of the number of months in which no scheduled payment has been made and in which no payment is to be required by reason of the deferment. The charge for subsequent deferments in the same contract shall be computed in the same manner, provided the charge is based on the first installment of such subsequent deferment.~~

~~A deferment charge may be collected at the time of deferment or at any time thereafter.~~

~~No installment which has been partially paid or on which a default charge has been made shall be deferred or included in the computation of a deferment charge unless the partial payment or default charge is refunded to the borrower or credited to the deferment charge.~~

~~If one or more installments are in default and a deferment charge is deducted from a tendered payment and as a result the account is made current, any difference between the amount paid and the amount of the deferment charge, if more than five dollars ($5.00), shall be refunded to the borrower; provided, any uncollected default or deferment charges previously due may be deducted.~~

~~If a deferment is imposed without the borrower's consent, then the number of months in the deferment period shall not exceed the number of installments in default.~~

~~If the amount of payment tendered is sufficient to pay the account up to date, including accrued default charges, no deferment charge may be assessed except upon written request of the borrower.~~

~~The borrower shall be advised by the licensee, in writing, of each deferment including the amount of the deferment charge, the due date, and amount of the next scheduled installment, and the amount of the unpaid balance.~~

~~If a loan contract is prepaid during a deferment period, the refund of charges must include the portion of the deferment charge applicable to any month of the deferment period in which less than 16 days have expired. To arrive at the proper amount of refund first determine the amount the refund would have been if the deferment had not been granted and the loan was paid in full on the due date of the last installment which was paid. To this amount must be added the deferment charge applicable to each month in the deferment period in which less than 16 days have expired. The sum of these will be the total amount of refund due.~~

~~If there is a prepayment of a loan in full subsequent to the deferment period, the total charge refund may be based on the contract's original add-on charge, provided the number of prepaid loan months shall be based on the deferred maturity date. When the refund is based on the number of the elapsed months rather than the number of prepaid months, the number of elapsed months must be reduced by one month for each month on which a deferment charge has been made.~~

Statutory Authority G.S. 53-92; 53-104; 53-173(6); 53-185.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services (DHR) intends to adopt rules cited as 10 NCAC 3R .3001, .3010, .3020, .3030 and .3040.

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

The public hearing will be conducted at 2:00 p.m. on September 9, 1992 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To establish the State Medical Facilities Plan as a rule.

Comment Procedures: Written comments should be submitted as soon as possible but no later than September 2, 1992, to Jackie Sheppard, APA Coordinator, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530, Telephone (919) 733-2342.

Editor's Note: These Rules have been filed as temporary rules effective May 31, 1992 for a period of 180 days to expire on October 31, 1992.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .3000 - STATE MEDICAL FACILITIES PLAN

.3001 CERTIFICATE OF NEED REVIEW CATEGORIES

The agency has established nine categories of facilities and services for certificate of need review and will determine the appropriate review category or categories for all applications submitted. For proposals which include more than one category, the agency will require the applicant to submit separate applications. If it is not practical to submit separate applications, the agency will determine in which category the application will be reviewed. The review of an application for a certificate of need will commence in the next review schedule after the application has been determined to be complete. The nine categories of facilities and services are:

(1) Category A. Includes proposals for acute health service facilities including but not limited to the following types of projects: renovation, construction, major medical equipment and other ancillary and support equipment and services, except those proposals included in Categories B through I.

(2) Category B. Includes proposals for long-term nursing facility beds which are reviewed against the State Medical Facilities Plan.

(3) Category C. Includes proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities except for special allocation of ICF/MR beds for only Thomas S. class members; new substance abuse and chemical dependency facilities; substance abuse and chemical dependency beds in existing health care facilities.

(4) Category D. Includes proposals for new or expanded end-stage renal disease treatment facilities; and relocations of existing dialysis stations.

(5) Category E. Includes proposals for new or expanded inpatient rehabilitation facilities and inpatient rehabilitation beds in other health care facilities.

(6) Category F. Includes proposals for new or expanded ambulatory surgical facilities.

(7) Category G. Includes proposals involving cost overruns; addition of one dialysis station for isolation of patients; expansions of existing continuing care or life care facilities which are applying under exemptions from need projections in the Plan; relocations of existing health service facilities which do not involve an increase in the number of health service facility beds; with the exception

of relocating dialysis stations; reallocation of beds due to withdrawals or relinquishments of certificates of need; hospital proposals to convert acute care beds to short-term nursing; proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; and any other proposal not included in Categories A through F, Category H, or Category I.

(8) Category H. Includes proposals for demonstration projects identified in this Plan; special allocation of ICF/MR beds for Thomas S. class members only.

(9) Category I. Includes proposals for new continuing care or life care facilities and new home health agencies or offices.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3010 HEALTH SERVICE AREAS

The agency has assigned the counties of the state to the following health service areas for the purpose of scheduling applications for certificates of need:

HEALTH SERVICE AREAS (HSA)

I	II	III	IV	V	VI
County	County	County	County	County	County
Alexander	Alamance	Cabarrus	Chatham	Anson	Beaufort
Alleghany	Caswell	Gaston	Durham	Bladen	Bertie
Ashe	Davidson	Iredell	Franklin	Brunswick	Camden
Avery	Davie	Lincoln	Granville	Columbus	Carteret
Buncombe	Forsyth	Mecklenburg	Johnston	Cumberland	Chowan
Burke	Guilford	Rowan	Lee	Harnett	Craven
Caldwell	Randolph	Stanly	Orange	Hoke	Currituck
Catawba	Rockingham	Union	Person	Montgomery	Dare
Cherokee	Stokes		Vance	Moore	Duplin
Clay	Surry		Wake	New Hanover	Edgecombe
Cleveland	Yadkin		Warren	Pender	Gates
Graham				Richmond	Greene
Haywood				Robeson	Halifax
Henderson				Sampson	Hertford
Jackson				Scotland	Hyde
McDowell					Jones
Macon					Lenoir
Madison					Martin
Mitchell					Nash
Polk					Northampton
Rutherford					Onslow
Swain					Pamlico
Transylvania					Pasquotank
Watauga					Perquimans
Wilkes					Pitt
Yancey					Tyrrell
					Washington
					Wayne
					Wilson

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3020 CERTIFICATE OF NEED REVIEW SCHEDULE

The agency has established the following schedule for review of categories and subcategories of facilities and services in 1992:

(1) Category B. Subcategory Long-Term Nursing Facilities.

County	HSA	CON Beginning Review Date
Alleghany	I	February 1, 1992
Cleveland	I	February 1, 1992
Polk	I	February 1, 1992
Burke	I	August 1, 1992
Jackson	I	August 1, 1992
Alamance	II	February 1, 1992
Caswell	II	February 1, 1992
Rockingham	II	February 1, 1992
Davie	II	August 1, 1992
Yadkin	II	August 1, 1992
Mecklenburg	III	March 1, 1992
Stanly	III	September 1, 1992
Chatham	IV	March 1, 1992
Person	IV	March 1, 1992
Wake	IV	September 1, 1992
Warren	IV	September 1, 1992
Cumberland	V	April 1, 1992
Moore	V	April 1, 1992
Robeson	V	April 1, 1992
Scotland	V	April 1, 1992
Bladen	V	October 1, 1992
New Hanover	V	October 1, 1992
Beaufort	VI	April 1, 1992
Nash	VI	April 1, 1992
Northampton	VI	April 1, 1992
Craven	VI	October 1, 1992
Hertford	VI	October 1, 1992
Pamlico	VI	October 1, 1992
Wilson	VI	October 1, 1992

(2) Category C. Subcategory Intermediate Care Facilities for Mentally Retarded.

Counties	HSA	CON Beginning Review Date
Jackson, Haywood, Macon, Cherokee, Clay Graham, Swain	I	December 1, 1992
Transylvania, Henderson	I	December 1, 1992
Caldwell, Burke, Alexander, McDowell	I	December 1, 1992
Rutherford, Polk	I	June 1, 1992
Cleveland	I	June 1, 1992
Mecklenburg	III	May 1, 1992
Surry, Yadkin	II	June 1, 1992
Forsyth, Stokes	II	June 1, 1992
Alamance, Caswell	II	November 1, 1992
Orange, Person, Chatham	IV	May 1, 1992
Vance, Granville, Franklin, Warren	IV	November 1, 1992
Davidson	II	November 1, 1992
Cumberland	V	December 1, 1992
Johnston	IV	May 1, 1992

Counties	HSA	CON Beginning Review Date
Wake	IV	November 1, 1992
Randolph	II	November 1, 1992
New Hanover, Brunswick, Pender	V	December 1, 1992
Onslow	VI	June 1, 1992
Wilson, Greene	VI	June 1, 1992
Edgecombe, Nash	VI	June 1, 1992
Hertford, Bertie, Gates, Northampton	VI	December 1, 1992
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	December 1, 1992

(3) Category D. Subcategory End Stage Renal Disease Treatment Facilities.

Counties	HSA	CON Beginning Review Date
Cherokee, Clay, Graham, Jackson, Macon, Swain	I	April 1, 1992
Buncombe, Haywood, Madison, Mitchell, Yancey	I	October 1, 1992
Henderson, Polk, Transylvania	I	October 1, 1992
Ashe, Avery, Caldwell, Watauga, Wilkes	I	April 1, 1992
Burke, McDowell	I	October 1, 1992
Rutherford	I	April 1, 1992
Alexander, Catawba	I	October 1, 1992
Alleghany, Stokes, Surry	II	October 1, 1992
Davidson	II	October 1, 1992
Caswell, Rockingham	II	October 1, 1992
Randolph	II	April 1, 1992
Alamance	II	April 1, 1992
Gaston	III	May 1, 1992
Lincoln	III	May 1, 1992
Rowan	III	October 1, 1992
Cabarrus	III	October 1, 1992
Montgomery, Stanly	III	October 1, 1992
Chatham, Lee	IV	October 1, 1992
Person	IV	May 1, 1992
Wake	IV	October 1, 1992
Johnston	IV	October 1, 1992
Franklin, Vance, Warren	IV	May 1, 1992
Anson	V	August 1, 1992
Cumberland, Hoke	V	April 1, 1992
Harnett	V	April 1, 1992
Sampson	V	April 1, 1992
Bladen	V	August 1, 1992
Robeson	V	August 1, 1992
Pender	V	August 1, 1992
Brunswick	V	August 1, 1992
Duplin	VI	April 1, 1992
Wayne	VI	April 1, 1992
Edgecombe, Nash	VI	April 1, 1992
Gates, Halifax, Hertford, Northampton	VI	August 1, 1992
Bertie, Washington	VI	August 1, 1992
Martin	VI	April 1, 1992

Counties	HSA	CON Beginning Review Date
Greene, Pitt	VI	August 1, 1992
Beaufort	VI	August 1, 1992
Carteret, Craven, Jones, Pamlico	VI	August 1, 1992
Onslow	VI	August 1, 1992

(4) Category I. Subcategory Home Health Agencies.

County	HSA	CON Beginning Review Date
Mecklenburg	III	February 1, 1992
Randolph	II	April 1, 1992
Wilkes	I	April 1, 1992

(5) All categories for which review dates are not specified in Subparagraph (1), (2), (3), (4) of this Rule.

REVIEW PERIOD	HSA I	HSA II	HSA III	HSA IV	HSA V	HSA VI
January 1						
February 1	B,G	B,G	A,D,G,F	A,D,G,F	A,D,G,F	A,D,G,F
March 1			B,G,	B,G		
April 1	A,D,G,F	A,D,G,F			B,G	B,G
May 1			C,G,E	C,G,E		
June 1	A,C,G,E	A,C,G,E			A,C,G,E	A,C,G,E
July 1			A,D,G	A,D,G		
August 1	B,G	B,G			D,G,F	D,G,F
September 1			B,G,F	B,G,F		
October 1	D,G,F	D,G,F			B,G	B,G
November 1		A,C,G,E	A,C,G,E	A,C,G,E	A,C,G,E	
December 1	A,C,G,E				A,C,G,E	A,C,G,E

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3030 FACILITY AND SERVICE ALLOCATIONS

Facility and services allocations are:

(1) Category A. Acute Health Service Facilities.

Morehead Memorial Hospital Service System	HSA II	16 beds
Halifax Memorial Hospital Service System	HSA VI	17 beds
UNC Hospital Service System	HSA IV	15 beds (University students)

(2) Category B. Long-Term Nursing Facility Beds.

County	HSA	Number of Nursing Beds Allocated
Alleghany	1	20
Cleveland	1	60
Polk	1	40

County	HSA	Number of Nursing Beds Allocated
Burke	I	60
Jackson	I	20
Alamance	II	60
Caswell	II	20
Rockingham	II	80
Davie	II	90
Yadkin	II	60
Mecklenburg	III	100
Stanly	III	60
Chatham	IV	20
Person	IV	20
Wake	IV	70
Warren	IV	20
Cumberland	V	90
Moore	V	60
Robeson	V	4
Scotland	V	20
Bladen	V	40
New Hanover	V	100
Beaufort	VI	40
Nash	VI	60
Northampton	VI	20
Craven	VI	60
Hertford	VI	20
Pamlico	VI	20
Wilson	VI	60

(3) Category C.
(a) Psychiatric Facility Beds.

Counties	HSA	BEDS	
		Adult	Child/Adolescent
Transylvania, Henderson	I	--	12
Gaston, Lincoln	III	11	--
Rowan, Iredell, Davie	III	19	--
Stanly, Cabarrus, Union	III	26	10
Surry, Yadkin	II	23	--
Rockingham	II	16	--
Vance, Granville, Franklin, Warren	IV	13	--
Davidson	II	10	--
Lee, Harnett	V	15	--
Wake	IV	34	--
Craven, Jones, Pamlico, Carteret	VI	14	--
Lenoir	VI	10	--
Beaufort, Washington, Tyrrell, Hyde, Martin	VI	17	--

(b) Intermediate Care Facilities for Mentally Retarded Beds.

Counties	HSA	Allocation
Jackson, Haywood, Macon, Cherokee, Clay, Graham, Swain	I	12
Transylvania, Henderson	I	12
Caldwell, Burke, Alexander, McDowell	I	6
Rutherford, Polk	I	6
Cleveland	I	18
Mecklenburg	II	48
Surry, Yadkin	II	12
Forsyth, Stokes	II	18
Alamance, Caswell	II	18
Orange, Person, Chatham	IV	12
Vance, Granville, Franklin, Warren	II	6
Davidson	II	6
Cumberland	V	18
Johnston	IV	42
Wake	II	12
Randolph	V	6
New Hanover, Brunswick, Pender	V	6
Onslow	VI	18
Wilson, Greene	VI	6
Edgecombe, Nash	VI	6
Hertford, Bertie, Gates, Northampton	VI	6
Pasquotank, Chowan, Perquimans, Camden, Dare, Currituck	VI	6

(c) Substance Abuse and Chemical Dependency Facility Beds. No allocation.

(4) Category D. End Stage Renal Disease Treatment Facilities.

Counties	HSA	Allocation If All Pending Are Approved
Cherokee, Clay, Graham, Jackson, Macon, Swain	I	4
Buncombe, Haywood, Madison, Mitchell, Yancey	I	13
Henderson, Polk, Transylvania	I	3
Ashe, Avery, Caldwell, Watauga, Wilkes	I	6
Burke, McDowell	I	2
Rutherford	I	7
Alexander, Catawba	I	4
Alleghany, Stokes, Surry	II	0
Davidson	II	2
Caswell, Rockingham	II	7
Randolph	II	3
Alamance	II	6
Gaston	III	6
Lincoln	III	7
Rowan	III	4

Counties	HSA	Allocation If All Pending Are Approved
Cabarrus	III	5
Montgomery, Stanly	III	5
Chatham, Lee	IV	6
Person	IV	8
Wake	IV	12
Johnston	IV	7
Franklin, Vance, Warren	IV	10
Anson	V	3
Cumberland, Hoke	V	17
Harnett	V	3
Sampson	V	4
Bladen	V	7
Robeson	V	13
Pender	V	0
Brunswick	V	10
Duplin	VI	3
Wayne	VI	4
Edgecombe, Nash	VI	14
Gates, Halifax, Hertford, Northampton	VI	19
Bertie, Washington	VI	0
Martin	VI	8
Greene, Pitt	VI	3
Beaufort	VI	0
Carteret, Craven, Jones, Pamlico	VI	13
Onslow	VI	6

(5) Category E. Inpatient Rehabilitation Facility Beds.

HSA	Beds
I	20
II	4
III	20
IV	15
V	22
VI	35

(6) Category F. Ambulatory Surgery Facilities.

Any area's need is determined by applying the following formula:

1990 Amb. Surg. Cases in the Proposed Amb. Surg. Area or 50.9 Area Population (1000's)	X	1994 Pop. of Area to be Served (1000's)	=	Proposed Amb. Su Cases in Proposed Service Area
Projected Ambulatory Surgical Cases in Proposed Service Area 1600 (cases per room per year)		divided by .80	=	Ambulatory Surger Rooms Needed in Proposed Service A

This methodology is not applicable to CON ambulatory surgical applications which conform to 10 NCAC 3R .2115(c)(2) relative to access to medically underserved persons.

(7) Category H. Brain Injury Demonstration - Long-Term Nursing Facility Beds.

(a) HSA I and III — 20 beds

(b) HSA II, IV and V, (less Bladen, Brunswick, Chowan New Hanoever, Pender and Sampson counties.) — 20 beds

(c) HSA VI (plus Bladen, Brunswick, Chowan, New Hanover, Pender and Sampson counties.) — 20 beds

(8) Category B - Demonstration Project, Medically Complex Children - Long-Term Nursing Beds.

All HSAs — 10 beds

(9) Category G. Thomas S. class - Intermediate Care Facility beds for Mentally Retarded.

All HSAs — 71 beds

(10) Category I. New Home Health Agencies.

County	HSA	Number of Agencies Allocated
Mecklenburg	III	1
Randolph	II	2
Wilkes	I	1

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

.3040 REALLOCATIONS, ADJUSTMENTS, AND ALLOCATION AVAILABILITY

(a) Reallocations resulting from withdrawals, relinquishments, or no applications.

(1) An allocation for which a certificate of need is issued, but is subsequently withdrawn or relinquished, and an allocation for which no certificate of need application is received, is available for a review period to be determined by the Certificate of Need Section, but beginning no earlier than 60 days from:

(A) the last date on which the holder of a certificate of need could have appealed a notice of intent to withdraw his certificate, if he does not in fact appeal;

(B) the date on which an appeal is finally resolved against the holder;

(C) the date that the Certificate of Need Section receives notice from the holder of the certificate of need that the certificate has been voluntarily relinquished; or

(D) For allocations for which no application was received, the last due date on which applications could have been received.

Notice of the reallocation and the review period for which applications shall be submitted to whom will be given no less than 45 days prior to the due date for receipt of the new applications.

(2) Reallocation of service capacity represented by a relinquished or withdrawn certificate of need or by an allocation for which no application was received will occur only to the extent of the need indicated for the same service contained in this Section in effect at the time of such determination, as adjusted through the provisions of Paragraph (b) of this Rule. The effective date of the determination of the availability of capacity for reallocation is the date designated in Parts (a)(1)(A), (B), (C) or (D) of this Rule.

(3) Reallocations made available through this policy for which no application is received for the review period designated in Subparagraph (a)(1) of this Rule will not be reallocated again.

(b) Need adjustments for prior year certificate of need awards. Need determinations in this section are based on an inventory of facilities that existed and of certificates of need awarded prior to preparation of this Plan and will be adjusted by the amount of any subsequent certificate of need awards. A

record of capacity remaining available for allocation will be maintained by the Medical Facilities Planning Section, based upon information supplied by the Certificate of Need Section. For information about the availability of these allocations write Medical Facilities Planning Section, Division of Facility Services, P.O. Box 29530, Raleigh, NC 27626-0530, or call 919-733-4130.

(c) Availability of Plan Allocations. Single-month review specific allocations in this Plan are available only for the review cycles specified in 10 NCAC 3R .3020(1), (2), (3) and (4) and in the next-occurring scheduled certificate of need review cycle applicable to the same facility service category for the health service area in which the county or counties are located, as specified in 10 NCAC 3R .3020(5). Allocations which are not single-month review specific are available only for the certificate of need review cycles specified in 10 NCAC 3R .3020(5).

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1).

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 8 .0602.

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

The public hearing will be conducted at 10:00 a.m. on July 23, 1992 at the Code Officials Qualification Board, 410 N. Boylan Avenue, Raleigh, N.C. 27611.

Reason for Proposed Action: To extend the probationary certificate for fire inspectors only due to courses not being available at the time of original certification.

Comment Procedures: Written comments may be sent to Grover Sawyer, c/o Qualifications Board, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Grover Sawyer at (919) 733-3901 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 8 - ENGINEERING AND BUILDING CODES

SECTION .0600 - QUALIFICATION BOARD-PROBATIONARY CERTIFICATE

.0602 NATURE OF PROBATIONARY CERTIFICATE

A probationary certificate may be issued, without examination, to any newly-employed or newly-promoted code enforcement official who lacks a standard certificate which covers his new position. A probationary certificate is issued for two years only and may not be renewed. A probationary certificate is issued to Fire Prevention Code enforcement officials for two years only, or until June 30, 1994, whichever is later, and may not be renewed. The official ~~will~~ shall take whatever measures are necessary during such period to qualify for an appropriate standard certificate. A probationary certificate authorizes the official, during the effective period of the certificate, to hold the position of the type, level, and location specified. The certificate shall be conditioned upon the ~~applicant's~~ applicant working under supervision sufficient to protect the public health and safety; or the applicant must have a minimum of two years of design, construction, or inspection experience working under a certified inspector, licensed engineer, architect, or contractor, or one of the experience qualifications listed in the Board's rules in each area of code enforcement for which the probationary certificate is issued; or the applicant must have successfully completed a probationary pre-qualification exam administered by the Board in each area of code enforcement for which the probationary certificate is issued.

Statutory Authority G.S. 143-151.12(1); 143-151.13(d).

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Alarm Systems Licensing Board intends to adopt rule(s) cited as 12 NCAC 11 .0208.

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

The public hearing will be conducted at 11:00 a.m. on July 17, 1992 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, N.C. 27626-0500.

Reason for Proposed Action: To require licensees to view a video training tape within 90 days of licensure.

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: Mr. James F. Kirk, NC Alarm Systems Licensing Board, 3320 Old Garner Rd., P.O. Box 29500, Raleigh, N.C. 27626-0500.

CHAPTER 11 - N.C. ALARM SYSTEMS LICENSING BOARD

SECTION .0200 - PROVISIONS FOR LICENSEES

.0208 TRAINING REQUIREMENTS FOR ALARM LICENSEES

Every Alarm licensee shall satisfactorily complete viewing of a video training session offered by the Alarm Systems Licensing Board. This video training session will be offered quarterly and must be completed by the licensee within 90 days of licensure.

Statutory Authority G.S. 74D-5(a)(2).

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources intends to amend rules cited as 15A NCAC 2H .0801 - .0810.

The proposed effective date of this action is November 2, 1992.

The public hearing will be conducted at 7:00 p.m. on July 21, 1992 at the Ground Floor Hearing Room, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Reason for Proposed Action: To add certification requirements for; groundwater programs; toxic organic analyses; certain inorganic analyses; Class I & II wastewater treatment plant labs and civil penalties for certification infractions. Certification fees are increased to fund personnel and operating expenses for the expanded program.

Comment Procedures: The Commission would also like to receive comment on the necessity to establish fees for municipal or industrial laboratories and commercial laboratories at the same level. The proposed Rules set the minimum fees at different levels.

All persons interested in this matter are invited to attend. Comments, statements, data, and other information may be submitted in writing prior to, during, or within 15 days after the hearing or may be presented orally at the hearing. Persons desiring to speak will indicate their intent at the time of registration at the hearing. Statements may be limited to three minutes at the discretion of the hearing officer. Submittals or written copies of oral statements are encouraged. Send comments to William Edwards Jr., EHNR/DEM Laboratory Section, 4405 Reedy Creek Road, Raleigh, North Carolina 27607-6445, Telephone (919) 733-3908.

This Rule affects the expenditures or revenues of State and local funds. A fiscal note was submitted to the Fiscal Research Division on April 29 1992, OSBM on April 29, 1992, N.C. League of Municipalities on May 4, 1992, and N.C. Association of County Commissioners on May 4, 1992.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0800 - LABORATORY CERTIFICATION

.0801 PURPOSE

These ~~Regulations~~ Rules set forth the requirements for state certification of commercial, municipal, and industrial laboratories ~~to~~ which perform ~~water~~ analyses required by the Water and Air Quality Reporting Act, G.S. 143-215.63 et seq; Environmental Management Commission ~~Regulations~~ Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500; ~~and~~ Environmental Management Commission ~~Regulations~~ Rules for Local Pretreatment Programs found in 15A NCAC 2H .0900; and the Environmental Management Commission Rules for Groundwater Classification and Standards found in 15A NCAC 2L .0100, .0200, and .0300.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0802 SCOPE

These Rules apply to commercial laboratories and ~~Class III and IV~~ municipal or industrial wastewater treatment plant laboratories which perform ~~water~~ analyses for persons subject to G.S. 143-215.1, 143-215.63, et seq.; ~~or~~ the Environmental Management Commission Rules for Surface Water Monitoring and Reporting found in Subchapter 2B of this Chapter, Section .0500; and Groundwater rules found in 15 NCAC 2L .0100, .0200, and .0300. These Rules also apply to all wastewater treatment plant laboratories for municipalities having Local Pretreatment Programs as ~~found~~ regulated in 15A NCAC 2H .0900. Municipal and industrial laboratories that perform analyses for ~~two~~ three or less of the parameters listed in Rule .0804 of this Section ~~are exempt~~ may be exempted from the requirements of these Rules. Written requests for the exemption will be considered by the State Laboratory on a case by case basis.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0803 DEFINITIONS

The following terms as used in this Section shall have the assigned meaning:

(1) Commercial Laboratory means any laboratory, including its agents or employees, which is seeking to analyze or is analyzing ~~water~~ samples for others for a fee.

(2) State means the North Carolina Division of Environmental Management of the Department of Environment, Health, and Natural Resources, ~~and Community Development,~~ or its successor.

(3) State Laboratory means the Laboratory ~~branch~~ Section of the North Carolina Division of Environmental Management, or its successor.

(4) Unacceptable results on performance evaluation samples or split samples are those that vary by more than ~~plus or minus 25 percent of the value~~ the 99 percent confidence interval or three standard deviations as determined by the ~~State Laboratory~~ United States Environmental Protection Agency (EPA) or the State Laboratory may adopt specific variance limits for a particular sample or parameter.

(5) Certification is a declaration by the State that the personnel, equipment, records, quality control procedures, and methodology cited by the applicant are accurate and that the applicant's proficiency has been considered and found to be acceptable.

(6) Decertification is loss of certification.

(7) Recertification is reaffirmation of certification.

(8) Municipal Laboratory means a laboratory, including its agents or employees, operated by a municipality or other local government to analyze samples from its wastewater treatment plant(s).

(9) Industrial Laboratory means a laboratory, including its agents or employees, operated by an industry to analyze samples from its wastewater treatment plant(s).

(10) Pretreatment Program means a program of waste pretreatment requirements set up in accordance with 15A NCAC 2H .0900 and approved by the Division of Environmental Management.

(11) Inaccurate data or other information means data or information that is in any way incorrect, mistaken or not accurate.

(12) Falsified data or information means data or information which has, for whatever reason, been knowingly made false or untrue by alteration, fabrication, omission, substitution, or mischaracterization.

(13) Subcontracting samples means one commercial laboratory sends client samples to another commercial laboratory for analyses.

(14) Analytical Chemistry experience means experience analyzing samples in a chemistry laboratory or supervising a chemistry laboratory that analyzes samples.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0804 PARAMETERS FOR WHICH CERTIFICATION MAY BE REQUESTED

(a) Commercial laboratories ~~need~~ are required to obtain certification ~~only~~ for parameters which will be reported by the client to comply with ~~the monitoring~~ State surface water monitoring groundwater, and pretreatment ~~regulations.~~ Rules. Municipal and Industrial Laboratories ~~need~~ are required to obtain certification ~~only~~ for parameters which will be reported to the State to comply with State surface water monitoring, groundwater, ~~monitoring~~ and pretreatment ~~regulations.~~ Rules.

(b) A listing of ~~selected~~ certifiable inorganic parameters follows:

(1) BOD
(2) COD
(3) Chloride
(4) Chlorine, total residual
(5) ~~(1)~~ Coliform, fecal MF
(6) ~~(5)~~ Coliform, total MF
(7) ~~(6)~~ Coliform, fecal tube
(8) ~~(7)~~ Coliform, total tube

(9) Color, Platinum Cobalt
(10) Color, ADMI
(11) Conductivity
(12) ~~(8)~~ Cyanide
(13) ~~(9)~~ Fluoride
~~(10) Grease and Oil~~
(14) ~~(11)~~ Hardness, total
(15) ~~(12)~~ MBAS
(16) ~~(13)~~ Metals, Group I - regular level - Atomic Absorption Flame (AAF), Inductively Coupled Plasma (ICP), or colormetric, if applicable.
(A) ~~(a)~~ aluminum
(B) arsenic - ICP or colormetric only
(C) ~~(b)~~ beryllium
(D) ~~(c)~~ cadmium
(E) ~~(d)~~ chromium, total
(F) ~~(e)~~ cobalt
(G) ~~(f)~~ copper
(H) ~~(g)~~ iron
(I) ~~(h)~~ lead
~~(i) maganese~~
(J) manganese
(K) ~~(j)~~ nickel
(L) selenium - ICP only
(M) vanadium
(N) ~~(k)~~ zinc
(17) ~~(14)~~ Metals, Group II - regular level - Atomic Absorption Flame (AAF), Inductively Coupled Plasma (ICP), or colormetric, if applicable.
(A) ~~(a)~~ antimony
(B) ~~(b)~~ silver
(C) ~~(c)~~ thallium
(18) Metals, Group I - low level - Atomic Absorption Graphite Furnace (GF) or hydride
(A) aluminum
(B) arsenic - GF or hydride
(C) beryllium
(D) cadmium
(E) chromium, total
(F) cobalt
(G) copper
(H) iron
(I) lead
(J) manganese
(K) nickel
(L) selenium - GF or hydride
(M) vanadium
(N) zinc
(19) Metals, Group II - low level - Atomic Absorption Graphite Furnace (GF)
(A) antimony
(B) silver
(C) thallium
~~(15) Arsenic~~
(20) ~~(16)~~ Barium
(21) ~~(17)~~ Mercury
~~(18) Selenium~~
(22) ~~(19)~~ Ammonia nitrogen
(23) ~~(20)~~ Total Kjeldahl nitrogen (TKN)
(24) ~~(21)~~ Nitrate plus nitrite nitrogen
(25) Nitrate nitrogen
(26) Nitrite nitrogen
(27) ~~(22)~~ Total phosphorus
(28) ~~(23)~~ Orthophosphate
(29) Oil and Grease - Water
(30) Oil and Grease - EPA Method 9071
(31) ~~(24)~~ pH
(32) ~~(25)~~ Phenols
(33) Residue, settleable
(34) ~~(26)~~ Residue, total
(35) Residue, total dissolved 180°C
(36) ~~(27)~~ Residue, total suspended
(37) Sulfate
(38) Sulfide
(39) Sulfite
(40) Total Organic Carbon (TOC)
(41) ~~(28)~~ Turbidity
(42) TCLP Extraction EPA Method 1311 - Metals and/or Organics. Must be accompanied by the appropriate metals and organics certifications.

(c) Each of the twenty analytical categories listed in this Paragraph will be considered a certifiable parameter. A listing of certifiable organic parameters follows:

(1) Purgeable Halcocarbons - EPA method 601
- Standard Methods 6230B, 6230D
- EPA method 5030 plus 8010
- EPA method 5030 plus 8021
(2) Purgeable Aromatics - EPA method 602
- Standard Methods 6220B, 6230D
- EPA method 5030 plus 8020
- EPA method 5030 plus 8021
(3) Acrolein, Acrylonitrile, Acetonitrile - EPA method 603
- EPA method 5030 plus 8030
(4) Phenols - EPA Method 604
- Standard Methods 6420B
- EPA Method 8040 with 3500 series extractions
(5) Benzidines - EPA Method 605
(6) Phthalate Esters - EPA Method 606
- EPA Method 8060 or 8061 with 3500 series extractions
(7) Nitrosamines - EPA Method 607
- EPA Method 8070 with 3500 series extractions
(8) Organochlorine Pesticides and PCBs - EPA method 608
- Standard Methods 6630B, 6630C
- EPA method 8080, 8081 with 3500 series extractions

(9) Nitroaromatics and Isophorone - EPA method 609
- EPA method 8090 with 3050 series extractions

(10) Polynuclear Aromatic Hydrocarbons - EPA method 610
- Standard Methods 6440B
- EPA method 8100 with 3500 series extractions

(11) Haloethers - EPA method 611
- EPA method 8110 with 3500 series extractions

(12) Chlorinated Hydrocarbons - EPA method 612
- EPA methods 8120, 8121 with 3500 series extractions

(13) Purgeable organics - EPA methods 624, 1624
-Standard Methods 6210B, 6210D
- EPA method 5030 plus 8240
- EPA method 5030 plus 8260

(14) Base/Neutral and Acid Organics - EPA methods 625, 1625
- Standard Methods 6410B
- EPA methods 8250, 8270 with 3500 series extractions

(15) Chlorinated Acid Herbicides - Standard methods 509B, 6640B
- EPA methods 8150, 8151 with 3500 series extractions

(16) Organophosphorus Pesticides - EPA methods 8140, 8141 with 3500 series extractions

(17) Total Petroleum Hydrocarbons - (TPH) California GC Method with EPA method 5030 and 3550 extractions

(18) Nonhalogenated Volatile Organics - EPA Method 8015A

(19) N-Methylcarbamates - EPA method 8318
- EPA Method 632

(20) 1,2, Dibromoethane (EDB) - EPA Method 504

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0805 CERTIFICATION AND RENEWAL OF CERTIFICATION

(a) Prerequisites and requirements for Certification. The following requirements must be met prior to certification. Once certified, failure to comply with any of the following items will be a violation of certification requirements.

(1) Laboratory Procedures. Analytical methods, sample preservation, sample containers and sample holding times shall conform to those requirements found in 40 CFR-136.3, Federal Register, Vol. 49, p. 43234 (October 26, 1984); ~~and,~~ or Federal Register, Vol. 50, p. 690 (January 4, 1985); ~~as submitted by the Environmental Protection Agency.~~ or Federal Register, Vol. 51, p. 23692 (January 30, 1986); or Federal Register, Vol. 56 p. 50758 (October 8, 1991) for wastewater and surface water analyses; and 15A NCAC 2L .0112 of the State Groundwater rules for groundwater, soils, sediments, and sludge analyses. All samples must meet the preservatives and holding time requirements in the October 26, 1984, Federal Register. These and subsequent amendments and editions are incorporated by reference. This material is available for inspection at the State Laboratory, 4405 Reedy Creek Road, Raleigh, North Carolina 27607. Copies of the Federal Register may be obtained by requesting a copy of the Code of Federal Regulations, 40 CFR-136.3, parts 100-149 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost of thirty dollars ($30.00). Copies of 15A NCAC 2L may be obtained from EHNR, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, N.C. 27626-0535 at no charge. The method for total petroleum hydrocarbons shall be the California Gas Chromatograph Method, Eisenberg, D.M., and Others, 1985, Guidelines for addressing fuel leaks: California Regional Quality Control Board San Francisco Bay Region, 43 pp. or EHNR Guidelines for Remediation of Soil Contaminated by Petroleum. The method for N-Methylcarbamates shall be EPA Method 8318 or EPA Method 632. The method for low level 1,2- Dibromoethane (EDB) shall be EPA method 504. Other laboratory procedures as may be approved by the Director of the Division of Environmental Management may be used.

(2) Performance Evaluations. Each laboratory must demonstrate ~~satisfactory~~ acceptable performance on evaluation samples submitted by the State Laboratory or EPA.

(A) Municipal and Industrial laboratories must participate in the annual Environmental Protection Agency Discharge Monitoring Report Quality Assurance (EPA DMR QA) Study by analyzing the samples supplied by EPA and reporting

data produced. The State Laboratory will submit samples to any laboratory not eligible to receive the EPA samples.

(B) Commercial laboratories must participate in the EPA Water Pollution (WP) Studies by analyzing the samples supplied by EPA and reporting data produced. The State Laboratory will submit samples to any laboratory not eligible to receive the EPA samples. When two samples for the same parameter are submitted and analyzed at the same time, an unacceptable result on one or both samples will be considered the first unacceptable result for certification purposes and a rerun sample will be submitted.

(C) Laboratories requesting initial certification must submit an acceptable performance sample result for each parameter for which performance samples are available. Laboratories that submit two unacceptable results for a particular parameter must then submit two consecutive acceptable results for that parameter prior to initial certification.

(D) If performance samples are not available for a parameter, certification for that parameter will be based on the proper use of the approved procedure, the on-site inspection, and adherence to the other requirements in this Section. Analysis of split samples may also be required.

(E) In the Gas Chromatography, Liquid Chromatography, or Gas Chromatograph Mass Spectrometer Categories, a laboratory's performance on a specific analytical method may be determined by the laboratory's ability to acceptably analyze selected indicator chemicals as specified by the State Laboratory during a performance evaluation.

(3) Supervisory Requirements.

(A) The supervisor of a commercial laboratory must have a minimum of a B.S. or A.B. degree from an accredited college or university in chemistry or closely related science curriculum plus a minimum of two years laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of four years experience in analytical chemistry. ~~Non-degree supervisors must have at least six years laboratory experience.~~

(B) The supervisor of a municipal or industrial waste water treatment plant laboratory must have a minimum of a B.S. or A.B. degree from an accredited college or university in chemistry or closely related science curriculum plus a minimum of six months laboratory experience in analytical chemistry, or a two year associate degree from an accredited college, university, or technical institute in chemistry technology, environmental sciences, or closely related science curriculum plus a minimum of two years experience in analytical chemistry. Non-degree supervisors must have at least six years laboratory experience in analytical chemistry.

(C) All laboratory supervisors are subject to review by the State Laboratory. One person may serve as supervisor of no more than two laboratories. The supervisor shall provide personal and direct supervision of the technical personnel and be held responsible for the proper performance and reporting of all analysis made for these ~~Regulations.~~ Rules. The supervisor must work in the laboratory or visit the laboratory once each day. If the supervisor is to be absent, the supervisor shall arrange for a substitute capable of insuring the proper performance of all laboratory procedures, however, the substitute supervisor can not be in charge for more than three consecutive weeks. Existing laboratory supervisors that do not meet the requirements ~~in this Paragraph~~ of this Rule may be accepted after review by the State Laboratory and meeting all other certification requirements. Previous laboratory-related performance will be considered when reviewing the qualifications of a potential laboratory supervisor.

(4) Laboratory Manager. Each laboratory must designate a laboratory manager and include his name and title on the application for certification. The laboratory manager shall be administratively above the laboratory supervisor and will be in responsible charge in the event the laboratory supervisor ceases to be employed by the laboratory and will be responsible for filling the laboratory supervisor position with an acceptable replacement. At commercial laboratories, where the owner is the laboratory supervisor, the laboratory manager and laboratory supervisor may be the same person if there is no one administratively above the laboratory supervisor.

(5) ~~(4)~~ Application. Each laboratory requesting state certification or certification renewal shall submit an application in duplicate to the State Laboratory. ~~Each application will be reviewed to determine the adequacy of personnel, equipment, records, quality control procedures, and methodology.~~ After receiving a completed application and prior to issuing certification, a representative of the State Laboratory may visit each laboratory to verify the information in the application and the adequacy of the laboratory.

(6) ~~(5)~~ Facilities and equipment. Each laboratory requesting certification must contain or be equipped with the following except Class I and II wastewater treatment plants may be exempted from Part (A), (B), or (E) of this Subparagraph if they are performing three or less of the certifiable parameters:

(A) A minimum of 150 sq. ft. of laboratory space;

(B) A minimum of 12 linear feet of laboratory bench space;

(C) A sink with hot and cold water;

(D) Adequate lighting, cooling, and heating;

(E) An analytical balance capable of weighing 0.1 mg, mounted on a heavy shock proof table;

(F) A refrigerator of adequate size that will maintain temperature of ~~4°C,~~ four degrees Celsius;

(G) ~~An EPA approved or a current copy of "Standard Methods for the Analysis of Water and Wastewater" or EPAs "Methods for Chemical Analysis of Water and Wastes";~~ A copy of each approved analytical procedure being used in the laboratory;

(H) A source of distilled or deionized water that will meet the minimum criteria of the approved methodologies;

(I) Glassware, chemicals, supplies, and equipment required to perform all analytical procedures included in their certification.

(7) ~~(6)~~ Analytical Quality Control Program. Each laboratory shall develop and maintain a document outlining the analytical quality control practices used for the parameters included in their certification. Supporting records shall be maintained as evidence that these practices are being effectively carried out. The quality control ~~program~~ document shall be available for inspection by the State Laboratory. ~~and include~~ The following are requirements for certification and must be included in each certified laboratory's quality control program.

(A) All analytical ~~quality control~~ data pertinent to each certified analysis must be filed in an orderly manner so as to be readily available for inspection upon request.

(B) Excluding Oil and Grease, all residue parameters, TCLP extractions, residual chlorine, and coliform, analyze ~~one duplicate sample and~~ one known standard in addition to calibration standards each day samples are analyzed to document ~~precision and~~ accuracy. Analyze one suspended residue, one dissolved residue, one residual chlorine and one oil and grease standard quarterly. For residual chlorine, all calibration standards required by the approved procedure in use and by EPA must be analyzed.

(C) Excluding Oil and Grease, analyze 10 percent of all samples in duplicate to document precision. Laboratories analyzing less than ten samples per month must analyze at least one duplicate each month samples are analyzed.

(D) ~~(C)~~ Any quality control procedures required by a particular approved method shall be considered as required for certification for that analysis.

(E) ~~(D)~~ All quality control requirements as set forth by the State Laboratory.

(F) ~~(E) A corrective action policy requiring that at~~ Any time quality control results indicate an analytical problem, ~~resolve~~ the problem ~~and rerun any samples involved.~~ must be resolved and any samples involved must be rerun if the holding time has not expired.

(G) ~~(F) A policy requiring that~~ All analytical records must be ~~maintained~~ available for a period of three years.

(H) All laboratories must use printed laboratory bench worksheets that include a space to enter the signature or initials of the analyst, date of analyses, sample identification, volume of sample analyzed, value from the measurement system, factor and final value to be reported and each item must be recorded each time samples are analyzed. The date and time BOD and coliform samples are removed from the incubator must be included on the laboratory worksheet.

(I) For analytical procedures requiring analysis of a series of standards, the concentrations of these standards must

bracket the concentration of the samples analyzed. One of the standards must have a concentration equal to the laboratory's lower reporting concentration for the parameter involved. For metals by AA or ICP, a series of at least three standards must be analyzed along with each group of samples. For colormetric analyses, a series of five standards or standards as set forth in the analytical procedure must be analyzed to establish a standard curve. The curve must be updated as set forth in the standard procedures, each time the slope changes by more than 10 percent at mid-range, each time a new batch of chemicals is used, each time a new stock standard is prepared, or at least every 12 months. Each analyst performing the analytical procedure must produce a standard curve.

(J) Each day an incubator, oven, waterbath or refrigerator is used, the temperature must be checked, recorded, and initialed. During each use, the autoclave maximum temperature and pressure must be checked, recorded, and initialed.

(K) The analytical balance must be checked with one clase S standard weight each day used and at least three standard weights quarterly. The values obtained must be recorded in a log and initialed by the analyst.

(L) Chemicals must be dated when received and when opened. Reagents must be dated and initialed when prepared.

(M) A record of date collected, time collected, sample collector, and use of proper preservatives must be maintained.

(N) At any time, a laboratory receives samples which do not meet sample collection, holding time, or preservation requirements, the laboratory must notify the sample collector or client and secure another sample if possible. If another sample cannot be secured, the original sample may be analyzed but the results reported must be qualified with the nature of the infraction(s) and the laboratory must notify the State Laboratory about the infraction(s). The notification must include a statement indicating whether or not the problem has been resolved for future samples.

(O) All thermometers must meet National Institute of Standards and Technology (NIST) specifications for accuracy or be checked against a NIST traceable thermometer and proper corrections made.

(8) ~~(7)~~ Decertification Requirements. Municipal and industrial laboratories that cannot meet initial certification requirements must comply with the Decertification Requirements as set forth in Rule .0807 ~~(c)~~ (e) of this Section.

(b) Issuance of Certification.

(1) In the absence of substantial deficiencies, certification will be issued by the Director, Division of Environmental Management, Department of Environment, Health, and Natural Resources, ~~and Community Development,~~ or his delegate, for each of the applicable parameters requested.

(2) Initial certifications will be issued for prorated time periods to schedule all certification renewals on the first day of January.

(3) Initial certification shall be valid for up to three years from date of issue.

(c) Maintenance of Certification.

(1) To maintain certification for each parameter, a certified laboratory must analyze up to ~~three~~ five performance evaluation samples per parameter per year submitted by the State Laboratory or EPA as an unknown. Laboratories submitting unacceptable results on a performance evaluation sample may be required to analyze more than ~~three~~ five samples per year.

(2) In addition, the State Laboratory may request that samples be split into two equal representative portions, one part going to the state and the other to the certified laboratory for analysis.

(3) The State laboratory may submit or require clients to submit blind performance samples or split samples under direction of State Laboratory personnel.

(4) ~~(3)~~ A certified laboratory will be subject to periodic announced or unannounced inspections during the certification period and shall make time and records available for inspections and must supply copies of records for any investigation upon written request by the State Laboratory.

~~(4) The State Laboratory will maintain a list of certified commercial laboratories and the parameters for which the laboratories have been certified. The list will be revised every six months.~~

~~(5) The State Laboratory will maintain a list of certified municipal and industrial laboratories and the parameters for which the laboratories have been certified. The list will be revised every six months.~~

(5) ~~(6)~~ A certified laboratory must provide the State Laboratory with written notice of laboratory supervisor or laboratory manager changes within 30 days of such changes.

(6) A certified laboratory must submit written notice of any changes of location, ownership, address, name, or telephone number within 30 days of such changes.

(d) Certification Renewals.

(1) Applications for certification renewal ~~will~~ must be submitted in duplicate to the State Laboratory 30 days in advance of expiration of certification.

(2) Certification renewals of laboratories shall be issued for up to three years. ~~with the exception that renewals for existing certified laboratories may be prorated to make all certification renewals due on the first day of January.~~

(e) Data reporting.

(1) Certified commercial laboratories must make data reports to their clients that are signed by the laboratory supervisor. This duty may be delegated in writing; however, the responsibility shall remain with the supervisor.

(2) Whenever a certified commercial laboratory refers or subcontracts samples to another certified laboratory for analyses, the referring laboratory must supply the date and time samples were collected to insure holding times are met.

The initial client requesting the analyses must receive the original or a copy of the report made by the laboratory that performs the analyses.

(f) ~~(e)~~ Discontinuation of Certification

(1) A laboratory may discontinue certification for any or all parameters by making a written request to the State Laboratory.

(2) After discontinuation of certification, a laboratory may be recertified by meeting the requirements for initial certification, however, laboratories that discontinue certification during any investigation shall be subject to Rule .0808 of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0806 FEES ASSOCIATED WITH CERTIFICATION PROGRAM

~~(a) Certification and Certification Renewal Fees. Before being granted certification or certification renewal, laboratories shall pay to the state a fee of twenty dollars ($20.00) for each parameter for which certification is requested, however, the minimum fee will be two hundred fifty dollars ($250.00).~~

~~(b) Certification Maintenance Fees. After certification or certification renewal has been issued certified laboratories will pay to the state a certification maintenance fee of two hundred fifty dollars ($250.00) each year. Certification maintenance fees will not be required for those years in which certification or certification renewal are required. These fees are due on or before the first day of January or the certification anniversary date.~~

(a) Municipal and industrial laboratories must pay an annual fee of fifty dollars ($50.00) for each inorganic parameter plus one hundred dollars ($100.00) for each organic parameter; however, the minimum fee will be one thousand dollars ($1,000.00) per year.

(b) Commercial laboratories located in North Carolina must pay an annual fee of fifty dollars ($50.00) for each inorganic parameter plus one hundred dollars ($100.00) for each organic parameter; however, the minimum fee will be two thousand dollars ($2,000.00) per year.

(c) Commercial laboratories located outside of North Carolina must pay an annual fee of seventy-five dollars ($75.00) for each inorganic parameter plus one hundred and fifty dollars ($150.00) for each organic parameter; however, the minimum fee will be three thousand five hundred dollars ($3,500.00) per year.

(d) ~~(c)~~ Prior to receiving initial certification a laboratory must pay the appropriate fee as specified in Paragraph (a), (b), or (c) of this Rule. Initial certification fees ~~may~~ will be prorated ~~in order~~ on a semi-annual basis to make all certification renewals due on the first day of January.

(e) Once certified, a laboratory must pay the full annual parameter fee for each parameter added to their certificate.

(f) A laboratory decertified for all parameters must pay initial certification fees prior to recertification.

(g) A laboratory decertified for one or more parameters must pay a fee of one hundred dollars ($100.00) for each parameter for which it was decertified prior to recertification.

(h) ~~(d)~~ Out-of-state laboratories shall reimburse the state for actual travel and subsistence costs incurred in certification and maintenance of certification.

(i) Annual certification fees are due by December 31 of each year.

(j) A fifty dollars ($50.00) late payment fee must be paid when annual certification fees are not paid by the date due.

(k) For laboratories seeking initial certification or recertification, the State Laboratory will pro-

vide two performance samples for each parameter at no charge; however, a fee of one hundred dollars ($100.00) per sample will be charged for all samples after the first two have been supplied.

(l) Metals group I and metals group II will be considered as single parameters when calculating fees.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0807 DECERTIFICATION AND CIVIL PENALTIES

(a) Laboratory Decertification. ~~Once certified,~~ A laboratory may ~~lose its certification~~ be decertified for any or all parameters ~~by failing to:~~ for up to one year for any of the following infractions:

(1) Failing to maintain the facilities, or records, or personnel, or equipment, or quality control program as set forth in the application, and these ~~Regulations;~~ Rules; or

(2) ~~Submit truthful and accurate~~ Submitting inaccurate data ~~reports;~~ or other information; or

(3) Failing to pay required fees by the date due; or

(4) Failing to discontinue supplying data for clients or programs described in Rule .0802 of this Section during periods when a ~~parameter~~ decertification is in effect; or

(5) Failing to submit a split sample to the State Laboratory as requested; or

(6) Failing to use approved methods of analysis; or

(7) Failing to report laboratory supervisor or equipment changes within 30 days of such changes; or

(8) Failing to report analysis of performance evaluation samples submitted by EPA or the State Laboratory within the specified time limits; or

(9) Failing to allow an inspection by an authorized representative of the State laboratory; or

(10) Failing to supply analytical data requested by the State Laboratory; or

(11) Failing to submit a renewal application 30 days prior to the expiration date of the certificate; or

(12) Failing to meet required sample holding times; or

(13) Failing to respond to requests for information by the date due; or

(14) Failing to comply with any other terms, conditions, or requirements of this Section or of a laboratory certification.

(b) Parameter Decertification. ~~Once certified,~~ A laboratory may ~~loose its certification for a~~ receive a parameter decertification for ~~by~~ failing to:

(1) Obtain acceptable results on two consecutive blind and/or announced performance evaluation samples submitted by EPA or the State Laboratory; or

(2) Obtain acceptable results on ~~three~~ two consecutive blind and/or announced split samples that have also been analyzed by the State Laboratory. ~~or~~

~~(3) Submit a split sample to the State Laboratory as requested; or~~

~~(4) Use approved methods of analysis; or~~

~~(5) Report equipment changes that would affect its ability to perform the test within 30 days of such changes; or~~

~~(6) Report analysis of performance evaluation samples submitted by the State Laboratory within 30 days of receipt; or~~

~~(7) Maintain records and perform quality controls as set forth by these Regulations and the State Laboratory for a particular parameter; or~~

~~(8) Maintain equipment required for a particular parameter.~~

(c) Falsified data. A laboratory that submits falsified data or other information may be decertified for all parameters for up to two years.

(d) Decertification Factors. In determining a period of decertification, the Director shall recognize that any harm to the natural resources of the State arising from violations of Rules in this Section may not be immediately observed and may be incremental or cumulative with no damage that can be immediately observed or documented. Decertification for periods up to the maximum may be based on any and or a combination of the following factors to be considered:

(1) The degree and extent of harm, or potential harm, to the natural resources of the State or to the public health, or to private property resulting from the violation;

(2) The duration, and gravity of the violation;

(3) The effect, or potential effect, on ground or surface water quantity or quality or on air quality;

(4) Cost of rectifying any damage;

(5) The amount of money saved by noncompliance;

(6) As to violations other than submission of falsified data or other information, whether the violation was committed willfully or intentionally;

(7) The prior record of the laboratory in complying or failing to comply with any

State and federal laboratory rules and regulations;

(8) The cost to the State of investigation and enforcement procedures;

(9) Cooperation of the laboratory in discovering, identifying, or reporting the violation;

(10) Measures the laboratory implemented to correct the violation or abate the effect of the violation, including notifying any affected clients;

(11) Measures the laboratory implemented to correct the cause of the violation;

(12) Any other relevant facts.

(e) ~~(c)~~ Decertification Requirements.

(1) A decertified laboratory is not to analyze samples for the decertified parameters for programs described in Rule .0802 of this Section or clients reporting to these programs.

(2) A decertified commercial laboratory must supply written notification of the decertification to clients with Division of Environmental Management reporting requirements. Within 30 days, the decertified laboratory must supply the State Laboratory with a list of clients involved and copies of the notices sent to each.

(3) ~~(2)~~ A ~~decertified~~ commercial laboratory that has received a parameter decertification may ~~must~~ make arrangements to supply analysis through ~~a~~ another certified laboratory during any decertification periods ~~or notify clients that the analysis cannot be supplied.~~ The decertified laboratory must supply the State Laboratory with the name of the laboratory to be used. ~~and the client(s) involved.~~

(4) A commercial laboratory decertified for all parameters cannot subcontract samples for analyses to other certified laboratories during the decertification period.

(5) ~~(3)~~ A decertified municipal or industrial laboratory must ~~make arrangements to~~ have its ~~their~~ samples analyzed by another certified laboratory during any decertification period and supply the State Laboratory with the name of the certified laboratory to be used.

(f) Civil Penalties. Civil penalties may be assessed against a laboratory which violates or fails to act in accordance with any of the terms, conditions, or requirements of the Rules in this Section or of a laboratory certification. A laboratory is subject to both civil penalties and decertification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 143-215.6A.

.0808 RECERTIFICATION

(a) A laboratory decertified in accordance with Rule .0807(a) of this Section ~~because of failure to maintain sufficient or adequate facilities, or laboratory supervisor, or records, or equipment, or quality control program, or failure to pay required fees~~ may be recertified ~~after 30 days~~ at the end of the decertification period by showing to the satisfaction of the State Laboratory that it has corrected the deficiency(ies).

(b) A laboratory decertified for a parameter due to unacceptable results on two consecutive performance evaluation samples submitted by EPA or the State Laboratory, or on ~~three~~ two consecutive split samples may be recertified after 60 days by reporting acceptable results on two consecutive performance evaluation samples ~~similar to those for which approval was lost~~ submitted by the State Laboratory. Recertification samples may be requested at any time, however, recertification must be requested in writing at the end of the 60 day period immediately following the date of decertification.

(c) A laboratory decertified for submitting falsified ~~reports loses certification for all parameters and shall not be considered for any certification for a one-year period.~~ data or other information may be recertified at the end of the decertification period by demonstrating compliance with all requirements of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0809 RECIPROCITY

(a) Laboratories certified under other state certification programs may be given reciprocity certification where such programs meet the requirements of ~~these Regulations.~~ this Section. In requesting reciprocity certification, laboratories shall include with the application required by ~~Regulation .0805(a)~~ Rule .0805(a) of this Section a copy of their certification and Regulation from the certifying agency.

(b) Laboratories certified ~~on the basis of program equivalency~~ by reciprocity shall pay the fees required by ~~Regulation .0806~~ Rule .0806 of this Section.

(c) Any time that a laboratory has its certification with the reciprocal program discontinued for any reason, certification under this Section will be terminated at the same time.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10).

.0810 ADMINISTRATION

(a) The Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources, ~~and Community Development,~~ or his delegate, is authorized to issue certification, to reject applications for certification, to renew certification, to issue recertification, to issue decertification, and to issue reciprocity certification.

(b) Appeals. In any case where the Director of the Division of Environmental Management, Department of Environment, Health, and Natural Resources, ~~and Community Development~~ or his delegate denies certification, or decertifies a laboratory, the laboratory may appeal to the N.C. Office of Administrative Hearings in accordance with Chapter 150B of the General Statutes.

(c) The State Laboratory will maintain a list of certified commercial laboratories. The list will be reprinted every six months.

(d) Implementation of the November, 1992 changes to this Section.

(1) All requirements of the Rules in this Section are effective on the effective date of the amendments.

(2) Requests for the new parameters may be made by submitting a properly completed application form.

(3) Excluding Class I and II wastewater treatment plant laboratories not currently certified, laboratories subject to the amended requirements of these Rules must submit a completed application within three months of the effective date of the amendments. Laboratories submitting an acceptable application for any of the newly certifiable parameters may analyze samples for these new parameters until the State Laboratory has issued or denied certification.

(4) Class I and II wastewater treatment plant laboratories not currently certified must submit an application by July 1, 1995, or as requested by the State Laboratory. After submitting an acceptable application, these laboratories may continue to analyze samples until the State Laboratory has issued or denied certification.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(10); 150B-23.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Division of Environmental Management intends to amend rule(s) cited as 15A NCAC 2M .0201.

The proposed effective date of this action is November 2, 1992.

Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): Any person(s) requesting a public hearing on the proposed rule must submit such a request in writing within 15 days after publication of the notice. The request must be submitted to Mrs. Vega M. George, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535. Mailed written requests must be received by July 16, 1992.

Reason for Proposed Action: To permit the commitment of loan funds through the Federally seeded State Revolving Fund program to finance wastewater collection sewers.

Comment Procedures: Interested persons desiring to make written comments concerning this Rule should send their typewritten statement to Mrs. Vega M. George, Division of Environmental Management, P.O. Box 29535, Raleigh, NC 27626-0535. Mailed written comments must be received by July 31, 1992.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2M - NORTH CAROLINA WATER POLLUTION CONTROL REVOLVING FUND

SECTION .0200 - APPLICABLE ACTIVITIES

.0201 LOAN ACTIVITIES

(a) Loans shall be available for the construction of publicly owned wastewater treatment works that appear on the state's priority list and as they are defined in Section 212 of the Federal Clean Water Act. ~~except for wastewater collection sewers.~~

(b) Loans may be available for implementation of a non-point source pollution control management program under Section 319 of the Federal Clean Water Act; and

(c) Loans may be available for development and implementation of an estuary conservation and management plan under Section 320 of the Federal Clean Water Act.

Statutory Authority G.S. 159G-5(c); 159G-15.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Coastal Management intends to amend rule(s) cited as 15A NCAC 7H .0305, .0308, .0310.

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

The public hearing will be conducted at 4:00 p.m. on July 23, 1992 at the Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, N.C.

Reasons for Proposed Actions:

15A NCAC 7H .0305 - *Amendments to this Rule consist of amending the definition of "frontal dune" by eliminating a restriction on man-made dunes and a reference to the primary dune.*

15A NCAC 7H .0308, .0310 - *Amendments to these Rules are to clarify development guidelines for the Ocean Hazard System Area of Environmental Concern.*

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 July 31, 1992. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0300 - OCEAN HAZARD AREAS

.0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(1) the growth of vegetation occurs, or

(2) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(b) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equalled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).

(c) Frontal Dunes. ~~In areas where there is a primary dune, that dune shall be deemed to be the frontal dune. Where there is no primary dune, the~~ The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value. ~~Man made mounds seaward of the natural line of frontal dunes and dunes created after June 1, 1979 shall not be considered to be frontal or primary dunes.~~

(d) General Identification. For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval, a readily identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in .0304 of this Section. Natural or man-made landmarks should be considered in delineating this area.

(e) "Vegetation Line" means the first line of stable natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. It is generally located at or immediately oceanward of the seaward toe of the frontal dune and/or erosion escarpment. In areas where there is no stable natural vegetation present, this line shall be established by connecting or extending the lines from the nearest adjacent vegetation on either side of the site and by extrapolating (by either on-ground observation or by aerial photographic interpretation) to establish the line.

(f) "Erosion Escarpment" means normal vertical drop in the beach profile caused from high tide and/or storm tide erosion.

(g) Measurement line means the line from which the ocean front setback as described in .0306(a) of this Subchapter is measured in the unvegetated beach area of environmental concern as described in .0304(a)(4) of this Subchapter. Procedures for determining the measurement line

shall be adopted by the Commission for each area where such a line is designated. These procedures shall be available from any local permit officer or the Division of Coastal Management.

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

.0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) Preferred erosion control measures shall be beach nourishment projects and relocation. Alternative approaches will be allowed where the applicant can show that such measures are necessary to provide adequate protection. Comprehensive shoreline management shall be preferred over small scale methods.

(B) Erosion control structures which cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach are prohibited. Such structures include, but are not limited to, wooden bulkheads, seawalls, rock or rubble revetments, wooden, metal, concrete or rock jetties, groins and breakwaters; concrete-filled sandbags and tire structures.

(C) Rules concerning the use of oceanfront erosion control measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.

(D) Erosion control measures which will interfere with public access to and use of the ocean beaches are prohibited.

~~(E) Erosion control measures which significantly increase erosion on adjacent properties are prohibited.~~

(E) ~~(F)~~ All oceanfront erosion control activities, other than beach bulldozing, placement of sandbag structures or artificial seaweed shall demonstrate sound engineering for their planned purpose and shall be certified by a licensed engineer prior to being permitted.

(F) ~~(G)~~ Shoreline erosion control projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for important wildlife species unless adequate mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.

(G) ~~(H)~~ Project construction shall be timed to have minimum significant adverse effect on biological activity.

(H) ~~(I)~~ The applicant shall notify all littoral property owners within 100′ of the boundaries of the project site and no permit shall be issued until the property owner(s) has signed the notice form or until a reasonable effort has been made to serve notice on the owner(s) by registered or certified mail.

(I) ~~(J)~~ All oceanfront erosion control projects shall be consistent with the general policy statements in 15A NCAC 7M .0200.

(J) ~~(K)~~ Prior to beginning any beach nourishment or structural erosion control project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

(K) ~~(L)~~ All permitted erosion control devices shall be marked so as to allow identification for monitoring and potential cleanup purposes.

(L) ~~(M)~~ Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:

(i) the erosion control structure is necessary to protect a bridge which provides the only existing road access to a substantial population on a barrier island; that is vital to public safety; and is imminently threatened by erosion;

(ii) the preferred erosion control measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control measure will have no adverse impacts on adjacent properties in private ownership and will have minimal impacts on public use of the beach.

(2) Temporary Erosion Control Structures

(A) Permittable temporary erosion control structures include only the following:

(i) Bulkheads or similar structures made of sandbags or comparable materials;

(ii) Low sandbag groins or sandbag sediment trapping structures above mean high water provided they are continuously buried by suitable sand from an outside source.

(B) Temporary erosion control structures as defined in (A) of this Paragraph may be used only to protect imminently threatened structures. Normally, a struc-

ture will be considered to be imminently threatened if its foundation is less than 20 feet away from the erosion scarp.

(C) Shore-parallel temporary erosion control structures must not extend more than 20 feet past the end of the structure to be protected. The erosion control structure also must not come closer than 15 feet to the applicant's side property lines unless the application is part of a joint project with neighbors trying to protect similarly threatened structures or unless the applicant has written permission from the affected property owner. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the property to be protected.

(D) If a temporary erosion control structure interferes with public access and use of the ocean beach, or if it requires burial but remains continuously exposed for more than six months it must be removed by the permittee within 30 days of notification by the Coastal Resources Commission or its representatives. In addition, the permittee shall be responsible for the removal of remnants of all or portions of the temporary erosion control structure damaged by storms or continued erosion.

(E) Once the temporary erosion control structure is determined to be unnecessary due to a natural reversal of the eroding condition, relocation of the threatened structure, or adoption of an alternate erosion control method, any remnants of the temporary erosion control structure exposed seaward of or on the beach must be removed by the permittee within 30 days of notification by the Coastal Resources Commission or its representatives.

(F) Temporary sandbag bulkheads permittable by this Rule shall be of a size and configuration consistent with their allowed purpose. Such structures may be appropriately anchored and shall not exceed a width at their base of three sandbags or a maximum of fifteen feet. In no case shall the structure extend below the mean high water line.

(3) Sand-Trapping Devices: Low intensity off-shore passive sand-trapping devices may be permitted provided:

(A) A minimum of two signs no smaller than 12 inches x 18 inches will be placed and maintained on poles on the ocean beach at least 6' above ground level that will indicate to fishermen, surfers and bathers that the structures or devices are present offshore.

(B) The structures or devices will be removed at the expense of the applicant should they be documented as a nuisance to private property or to the public well being. "Nuisance" will be defined as any interference with reasonable use of public trust waters or the ocean beaches for navigation, swimming, fishing, sunbathing, or other recreational uses.

(C) The structures or devices will be aligned no closer than 450 feet seaward of the first line of stable natural vegetation or 300 feet from the mean high water line, whichever is further seaward.

(4) Beach Nourishment. Sand used for beach nourishment should be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.

(5) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion control measure if the following conditions are met:

(A) The area on which this activity is being performed must maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and should follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment should not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity must not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);

(C) Movement of material from seaward of the low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal

systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

(1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.

(2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas will be immediately replanted or temporarily stabilized until planting can be successfully completed.

(4) Sand used to establish or strengthen dunes must be ~~brought in from a source outside the ocean hazard area and must be of the same nature as the sand in the area in which it is to be placed.~~ of the same general characteristics as the sand in the area in which it is to be placed.

(5) No new dunes shall be created in inlet hazard areas.

(6) ~~That sand held in storage in any dune other than frontal or primary dunes may be moved laterally in order to strengthen existing primary or frontal dunes if the work would enhance the protection to the proposed development activity.~~ Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.

(7) No disturbance of a dune area will be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways

(1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner which entails negligible alteration on the primary dune. Structural accessways may not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune if:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is less than six feet in width; and

(C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway which does not meet (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

(4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") should be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways should be no greater than ten feet in width and should be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Construction Standards. New construction and substantial improvements (increases of 50 percent or more in value on square footage) to existing construction shall comply with the following standards:

(1) In order to avoid unreasonable danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100 year storm. Any building constructed within the ocean hazard area shall comply with the North Carolina Building Code including the Coastal and Flood Plain Construction Standards, Chapter 34, Volume 1 or Section 39, Volume 1-B and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All structures in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five feet below mean sea level.

(4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100 year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

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

.0310 USE STANDARDS FOR INLET HAZARD AREAS

(a) Inlet areas as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to this extremely hazardous nature of the inlet hazard areas, all development within these areas shall be located in accordance with the following standards:

(1) All development in the inlet hazard area shall be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area;

(2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;

(3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area;

(4) Established common-law and statutory public rights of access to the public trust lands and waters in inlet 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;

~~(5) Shoreline stabilization structures shall be permitted only as a part of a publicly supported project;~~

(5) ~~(6)~~ All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the inlet hazard areas;

(b) The types of development exempted from the ocean setback rules in Rule .0309(a) of this Section shall also be exempt from these inlet hazard area setback requirements.

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

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule(s) cited as 15A NCAC 13A .0001, .0009 - .0010; 13B .1204; 18A .1016; 18C .1507, .1607, .1614; 25 .0213; repeal rule(s) cited as 21C .0201 - .0207.

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

The public hearing will be conducted at 1:30 p.m. on July 22, 1992 at the Archives and History Bldg., (First Floor Auditorium), 109 E. Jones St., Raleigh, N.C.

Reasons for Proposed Actions:

15A NCAC 13A .0001 - *To comply with G.S. 150B regarding publication costs and mailing list fees.*

15A NCAC 13A .0009 - .0010 - *These amendments add new requirements for owners and operators of hazardous waste surface impoundments, waste piles, and landfills to install and operate leak detection systems at such time as these units are added, laterally expanded, or replaced. Most of these Rules are in response to the requirements of the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA.*

15A NCAC 13B .1204 - *This amendment is pursuant to a rule-making petition.*

15A NCAC 18A .1016 - *To clarify requirements for existing dormitories and new construction in summer camps; and to lower the amount of floor space for a child.*

15A NCAC 18C .1507 - *These amendments are needed to revise the rule title and to meet the federal primacy requirements to implement 40*

CFR 141.80 through 141.91, which are the new lead and copper control regulations.

15A NCAC 18C .1607 - *Is proposed for amendment to meet the federal primacy requirements for implementing the lead and copper rules.*

15A NCAC 18C .1614 - *Is proposed for amendment to meet the federal primacy requirements.*

15A NCAC 21C .0201 - .0207 - *This is a request to repeal "Local Health Department Delivery Funds" program rules. These are no longer allocated to local health departments. An increase in Medicaid eligibility to 185 percent of the federal poverty level resulted in these funds no longer being necessary to provide delivery services to non-Medicaid eligible women. The percentage of non-Medicaid eligible women receiving obstetrical services remains small.*

15A NCAC 25 .0213 - *This amendment is to set the mandatory inspection frequency for Bed and Breakfast Inns to 1/6 months and to delete unnecessary language involving meat markets.*

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 to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least three days prior to the public hearing. Oral presentation lengths shall be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

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 COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.1(f).

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0001 GENERAL

(a) The Hazardous Waste Section of the Solid Waste Management Division shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

(1) "Department of Environment, Health, and Natural Resources" shall be substituted for "Environmental Protection Agency" except in 40 CFR 262.51 through 262.54, 262.56, 262.57 where references to the Environmental Protection Agency shall remain without substitution;

(2) "Secretary of the Department of Environment, Health, and Natural Resources" shall be substituted for "Administrator," "Regional Administrator" and "Director" except for 40 CFR 262.55 through 262.57, 264.12(a), 268.5, 268.6, 268.42(b) and 268.44 where the references to the Administrator, Regional Administrator, and Director shall remain without substitution; and

(3) An "annual report" shall be required for all hazardous waste generators, treaters, storers, and disposers rather than a "biennial report".

(c) 40 CFR 260.1 through 260.3 (Subpart A), "General," have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c),~~ including subsequent amendments and editions.

(d) 40 CFR 260.11, "References", has been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and editions.

~~(e) Copies of all material adopted by reference in this Subchapter may be inspected in the Section Office, 401 Oberlin Road, P.O. Box 27687, Raleigh, N.C. 27611. Copies may be obtained from the Section at the actual cost to the Section.~~

(e) Copies of all materials in this Subchapter may be inspected or obtained as follows:

(1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules must submit a written request to the Hazardous Waste Section, P.O. Box 27687, Raleigh, N.C. 27611-7687. A

check in the amount of fifteen dollars ($15.00) made payable to The Hazardous Waste Section must be enclosed with each request. Upon receipt of each request, individuals will be placed on a mailing list to receive notices for one year.

(2) Material incorporated by reference in the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost of three hundred and forty dollars ($340.00) per year. Federal Register materials are codified once a year in the Code of Federal Regulations and may be obtained at the above address for a cost of: 40 CFR 1-51 thirty seven dollars ($37.00), 40 CFR 260-299 forty dollars ($40.00) and 40 CFR 100-149 forty dollars ($40.00), total one hundred and seventeen dollars ($117.00).

(3) The North Carolina Hazardous Waste Management Rules, including the incorporated by reference materials, may be obtained from the Hazardous Waste Section at a cost of sixteen dollars ($16.00).

(4) All material is available for inspection at the Department of Environment, Health, and Natural Resources, Hazardous Waste Section, 401 Oberlin Road, Raleigh, N.C.

Statutory Authority G.S. 130A-294(c).

.0009 STANDARDS FOR OWNERS/OPERATORS OF HWTSD FACILITIES - PART 264

(a) Any person who treats, stores or disposes of hazardous waste shall comply with the requirements set forth in this Section. The treatment, storage or disposal of hazardous waste is prohibited except as provided in this Section.

(b) 40 CFR 264.1 through 264.4 (Subpart A), "General", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(c) 40 CFR 264.10 through 264.18 (Subpart B), "General Facility Standards", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(d) 40 CFR 264.30 through 264.37 (Subpart C), "Preparedness and Prevention", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(e) 40 CFR 264.50 through 264.56 (Subpart D), "Contingency Plan and Emergency Procedures", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(f) 40 CFR 264.70 through 264.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(g) 40 CFR 264.90 through 264.101 (Subpart F), "Releases From Solid Waste Management Units", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions. For the purpose of this ~~adoption~~ incorporation by reference, "January 26, 1983" shall be substituted for "July 26, 1982" contained in 40 CFR 264.90(a)(2).

(h) 40 CFR 264.110 through 264.120 (Subpart G), "Closure and Post-Closure", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(i) 40 CFR 264.140 through 264.151 (Subpart H), "Financial Requirements", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c),~~ including subsequent amendments and additions, except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), and 40 CFR 264.151(a)(1), Section 15 are not ~~adopted~~ incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 264.143(a)(3) which were not ~~adopted~~ incorporated by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not ~~adopted~~ incorporated by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that

its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(3) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not ~~adopted~~ incorporated by reference:

(A) Except as otherwise provided in Paragraph (i)(3)(B) of this Section, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund over the term of the RCRA post-closure permit may be established by the Department as a permit condition.

(4) The following additional requirement shall apply:

The trustee shall notify the Department of payment to the trust fund, by certified mail within ten days following said payment to the trust fund. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

(j) 40 CFR 264.170 through 264.178 (Subpart I), "Use and Management of Containers", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(k) 40 CFR 264.190 through 264.199 (Subpart J), "Tank Systems", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(l) The following are requirements for Surface Impoundments:

(1) 40 CFR 264.220 through 264.231 (Subpart K), "Surface Impoundments", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(2) The following are additional standards for surface impoundments:

(A) The liner system shall consist of at least two liners;

(B) Artificial liners shall be equal to or greater than 30 mils in thickness;

(C) Clayey liners shall be equal to or greater than five feet in thickness and have a maximum permeability of 1.0 x 10-7 cm/sec;

(D) Clayey liner soils shall have the same characteristics as described in (r)(4)(B)(ii), (iii), (iv), (vi) and (vii) of this Rule;

(E) A leachate collection system shall be constructed between the upper liner and the bottom liner;

(F) A leachate detection system shall be constructed below the bottom liner; and

(G) Surface impoundments shall be constructed in such a manner to prevent landsliding, slippage or slumping.

(m) 40 CFR 264.250 through 264.259 (Subpart L), "Waste Piles", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(n) 40 CFR 264.270 through 264.283 (Subpart M), "Land Treatment", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(o) 40 CFR 264.300 through 264.317 (Subpart N), "Landfills", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(p) A long-term storage facility shall meet groundwater protection, closure and post-closure, and financial requirements for disposal facilities as specified in Paragraphs (g), (h), and (i) of this Rule.

(q) 40 CFR 264.340 through 264.351 (Subpart O), "Incinerators", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(r) The following are additional location standards for facilities:

(1) In addition to the location standards set forth in 15A NCAC 13A .0009(c), the Department, in determining whether to issue a permit for a hazardous waste management facility, shall consider the risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers and shall consider whether provision has been made for adequate buffer zones. The Department shall also consider ground water travel time, soil pH, soil cation exchange capacity, soil composition and permeability, slope, climate, local land use, transportation factors such as proximity to waste

generators, route, route safety, and method of transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility; potential impact on air quality, existence of seismic activity and cavernous bedrock.

(2) The following minimum separation distances shall be required of all hazardous waste management facilities except that existing facilities shall be required to meet these minimum separation distances to the maximum extent feasible:

(A) All hazardous waste management facilities shall be located at least 0.25 miles from institutions including but not limited to schools, health care facilities and prisons, unless the owner or operator can demonstrate that no unreasonable risks shall be posed by the proximity of the facility.

(B) All hazardous waste treatment and storage facilities shall comply with the following separation distances: all hazardous waste shall be treated and stored a minimum of 50 feet from the property line of the facility; except that all hazardous waste with ignitable, incompatible or reactive characteristics shall be treated and stored a minimum of 200 feet from the property line of the facility if the area adjacent to the facility is zoned for any use other than industrial or is not zoned.

(C) All hazardous waste landfills, long-term storage facilities, land treatment facilities and surface impoundments, shall comply with the following separation distances:

(i) All hazardous waste shall be located a minimum of 200 feet from the property line of the facility;

(ii) Each hazardous waste landfill, long-term storage or surface impoundment facility shall be constructed so that the bottom of the facility is 10 feet or more above the historical high ground water level. The historical high ground water level shall be determined by measuring the seasonal high ground water levels and predicting the long-term maximum high ground water level from published data on similar North Carolina topographic positions, elevations, geology, and climate; and

(iii) All hazardous waste shall be located a minimum of 1,000 feet from the zone of influence of any existing off-site ground water well used for drinking water, and outside the zone of influence of any existing or planned on-site drinking water well.

(D) Hazardous waste storage and treatment facilities for liquid waste that is classified as TC toxic, toxic, or acutely toxic and is stored or treated in tanks or containers shall not be located:

(i) in the recharge area of an aquifer which is designated as an existing sole drinking water source as defined in the Safe Drinking Water Act, Section .1424(e) [42 U.S.C. 300h-3(e)] unless an adequate secondary containment system is constructed, and after consideration of applicable factors in (r)(3) of this Rule, the owner or operator can demonstrate no unreasonable risk to public health;

(ii) within 200 feet of surface water impoundments or surface water stream with continuous flow as defined by the United States Geological Survey;

(iii) in an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in ~~15~~ 15A NCAC 2B .0200 and ~~10 NCAC 10D .0702(6);~~ 15A NCAC 18C .0102;

(iv) in an area that will allow direct surface or subsurface discharge to the watershed for a Class I or II Reservoir as defined in ~~10 NCAC 10D .0702 (4) and (5);~~ 15A NCAC 18C .0102;

(v) within 200 feet horizontally of a 100-year floodplain elevation;

(vi) within 200 feet of a seismically active area as defined in (c) of this Rule; and

(vii) within 200 feet of a mine, cave, or cavernous bedrock.

(3) The Department may require any hazardous waste management facility to comply with greater separation distances or other protective measures necessary to avoid unreasonable risks posed by the proximity of the facility to water table levels, flood plains, water supplies, public water supply watersheds, mines, natural resources such as wetlands, endangered species habitats, parks, forests, wilderness areas, and historical sites, and population centers or to provide an adequate buffer zone. The Department may also require protective measures necessary to avoid unreasonable risks posed by the soil pH, soil cation exchange capacity, soil composition and permeability, climate, transportation factors such as proximity to waste generators, route, route safety, and method of

transportation, aesthetic factors such as the visibility, appearance, and noise level of the facility, potential impact on air quality, and the existence of seismic activity and cavernous bedrock. In determining whether to require greater separation distances or other protective measures, the Department shall consider the following factors:

(A) All proposed hazardous waste activities and procedures to be associated with the transfer, storage, treatment or disposal of hazardous waste at the facility;

(B) The type of hazardous waste to be treated, stored, or disposed of at the facility;

(C) The volume of waste to be treated, stored, or disposed of at the facility;

(D) Land use issues including the number of permanent residents in proximity to the facility and their distance from the facility;

(E) The adequacy of facility design and plans for containment and control of sudden and non-sudden accidental events in combination with adequate off-site evacuation of potentially adversely impacted populations;

(F) Other land use issues including the number of institutional and commercial structures such as airports and schools in proximity to the facility, their distance from the facility, and the particular nature of the activities that take place in those structures;

(G) The lateral distance and slope from the facility to surface water supplies or to watersheds draining directly into surface water supplies;

(H) The vertical distance, and type of soils and geologic conditions separating the facility from the water table;

(I) The direction and rate of flow of ground water from the sites and the extent and reliability of on-site and nearby data concerning seasonal and long-term groundwater level fluctuations;

(J) Potential air emissions including rate, direction of movement, dispersion and exposure whether from planned or accidental, uncontrolled releases; and

(K) Any other relevant factors.

(4) The following are additional location standards for landfills, long-term storage facilities and hazardous waste surface impoundments:

(A) A hazardous waste landfill, long-term storage, or a surface impoundment facility shall not be located:

(i) ~~in~~ In the recharge area of an aquifer which is an existing sole drinking water source;

(ii) ~~within~~ Within 200 feet of a surface water stream with continuous flow as defined by the United States Geological Survey;

(iii) ~~in~~ In an area that will allow direct surface or subsurface discharge to WS-I, WS-II or SA waters or a Class III Reservoir as defined in ~~15~~ 15A NCAC 2B .0200 and ~~10 NCAC 10D .0702(6);~~ 15A NCAC 18C .0102;

(iv) ~~in~~ In an area that will allow direct surface or subsurface discharge to a watershed for a Class I or II Reservoir as defined in ~~10 NCAC 10D .0702(1) and (5);~~ 15A NCAC 18C .0102;

(v) ~~within~~ Within 200 feet horizontally of a 100-year flood hazard elevation;

(vi) ~~within~~ Within 200 feet of a seismically active area as defined in (c) of this Rule; and

(vii) ~~within~~ Within 200 feet of a mine, cave or cavernous bedrock.

(B) A hazardous waste landfill or long-term storage facility shall be located in highly weathered, relatively impermeable clayey formations with the following soil characteristics:

(i) The depth of the unconsolidated soil materials shall be equal to or greater than 20 feet;

(ii) The percentage of ~~fine grained~~ fine-grained soil material shall be equal to or greater than 30 percent passing through a number 200 sieve;

(iii) Soil liquid limit shall be equal to or greater than 30;

(iv) Soil plasticity index shall be equal to or greater than 15;

(v) Soil compacted hydraulic conductivity shall be a maximum of 1.0 x 10-7 cm/sec;

(vi) Soil Cation Exchange Capacity shall be equal to or greater than 5 milliequivalents per 100 grams;

(vii) Soil Potential Volume Change Index shall be equal to or less than 4; and

(viii) Soils shall be underlain by a competent geologic formation having a rock quality designation equal to or greater than 75 percent unless other geological conditions afford adequate protection of public health and the environment.

(C) A hazardous waste landfill or long-term storage facility shall be located in areas of low to moderate relief to the extent nec-

essary to prevent landsliding or slippage and slumping. The site may be graded to comply with this standard.

(5) All new hazardous waste impoundments that close with hazardous waste residues left in place shall comply with the standards for hazardous waste landfills in (r)(4) of this Rule unless the applicant can demonstrate that equivalent protection of public health and environment is afforded by some other standard.

(6) The owners and operators of all new hazardous waste management facilities shall construct and maintain a minimum of two observation wells, one upgradient and one downgradient of the proposed facility; and shall establish background groundwater concentrations and monitor annually for all hazardous wastes that the owner or operator proposes to store, treat, or dispose at the facility.

(7) The owners and operators of all new hazardous waste facilities shall demonstrate that the community has had an opportunity to participate in the siting process by complying with the following:

(A) The owners and operators shall hold at least one public meeting in the county in which the facility is to be located to inform the community of all hazardous waste management activities including but not limited to: the hazardous properties of the waste to be managed; the type of management proposed for the wastes; the mass and volume of the wastes; and the source of the wastes; and to allow the community to identify specific health, safety and environmental concerns or problems expressed by the community related to the hazardous waste activities associated with the facility. The owners and operators shall provide a public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting. The written transcript and other written material submitted or used at the meeting shall be submitted to the local public library closest to and in the county of the proposed site with a request that the information be made available to the public.

(B) For the purposes of this Rule, public notice shall include: notification of the boards of county commissioners of the county where the proposed site is to be located and all contiguous counties in North Carolina; a legal advertisement placed in a newspaper or newspapers serving those counties; and provision of a news release to at least one newspaper, one radio station, and one TV station serving these counties. Public notice shall include the time, place, and purpose of the meetings required by this Rule.

(C) No less than 30 days after the first public meeting transcript is available at the local public library, the owners and operators shall hold at least one additional public meeting in order to attempt to resolve community concerns. The owners and operators shall provide public notice of this meeting at least 30 days prior to the meeting. Public notice shall be documented in the facility permit application. The owners and operators shall submit as part of the permit application a complete written transcript of the meeting, all written material submitted that represents community concerns, and all other relevant written material distributed or used at the meeting.

(D) The application, written transcripts of all public meetings and any additional material submitted or used at the meetings, and any additions or corrections to the application, including any responses to notices of deficiencies shall be submitted to the local library closest to and in the county of the proposed site, with a request that the information be made available to the public until the permit decision is made.

(E) The Department shall consider unresolved community concerns in the permit review process and impose final permit conditions based on sound scientific, health, safety, and environmental principles as authorized by applicable laws or rules.

(s) 40 CFR 264.570 through 264.575 (Subpart W), "Drip Pads", have been incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 264.600 through 264.603 (Subpart X), "Miscellaneous Units", have been incorporated by reference including subsequent amendments and editions.

(u) 40 CFR 264.1030 through 264.1049 (Subpart AA), "Air Emission Standards for Process

Vents", have been incorporated by reference including subsequent amendments and editions.

(v) 40 CFR 264.1050 through 264.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", have been incorporated by reference including subsequent amendments and editions.

(w) Appendices to 40 CFR Part 264 have been incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c).

.0010 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265

(a) 40 CFR 265.1 through 265.4 (Subpart A), "General", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(b) 40 CFR 265.10 through ~~265.18~~ 265.19 (Subpart B), "General Facility Standards", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(c) 40 CFR 265.30 through 265.37 (Subpart C), "Preparedness and Prevention", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(d) 40 CFR 265.50 through 265.56 (Subpart D), "Contingency Plan and Emergency Procedures", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(f) 40 CFR 265.90 through 265.94 (Subpart F), "Ground-Water Monitoring", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(g) 40 CFR 265.110 through 265.120 (Subpart G), "Closure and Post-Closure", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(h) 40 CFR 265.140 through 265.151 (Subpart H), "Financial Requirements", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c),~~ including subsequent amendments and additions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), are not ~~adopted~~ incorporated by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not ~~adopted~~ incorporated by reference:

The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. Within 1 year of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.

(2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not ~~adopted~~ incorporated by reference:

After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference.

(3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not ~~adopted~~ incorporated by reference:

(A) Except as otherwise provided in Paragraph (h)(3)(B) of this Section, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period may be established by the Department by use of an Administrative Order.

(i) 40 CFR 265.170 through 265.177 (Subpart I), "Use and Management of Containers", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including sub-

sequent amendments and additions. Additionally, the owner or operator shall keep records and results of required inspections for at least three years from the date of the inspection.

(j) 40 CFR 265.190 through 265.201 (Subpart J), "Tank Systems", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(k) 40 CFR 265.220 through 265.230 (Subpart K), "Surface Impoundments", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(l) 40 CFR 265.250 through ~~265.258~~ 265.260 (Subpart L), "Waste Piles", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(m) 40 CFR 265.270 through 265.282 (Subpart M), "Land Treatment", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(n) 40 CFR 265.300 through 265.316 (Subpart N), "Landfills", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(o) 40 CFR 265.340 through 265.352 (Subpart O), "Incinerators", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(p) 40 CFR 265.370 through 265.383 (Subpart P), "Thermal Treatment", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological Treatment", have been ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(c).~~ including subsequent amendments and additions.

(r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads", have been incorporated by reference including subsequent amendments and editions.

(s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", have been incorporated by reference including subsequent amendments and editions.

(t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" have been incorporated by reference including subsequent amendments and editions.

(u) Appendices to 40 CFR Part 265 have been incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c).

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1200 - MEDICAL WASTE MANAGEMENT

.1204 REQUIREMENTS FOR GENERATORS OF REGULATED MEDICAL WASTE

(a) A person who ships Regulated medical waste from the generating facility for off-site treatment shall meet the following requirements:

(1) Regulated medical waste shall be packaged in a minimum of one plastic bag placed in a rigid fiberboard box, ~~or~~ drum or other rigid container in a manner that prevents leakage of the contents. The plastic bag shall be impervious to moisture and have a strength sufficient to preclude ripping, tearing or bursting the waste-filled bag under normal conditions of usage and handling. Each bag shall be constructed of material of sufficient single thickness strength to pass the 165-gram dropped dart impact resistance test as prescribed by Standard D 1709-91 of the American Society for Testing and Materials, which is incorporated by reference including subsequent amendments and editions, and certified by the bag manufacturer. A copy is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina. Copies may be requested by mail at American Society for Testing and Materials, 1916 Race Street, Philadelphia, P.A. 19103 or by calling (215) 299-5400 for a cost of twelve dollars ($12.00) plus one dollar and fifty cents ($1.50) for shipping and handling unless prepaid, then the fee is twelve dollars ($12.00).

(2) Regulated medical waste shall be stored in a manner that maintains the integrity of the packaging at all times.

(3) Each package of Regulated medical waste shall be labeled with a water-resistant universal biohazard symbol.

(4) Each package of Regulated medical waste shall be marked on the outer surface with the following information:

(A) the generator's name, address, and telephone number;

(B) the transporter's name, address, and telephone number;

(C) storage facility name, address, and telephone number, when applicable;
(D) treatment facility name, address and telephone number;
(E) date of shipment; and
(F) "INFECTIOUS WASTE" or "MEDICAL WASTE".

(b) Records of Regulated medical waste shall be maintained for each shipment and shall include the information listed in this Paragraph. This information shall be maintained at the generating facility for no less than three years. This requirement shall not apply to persons who generate less than 50 pounds of Regulated medical waste per month.

(1) amount of waste by number of packages (piece count);
(2) date shipped off-site;
(3) name of transporter;
(4) name of storage or treatment facility.

(c) A plan to ensure proper management of Regulated medical waste shall be prepared and maintained at the generating facility.

Statutory Authority G.S. 130A-309.26.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1000 - SANITATION OF SUMMER CAMPS

.1016 LODGING FACILITIES

Sleeping quarters may be of various types depending upon the nature of the camp program or the state of development of the physical plant, including dormitory-type buildings, rustic cabins, tents on platforms, "covered wagons", ~~etc.~~ or other similar sleeping quarters. Permanent dormitory-type sleeping quarters shall provide cross ventilation, at least 30 inches between beds, ~~40 square feet per person,~~ a minimum of six feet between heads of sleepers and an adequate number of sleeping units. New construction of permanent dormitory-type sleeping quarters shall provide 30 square feet of floor space per person. Reconstruction or remodeling that does not increase the number of children housed, shall not be considered new construction. Lodging facilities, whether provided by the camp or by individual campers, shall be kept clean and in good repair. Clean linen and soiled linen shall be stored and handled separately and in a sanitary manner.

Statutory Authority G.S. 130A-248.

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .1500 - WATER QUALITY STANDARDS

.1507 CORROSION CONTROL AND LEAD AND COPPER MONITORING

(a) Control and adjustment of pH shall be provided for community water systems having water with a pH below 6.5; such control and adjustment to be approved by the Department. Most waters are corrosive in varying degrees at pH 6.5 and slightly above and such waters should have pH adjustment.

(b) Suppliers of water for community water systems shall collect samples from a representative entry point to the water distribution system for the purpose of analysis to determine the corrosivity characteristics of the water:

(1) The supplier shall collect two samples per plant for analysis for each plant using surface water sources wholly or in part or more if required by the Department, one during mid-winter and one during mid-summer. The supplier of water shall collect one sample per plant for analysis for each plant using ground water sources or more if required by the Department. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with Department approval, be considered one treatment plant for determining the minimum number of samples.
(2) Determination of the corrosivity characteristics of the water shall include measurement of pH, calcium hardness, alkalinity, temperature, total dissolved solids (total filterable residue), and calculation of the Langelier Index in accordance with Paragraph (d). The determination of corrosivity characteristics shall only include one round of sampling (two samples per plant for surface water and one sample per plant for ground water sources). However, the Department may require more frequent monitoring as appropriate, and may require monitoring for additional parameters which indicate corrosivity characteristics, such as sulfates and chlorides. In certain cases, the Aggressive Index, as described in Paragraph (d), can be used instead of the Langelier Index; the supplier shall request in writing to the Department which will make this determination.

(c) The supplier of water shall report to the Department the results of the analyses for the

corrosivity characteristics within the first 10 days of the month following the month in which the sample results were received. If more frequent sampling is required by the Department, the supplier can accumulate the data and shall report each value within 10 days of the month following the month in which the analytical results of the last sample was received.

(d) Analyses conducted to determine compliance with Paragraphs (a) and (b) of this Rule shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 141.42(c)(1) through (9) which are hereby ~~adopted by reference as amended through March 12, 1982. A list of these methods is available from the Public Water Supply Section, Division of Environmental Health, P.O. Box 29536, Raleigh, North Carolina 27626-0536.~~ incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Nonmembers may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars ($15.00) up to 20 pages and thirty cents ($0.30) per pay for each additional page.

(e) Community water supply systems shall identify whether the following construction materials are present in their distribution system and report to the Department:

(1) Lead from piping, solder, caulking, interior lining of distribution mains, alloys and home plumbing;
(2) Copper from piping and alloys, service lines, and home plumbing;
(3) Galvanized piping, service lines, and home plumbing;
(4) Ferrous piping materials such as cast iron and steel;
(5) Asbestos cement pipe;
(6) Vinyl lined asbestos cement pipe;
(7) Coal tar lined pipes and tanks.

(f) Community water systems in operation on the effective date of this Rule shall comply with the requirements of (b) and (e) within one year of the effective date. Community water systems which begin operation after the effective date shall comply with the requirements of (b) and (e) within one year of the date operation begins.

(g) The provisions of 40 C.F.R. 141, Subpart I - Control of Lead and Copper are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Nonmembers may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars ($15.00) up to 20 pages and thirty cents ($0.30) per pay for each additional page.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

SECTION .1600 - VARIANCES AND EXEMPTIONS

.1607 VARIANCES AND EXEMPTIONS FOR CHEMICALS AND LEAD AND COPPER

~~(a) Removal using granular activated carbon (except for vinyl chloride) and removal using packed tower aeration are identified as the best available technology for achieving compliance with the maximum contaminant levels for synthetic organic chemicals.~~

~~(b) Except as provided in Paragraph (c), the Department may require, as a condition for the Department to grant a variance, a community water system or non-transient, non-community water system to install and use any treatment method identified in Paragraph (a). If the system cannot meet the maximum contaminant level after installation and use of the prescribed treatment method, the system shall be eligible to request a variance. A variance may only be granted if the requirements of 130A-321 are met.~~

~~(c) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treatment methods identified in Paragraph (a) would only achieve a de minimis reduction in contaminants, the Department may require, as a condition for the Department to grant a variance, that the system being granted a variance examine other treatment methods in accordance with a schedule of compliance issued by the Department.~~

~~(d) If the Department determines that a treatment method examined under Paragraph (c) of this Rule is technically feasible, the Department may require the system to install and use that treatment method in connection with a compliance schedule. The Department's determination shall be based upon studies by the system and other relevant information.~~

The provisions of 40 C.F.R. 142.62 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of

Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars ($15.00) up to 20 pages and thirty cents ($0.30) per page for each additional page.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142.

.1614 BOTTLED WATER AND POINT-OF-USE DEVICES

~~(a) The Department may require a public water system to use bottled water or point-of-use devices as a condition for granting a variance or exemption from the requirements of 15A NCAC 18C .1518 to avoid an unreasonable risk to health.~~

~~(b) Public water systems that use bottled water as a condition of obtaining a variance or exemption shall meet the following requirements in either paragraph (b)(1) or (b)(2) of this Rule in addition to requirements in Paragraph (b)(3) of this Rule:~~

~~(1) The water supplier shall develop and operate a monitoring program that provides reasonable assurances that the bottled water meets all maximum contaminant levels. The water supplier must monitor a representative sample of the bottled water for all contaminants regulated under 15A NCAC 18C .1518(a) the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the Department annually; or~~

~~(2) The public water system shall receive a certification from the bottled water company that the bottled water supplied has been taken from an "approved source" as defined in 21 C.F.R. 129.3(a) which is hereby adopted by reference in accordance with G.S. 150B-14(c), that the bottled water company has conducted monitoring in accordance with 21 C.F.R. 129.80(g)(1) through (3) which is hereby adopted by reference in accordance with G.S. 150B-14(c), and the bottled water does not exceed any maximum contaminant levels or quality limits as set out in 21 C.F.R. 103.35, 110, and 129 which are hereby adopted by reference in accordance with G.S. 150B-14(c). The public water system shall provide the certification to the Department the first quarter after it supplies bottled water and annually thereafter; and~~

~~(3) The water supplier shall provide sufficient quantities of bottled water to every person supplied by the public water system, via door-to-door bottled water delivery.~~

~~(c) Public water systems that use point-of-use devices as a condition for receiving a variance or exemption must meet the following requirements:~~

~~(1) The water supplier shall operate and maintain the point-of-use treatment system.~~

~~(2) The water supplier shall develop a monitoring plan and obtain department approval for the plan before point-of-use devices are installed for compliance. The monitoring plan shall provide health protection equivalent to a monitoring plan for central water treatment.~~

~~(3) Effective technology must be properly applied under a plan approved by the Department and the microbiological safety of the water must be maintained as follows:~~

~~(A) Adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use devices shall be provided; and~~

~~(B) The design and application of the point-of-use devices shall consider the tendency for increase in heterotrophic bacteria concentrations in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.~~

~~(4) Every building connected to the system shall have a point-of-use device installed, maintained, and adequately monitored. The rights and responsibilities of the public water system consumer shall be conveyed with title upon sale of property.~~

The provisions of 40 C.F.R. 142.57 are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 Saint Mary's Street, Raleigh, North Carolina. Non-members may obtain copies from the American Water Works Association, Information Services, 6666 West Quincy Avenue, Denver, Colorado 80235 at a cost of fifteen dollars ($15.00) up to

20 pages and thirty cents ($0.30) per page for each additional page.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 142.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21C - PERINATAL CARE

SECTION .0200 - LOCAL HEALTH DEPARTMENT DELIVERY FUNDS

.0201 GENERAL

(a) The purpose of local health department delivery funds is to enhance the provision of prenatal, delivery and newborn care by giving impetus to the development of cooperation between local health departments, hospitals and the private medical sector. Funds are made available to local health departments to assist eligible women and their newborns by reimbursing a portion of the cost of one or more of the following:

(1) professional fees for prenatal care, hospital delivery and hospital newborn care;

(2) prenatal outpatient diagnostic tests and procedures and prescribed medications;

(3) hospitalization for delivery and newborn care; and

(4) hospitalization and associated professional fees prior to delivery for the following conditions:

(A) actual or suspected premature labor;

(B) pyelonephritis;

(C) pre-eclampsia.

(b) Local health department delivery funds shall not be used for the following:

(1) abortion services;

(2) outpatient post-partum care;

(3) outpatient newborn care;

(4) transportation, except as provided in Rule .0207 of this Section;

(5) supplies;

(6) equipment;

(7) sterilization;

(8) services covered by other third party reimbursement sources; and

(9) salaries of personnel.

Statutory Authority G.S. 130A-127.

.0202 ALLOCATION OF GRANT FUNDS

There shall be allocated six thousand and seven hundred dollars ($6,700.00) per year to each county of the state. Additional amounts are allocated based upon each county's proportion of the total state's live births and proportion of the state's families below the poverty level as shown by the most recent information available from the North Carolina Department of Administration. The allocation of funds to any county may be modified to reflect actual utilization in previous fiscal years and other management considerations.

Statutory Authority G.S. 130A-127.

.0203 BUDGETING OF FUNDS

Local health department delivery funds will be budgeted as a separate line item entitled "Delivery Services" within each local health department's Maternal Health budget.

Statutory Authority G.S. 130A-127.

.0204 CLIENT ELIGIBILITY

To be eligible for services paid for through local health department delivery funds, clients must meet the residency and financial eligibility requirement of 15A NCAC 24A.

Statutory Authority G.S. 130A-127.

.0205 AUTHORIZATION AND REIMBURSEMENT

(a) The local health department shall authorize each client sponsored by the delivery funds. Authorizations are limited to those services listed in Rule .0201 of this Subchapter.

(b) The authorization shall be sent to the anticipated providers of care for each authorized client. The authorization shall include, but not be limited to the following information:

(1) name of client;

(2) medical service authorized;

(3) expiration date of authorization;

(4) amount authorized; and

(5) signature of authorizing official.

(c) The local health department shall negotiate rates of reimbursement for services to be provided under the delivery funds. These rates shall not exceed the medicaid rate of reimbursement in effect at the time the claim is received by the division.

(d) A health department may not authorize nor pay more than a total of five hundred dollars ($500.00) per mother-infant pair for inpatient delivery and newborn services, except that a health department with a contracted high risk maternity clinic may authorize and pay up to, but not more than a total of seven hundred and fifty dollars ($750.00) per mother-infant pair for high risk inpatient delivery and newborn services for mothers who were enrolled in the high risk maternity clinic and their infant(s).

(e) A health department may not authorize nor pay more than a total of five hundred dollars ($500.00) for each pre-delivery hospitalization as allowed under Rule .0601(a)(4) of this Section. Successive predelivery admissions of a given client to the same hospital separated by a period of less than 24 hours shall be considered one admission.

(f) Other rules governing authorization and billing processing, payment limitations, and limitations on billing clients sponsored by the delivery funds are found in 15A NCAC 21A.

Statutory Authority G.S. 130A-127.

.0206 MONITORING AND EVALUATION

The local health department shall complete and submit the Maternal and Child Health Delivery Fund School Health Fund Annual Report to the Division on a form provided by the Division within 45 days after the end of the contract period.

Statutory Authority G.S. 130A-127.

.0207 REIMBURSEMENT/TRANSPORTATION: BULK PURCHASE/MEDICATION

(a) Local health department delivery funds may be used to reimburse for:

(1) private motor vehicle mileage and public conveyance for transporting prenatal patients to out-of-county high risk maternity clinic;

(2) private motor vehicle mileage and rescue squad and ambulance service charges for transporting prenatal patients for an out-of-county hospital delivery (the rescue squad or ambulance vehicle must be permitted by the Office of Emergency Medical Services, Division of Facility Services, Department of Human Resources); and

(3) purchase of the following medications in bulk for prenatal and postpartum patients consistent with legal requirements relating to the purchasing and dispensing of medications: Rho(D) immune gobulin, oral tocolytic agents, ampicillin, sulfa drugs, and vitamin and mineral supplements.

(b) Individual authorizations are not required for the dispensing of prescribed medications purchased in bulk.

(c) The local health department shall negotiate rates of reimbursement for transportation services. The negotiated rate for:

(1) mileage costs of a privately-owned motor vehicle shall not exceed the state's maximum travel allowance per vehicle mile for automobile expenses as established in G.S. 138-6;

(2) public conveyance shall not exceed the customary charges; and

(3) ambulance and rescue squad services shall not include charges for additional personnel needed while in transit.

(d) A local health department may not authorize nor pay a patient for transportation costs.

(e) Local health department delivery funds shall not be used to reimburse for services available in the local health department, with the exception of medications purchased in bulk as authorized by these Rules.

Statutory Authority G.S. 130A-127.

CHAPTER 25 - LOCAL STANDARDS

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENTS

.0213 FOOD, LODGING/INST SANITATION/PUBLIC SWIMMING POOLS/SPAS

(a) A local health department shall provide food, lodging, and institutional sanitation and public swimming pools and spas services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

(1) The frequency of inspections of food, lodging, and institutional facilities and public swimming pools and spas with the following being the minimum:

Type of Establishment	Frequency
Bed and breakfast homes	1/year
Bed and breakfast inns	1/6 months
Child day-care facilities	2/year
Institutions	2/year
Local confinement facilities	1/year
Lodging	1/year
Meat markets	4/year

Meat markets ~~or summer camps~~ which are closed for a period of 60 days or more	1/3 months of operation (or part thereof)
Migrant housing water and sewage evaluation	1/year
Mobile food units	4/year
Private boarding schools and colleges	1/year
Public swimming pools and spas	1/operational season
Pushcarts	4/year
Residential care facilities	1/year
Restaurants	1/quarter
Schools	1/year
Summer camps	1/year

For the purpose of restaurant inspections, a food sampling inspection shall fulfill the requirement of an inspection provided a minimum of three distinct samples are taken from the restaurant. A maximum of one food sampling inspection per restaurant, per year, may be used to meet the quarterly inspection requirement for restaurants.

(2) Provisions for investigating complaints and suspected outbreaks of illness associated with food, lodging, and institutional facilities. Corrective actions shall be taken in cases of valid complaints and confirmed outbreaks of illness.

(3) Provisions for keeping records of activities described in Paragraphs (a) (1) and (2) of this Rule.

(b) A local health department shall establish, implement, and maintain written policies for the provision of sanitation education for food service personnel and orientation and in-service training for sanitarians. The policies shall include the following minimum requirements for sanitarians providing food, lodging, and institutional sanitation services:

(1) Initial field training for newly employed sanitarians;

(2) CDC Homestudy Course 3010-G or its equivalent as approved by the Division of Environmental Health;

(3) North Carolina State University Food Protection Short Course or its equivalent as approved by the Division of Environmental Health; and

(4) Compliance with the Board of Sanitarian Examiners' requirements.

Statutory Authority G.S. 130A-9.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule(s) cited as 15A NCAC 16A .0109; 15A NCAC 24A .0402 - .0403.

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

The public hearing will be conducted at 1:30 p.m. on July 22, 1992 at the Archives and History Bldg., (First Floor Auditorium), 109 E. Jones St., Raleigh, N.C.

Reasons for Proposed Actions:

15A NCAC 16A .0109 - *To amend the Migrant Health Program Rules and eliminate inpatient hospital services as a covered service. This action is necessary in order to assure the federal funding authority that there will be reasonable distribution of financial resources for the Migrant Program during the July - November Migrant Season. The assurance is required under a special condition on the Migrant Health Notice of Grant Award for the current budget period.*

15A NCAC 24A .0402 - .0403 - *To amend the Purchase of Medical Services administrative rules in order to assure conformity with the covered services and the reimbursement policy of the Migrant Health Program as amended.*

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 to John P.

Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least three days prior to the public hearing. Oral presentation lengths shall be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

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 COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.1(f).

***Editor's Note:** These Rules have been filed as temporary rules effective July 6, 1992 for a period of 180 days to expire on January 2, 1993.*

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .0100 - MIGRANT HEALTH

.0109 COVERED SERVICES

(a) The Migrant Health Program shall provide reimbursement for the following services provided to migrants which are necessary and essential for their immediate health needs:

(1) ambulatory care services in the form of physician and dentist services for acute pain relief including extractions, preventive, and restorative care;

(2) other services including psychologist's and psychiatrist's professional fees, laboratory tests, diagnostic x-rays, drugs and medications; and

(3) hospital outpatient and emergency room services. ~~and~~

~~(4) hospital inpatient services.~~

~~(b) Reimbursement for inpatient authorization services shall be limited as follows:~~

~~(1) Hospital service and admitting physician service may be authorized for the first three days of each admission;~~

~~(2) Consulting physician service may be authorized for one day per admission; if consulting physician service in more than one specialty is required, service for each speciality may be authorized for one day per admission;~~

~~(3) Surgeon service may be authorized for the day before surgery, the day of surgery and the day after surgery;~~

~~(4) Anesthesiologist service may be authorized for the day of surgery; and~~

~~(5) Radiologist service may be authorized for a maximum of three days per admission.~~

(b) ~~(c)~~ The Migrant Health Program shall not provide reimbursement for ~~the following services:~~

~~(1) hospital inpatient services provided for injuries; and~~

~~(2)~~ services provided for custodial care.

Statutory Authority G.S. 130A-223.

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0400 - REIMBURSEMENT

.0402 REIMBURSEMENT FOR INPATIENT HOSPITALIZATION

~~(a)~~ The Department shall reimburse providers of authorized inpatient hospitalization services at the Medicaid per diem rate in effect at the time the claim is received by the Department. ~~except in the Migrant Health Program.~~

~~(b) The Department shall reimburse providers of authorized inpatient hospitalization services under the Migrant Health Program at the rate of two hundred dollars ($200.00) per day or the Medicaid per diem rate, whichever is less.~~

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205; 130A-223.

.0403 REIMBURSEMENT FOR PROFESSIONAL, OUTPATIENT, OTHER SERVICES

(a) The Department shall reimburse providers of authorized outpatient services, professional services, and all other services not otherwise covered in the rules of this Section at the Medicaid rate in effect at the time the claim is received by the Department, except in the Migrant Health Program.

(b) The Department shall reimburse providers of authorized outpatient hospital services under

the Migrant Health Program at 80 percent of the Medicaid rate in effect at the time the claim is received by the Department.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205; 130A-223.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to repeal rule(s) cited as 15A NCAC 18A .0101 - .0132; and adopt rule(s) cited as 15A NCAC 18A .0134 - .0183.

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

The public hearings will be conducted at:

July 21, 1992
2:00 p.m.
EHNR-Washington Regional Office
Conference Room A
1424 Carolina Avenue
Washington, N.C.

July 22, 1992
1:30 p.m.
Archives and History Bldg.,
(First Floor Auditorium),
109 E. Jones St.,
Raleigh, N.C.

Reasons for Proposed Actions:

15A NCAC 18A .0101 - .0132 - *The existing crustacea rules were adopted in 1976 with some revisions made in 1987. These Rules are outdated and do not recognize new technologies and processes.*

15A NCAC 18A .0134 - .0183 - *The purpose of these Rules is to have up-to-date rules which will provide public health protection for the consumer and at the same time recognize the needs of the crustacea industry.*

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 to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least three days prior to the public hearing. Oral presentation lengths shall be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

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 COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.1(f).

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0100 - PROCESSING AND SHIPPING OF COOKED CRUSTACEA AND CRUSTACEA MEAT

.0101 DEFINITIONS

~~The following definitions shall apply in the interpretation and enforcement of Section .0100 of this Subchapter:~~

~~(1) "Crustacea meat" means the meat of crab, lobster, crayfish, and shrimp.~~

~~(2) "Food contact surface" means the parts of equipment, including auxiliary equipment, which may be in contact with the food being processed, or which may drain into the portion of equipment with which food is in contact.~~

~~(3) "Fresh crustacean" means a live, raw or frozen crustacean which shows no decomposition.~~

~~(4) "Internal temperature" means the temperature of the animal or product as opposed to the ambient temperature.~~

~~(5) "Packing-shipping" means inspecting, final packaging, placing crustacea meat under refrigeration, and shipping.~~

~~(6) "Pasteurization, pasteurized" and similar terms means the process of heating every~~

particle of crustacea meat in an approved hermetically sealed container to a temperature of at least 185 degrees F. and holding it continuously at or above this temperature for at least one minute in properly operated equipment approved by the state regulatory authority; provided that nothing in this definition shall be construed as barring any other pasteurization process which has been found equally effective and which is approved by the Division.

(7) "Picking/packing" means picking crustacea meat and placing the meat in a container.

(8) "Potable water" means water from a supply approved by the Division.

(9) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

(10) "Division" means the Division of Environmental Health or its authorized agents.

(11) "Adulterated or misbranded" means any crustacea having been cooked, picked, or packed in a plant which has not been certified by the Division in accordance with the requirements of these Rules or which are polluted as determined by bacteriological analysis or if the crustacea meat is putrid or unfit for human consumption or which is not labeled with a valid identification number awarded by the Division or which have been exposed to any unsanitary conditions.

(12) "Person" means an individual, firm, association, organization, partnership, business trust, corporation, or company.

Statutory Authority G.S. 130A-230.

.0102 REQUIREMENTS FOR OPERATION

(a) Inspection and Approval. No person shall operate a crustacea plant within the State of North Carolina until he shall have complied with the following rules and until such plant shall have been inspected and approved by the Division.

(b) Permit. No crustacea meat plant shall be operated in North Carolina until a permit to operate shall have been issued by the Division. A permit to operate shall be issued only after a sanitary inspection by the Division shows that the plant complies with these Rules.

(c) Application. Application for such inspection shall be made in writing by the person requesting a permit to operate. Such application forms can be obtained at the shellfish sanitation office. All certificates of inspection and permits shall be posted in a conspicuous place in the plant. Violation of any of the following rules shall constitute sufficient cause for revocation of the permit to operate. No permit to operate shall be issued or reissued until the plant has been inspected or reinspected by the Division.

(d) Approval of Plans. Plans and specifications for proposed new construction or remodeling shall be submitted for review and approval to the shellfish sanitation office.

Statutory Authority G.S. 130A-230.

.0103 PLANTS AND GROUNDS

(a) Plant Design. Plant design shall provide for continuous flow of the raw materials and product to prevent contamination by exposure to areas involved in earlier processing steps, refuse, or other objectionable areas.

(b) Plant Location. Plants in which crustacea meat is picked and packed shall, to the extent feasible, be so located that they will not be subject to flooding by high tides. If plant floors are flooded, processing shall be discontinued until after waters have receded and the facilities are cleaned and sanitized. (A minimum plant elevation of at least two feet above mean high water shall be provided in new plant construction.)

(c) Separation of Operations. Separate rooms or areas approved by the Division should be provided for receiving, washing, and cooking crustacea.

(d) Separation of Processes. The processes set out in (1) to (7) of this Subdivision shall be carried out in separate rooms or facilities, and the interior walls separating these rooms shall extend from floor to ceiling and contain only necessary openings:

(1) cooling;

(2) picking/packing; Mechanization will result in a single flow-through process and modification of these two requirements would be necessary to permit the use of one room for these procedures;

(3) packing/shipping;

(4) refrigeration of picked crustacea meat;

(5) refrigeration of unpicked cooked crustacea; provided that in an emergency, cooked crustacea may be stored in the same refrigeration room with packed crustacea meat;

(6) refrigeration of uncooked items such as fresh crustacea, bait, or fish;

(7) pasteurizing.

(e) Separation of Rooms. Separate rooms shall be provided for container storage, locker and lunch, toilets, and sales.

(f) Cooking Room. The cooking area or room shall be under permanent cover, located between the area for receiving raw crustacea and the

cooling room, and be properly vented to assure the quick removal of steam.

(g) Cooling Room. The construction and arrangement of the cooling room shall give adequate protection to the cooked crustacea from flies, insects, rodents, dust, plant traffic, and the washing down operation. This room and the refrigeration room for cooked crustacea shall open directly into the picking room or screened in area or passageway through which crustacea are transported after cooling.

(h) Adequate Space. Adequate space shall be provided for all routine operations to permit sanitary handling of crustacea and crustacea meat and thorough cleaning of equipment.

(i) Delivery Window. The delivery window between the picking-packing and packing-shipping rooms shall be equipped with a corrosion-resistant shelf of metal or equal smooth non-porous surface, draining toward the packing room.

(j) Lockers. Rooms or lockers shall be provided which have adequate capacity for storing clothing, aprons, gloves, and other personal articles of employees.

Statutory Authority G.S. 130A-230.

.0104 FLOORS, WALLS, AND CEILINGS

(a) Floors. All floors shall be of smooth materials and so constructed as to be easily cleanable and shall be kept clean and in good repair. Floors in cooling, picking, packing, refrigeration, and toilet rooms shall be of concrete or other equally impervious and easily cleanable material. Adequate floor drainage shall be provided in all areas where floors are subject to flooding-type cleaning or where normal operations release or discharge water or other liquid waste on the floor.

(b) Walls and Ceilings. All walls and ceilings shall be of tile, concrete, cement plaster, concrete blocks, painted wood, or equivalent material having a smooth, light-colored surface which will endure repeated washings and shall be free from cracks, ledges, and shelves. Doors and windows shall be properly fitted and maintained in good repair.

Statutory Authority G.S. 130A-230.

.0105 ANIMAL AND VECTOR CONTROL MEASURES

(a) Rodent Control. The plant shall be so constructed as to prevent entrance of rodents, and there shall be no evidence of rodents in any part of the plant.

(b) Vermin Control. Effective measures shall be taken to keep domestic animals, fowl, flies, rodents, and other vermin out of the establishment and to prevent their breeding or presence on the premises. All openings to the outer air shall be effectively protected against the entrance of such insects and rodents by self-closing doors, closed windows, 16-mesh or finer screening, controlled air currents, or other effective means.

(c) Rodenticides. Rodenticides, which are highly toxic to humans, shall not be stored in crustacea meat processing plants and shall not be used except under the supervision of a licensed pest-control operator or other qualified specialist. Rodenticides, which have a low toxicity for humans, shall be identified, stored, and used in such a manner as to prevent contamination of the product and to cause no health hazards to employees.

(d) Pesticides. Only those pesticides shall be used which have been approved for specific use and properly registered with the Environmental Protection Agency and with the North Carolina Department of Agriculture in accordance with the "Federal Environmental Pesticide Control Act" and the "North Carolina Pesticide Law". Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.

Statutory Authority G.S. 130A-230.

.0106 LIGHTING

(a) Natural or artificial lighting shall be provided in all parts of the plant. Minimum lighting intensities shall be as follows:

(1) 75 foot candles on working surfaces in picking and packing rooms/areas.

(2) 25 foot candles measured at a height of 30 inches above the floor throughout the rest of the plant.

(b) Light bulbs, fixtures or other glass suspended within the plant shall be protected to prevent contamination in case of breakage.

Statutory Authority G.S. 130A-230.

.0107 VENTILATION

Ventilation shall be provided to eliminate odors and condensation.

Statutory Authority G.S. 130A-230.

.0108 WATER SUPPLY

(a) Only potable water shall be used in any part of the plant.

(b) All air cooling, picking, and packing rooms shall be provided with faucets and wash down hoses.

(c) An automatically regulated hot water system shall be provided, which has sufficient capacity to furnish water with a temperature of at least 130 degrees F. during all hours of plant operation.

(d) Sufficient water shall be available for all plant needs and shall be a pressure supply system.

(e) Hot and cold water outlets designed for the facility shall be provided at each sink compartment, except that warm water only may be acceptable at hand-washing sinks as provided by Rule .0109 (e) of this Section.

Statutory Authority G.S. 130A-230.

.0109 PLUMBING AND RELATED FACILITIES

(a) All plumbing shall comply with applicable plumbing codes.

(b) There shall be no cross-connections between the approved pressure water supply and water from a non-approved source, and there shall be no fixtures or connections through which the approved supply might be contaminated by back siphonage.

(c) There shall be at least one lavatory for every 20 employees among the first 100 employees, and at least one lavatory for each 25 employees in excess of the first 100. (Twenty-four inches of wash sink or 18 inches of a circular basin, when provided with water outlets for such space, will be considered equivalent to one lavatory.)

(d) Hand-washing facilities shall be convenient to the work areas, and so located that the person responsible for supervision can readily observe that employees wash their hands before beginning work and after each interruption. There shall be at least one lavatory in the packing room for use by packing room workers.

(e) The lavatories shall be provided with hot water at least 100 degrees F. either from a controlled temperature source with a maximum temperature of 115 degrees F., or from a hot and cold mixing or combination valve. Steam-water mixing or steam-water combination valves shall not be used.

(f) Supplies of soap and single-service towels and protected dispensers shall be available near the lavatory. Other sanitary drying devices, if approved by the Division, are acceptable. Adjacent to the lavatories, a container of suitable construction shall be provided for the sole purpose of sanitizing the hands in an approved solution of adequate strength, 100 parts per million of available chlorine or its bactericidal equivalent.

(g) Conveniently located, separate toilets shall be provided for each sex except that separate facilities need not be required when family operations are carried on and satisfactory toilets are located nearby, or when the plant has fewer than 10 employees.

(h) Toilet room and privies shall be protected against the entrance of flies. Doors of toilet rooms and privies shall not open directly into processing areas of the plant and shall be self-closing. Toilet rooms and privies shall be kept clean, in good repair and furnished with toilet paper.

(i) Toilet rooms and privies shall be ventilated by a direct opening to the outer air, or by a mechanical ventilating system. Air vents shall be screened or have self-closing louvers.

(j) Fixtures, ducts, and pipes shall not be so suspended over working areas that drip or condensate may contaminate foods, raw materials, or food-contact surfaces.

(k) Plumbing facilities and equipment shall be so constructed and so located as to permit no splashing of water onto picking tables, packing tables, meat to be or already packed, packing cans, picking pans in transit, unpicked cooked crustacea, or shelf of the window through which picked crustacea meat is delivered to the packing room.

(l) Plumbing facilities and equipment shall be so placed as to facilitate the flow of plant activities and in relation to use, while at the same time avoiding crowded conditions.

Statutory Authority G.S. 130A-230.

.0110 SEWAGE DISPOSAL

(a) All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved sewage disposal method as provided in "Sewage Disposal Systems," 15A NCAC 18A .1900.

(b) Privies shall be permitted only where water-carried sewerage systems are not feasible.

Statutory Authority G.S. 130A-230.

.0111 CONSTRUCTION OF UTENSILS AND EQUIPMENT

All equipment and utensils shall be so designed and of such material and workmanship as to be smooth, easily cleanable, and durable and shall be kept in good repair. The food-contact surfaces of equipment and utensils shall, in addition, be easily accessible for cleaning, non-toxic, corrosion resistant, nonabsorbent, and free of open seams.

Statutory Authority G.S. 130A-230.

.0112 GENERAL CLEANLINESS

(a) Material and equipment not in routine use shall be stored in designated rooms or areas.

(b) The processing areas of the plant shall not be used for other operations while crustacea are being processed.

(c) No unauthorized persons shall be allowed in the processing areas of the plant at any time. Sales of crustacea or crustacea meat shall not be made from any processing portion of the plant or by an processing personnel.

(d) Premises shall be clean and free of litter and rubbish.

Statutory Authority G.S. 130A-230.

.0113 CLEANING OF BUILDING AND EQUIPMENT

(a) The plant interior shall be kept clean and all utensils and equipment shall be thoroughly cleaned at the end of each day's operation and more often if necessary. Food-contact surfaces shall be sanitized at the end of each day's operation. Sanitized shovels shall not be stored on the floor. Picking pans and knives shall be cleaned and rinsed frequently in a bactericidal solution during the day's operations, such as after delivery of meat to the packing room. Picking knives shall not be padded with paper towels or rags.

(b) Facilities shall be provided and used for the cleaning and sanitizing of utensils and equipment. For every 30 pickers, a two-compartment sink, with hot and cold running water shall be located in the picking room. Facilities for washing scrap containers shall be provided.

Statutory Authority G.S. 130A-230.

.0114 BACTERICIDAL TREATMENT OF UTENSILS AND EQUIPMENT

All food-contact surfaces shall be treated by one or more of the following methods:

(1) Exposure for at least 15 minutes at a temperature of at least 170 degrees F., or for at least five minutes at a temperature of at least 200 degrees F., in a steam cabinet equipped with a thermometer located in the coldest zone;

(2) Immersion for at least one minute in, or exposure for at least one minute to a flow of a solution maintained at not less than 100 parts per million of free chlorine or its equivalent. All food-contact surfaces must be wetted by the bactericidal solution and piping so treated must be filled. Bactericidal sprays containing not less than 200 parts per million of free chlorine or its equivalent may be used for large equipment. Bactericidal treatment with chemicals is not effective unless the surface has been thoroughly cleaned;

(3) Any bactericide approved by the Division is satisfactory for use in connection with crustacea plant sanitation.

Statutory Authority G.S. 130A-230.

.0115 STORAGE OF EQUIPMENT

Equipment and utensils, which have been cleaned and given bactericidal treatment, shall be stored so as to be protected against contamination.

Statutory Authority G.S. 130A-230.

.0116 RECEIVING OF CRUSTACEA

(a) Only fresh crustacea shall be accepted for processing. No crustacea plant shall pick crustacea meat from any inter-plant shipment of cooked crustacea or portions thereof without special authority from the Division.

(b) Fresh crustacea shall be cooked as soon as possible after receipt at the processing plant.

Statutory Authority G.S. 130A-230.

.0117 COOKING

(a) Crustacea shall be cooked under steam pressure until such time that the internal temperature of the center-most crustacean reaches 235 degrees F. Temperature shall be measured with a maximum registering thermometer having a range of 170-270 degrees F.

(b) The retort shall be so constructed as to permit a working pressure of at least 0-20 psig. Steam inlet and venting shall provide a uniform and complete distribution of steam. Venting shall be sufficient to permit complete elimination of air from the retort. Drains and vents shall be located at least two feet above mean high water.

(c) The retorts shall be equipped with:

(1) an enclosed, mercury-filled, indicating thermometer with a range that will include 170-270 degrees F. and located with the bulb extending into the heat chamber;

(2) an operating pressure indicator, at least three inches in diameter, with a 0-30 psig range, and located adjacent to the indicating thermometer;

(3) a safety valve operational at 18-30 psig, located in the upper portion of the retort, protected from tampering, and appropriate for operator's personal safety.

(d) Boiler must be of such capacity as to maintain 45 to 100 psig during cooking. The steam line from the boiler to the retort shall be at least one-fourth inch inside diameter. A pressure regulating valve, with a 10-30 psig range is optional. If used, it shall be located on the steam line and shall be one and one-fourth inches inside diameter, if not adjacent to the retort, or at least one inch inside diameter, if adjacent.

(e) Overhead hoists shall be equipped with chain bags.

(f) Retort cooking baskets shall be of stainless steel or equivalent material, and shall be so designed as to allow for proper steam disbursement, ease of handling, and dumping and satisfactory cleaning.

(g) Nothing in this Rule shall be so construed as barring any other cooking process which has been found equally effective and which is approved by the Division.

Statutory Authority G.S. 130A-230.

.0118 COOLING

Cooked crustacea, after removal from the retort, shall be moved immediately to a protected area to be air cooled to ambient temperature without being disturbed. Cooked crustacea shall be stored in original retort cooking basket.

Statutory Authority G.S. 130A-230.

.0119 PICKING AND PACKING

(a) The picking and packing operations shall be conducted in a sanitary manner. When cooked crustacea meat is washed, it shall be washed in clean running water from an approved source. All cooked crustacea placed before a picker shall be picked before a new supply is delivered. Crustacea meat shall be placed under refrigeration within two hours after picking.

(b) Repacking of crustacea meat which has been picked or processed in another plant shall not be allowed.

(c) Blending of fresh with frozen or pasteurized meat shall be prohibited.

(d) Cans or other containers for packaging cooked crustacea meat shall be clean, sanitized, single-service, made of an approved material, and tightly closed or sealed after filling.

(e) Packer's certificate number shall be legibly impressed, embossed, or lithographed in or on the sides of the containers in which crustacea meat is packed, except when the lid becomes an integral part of the container during the sealing process, the number may be on the lid; name and address of the firm or distributor shall be similarly marked on the container lid. Plastic bags shall have the name and address of the packer or distributor and certification number of the packer permanently marked on them (Hand-stamping is unacceptable.). Containers bearing a certificate number other than that of the respective plant shall not be allowed in the plant. Each container shall be permanently and legibly identified with a code indicating date of packing.

(f) Only clean shipping barrels, boxes, and containers shall be used.

Statutory Authority G.S. 130A-230.

.0120 FREEZING

(a) Crustacea meat for freezing shall be frozen within 24 hours of the time it is picked.

(b) Storage of frozen crustacea meat shall be at zero degrees F. or lower temperatures.

Statutory Authority G.S. 130A-230.

.0121 CRUSTACEA SCRAP DISPOSAL

Scrap containers shall be removed from the picking room as soon as they are filled, placed in suitable protected storage, and shall be removed from the premises at least daily and disposed of in a manner approved by the Division. All scrap containers shall be leak-proof and of nonabsorbent materials and shall be thoroughly cleaned at least daily. Other solid wastes shall be stored and disposed of with sufficient frequency and also in a manner approved by the Division.

Statutory Authority G.S. 130A-230.

.0122 SINGLE-SERVICE CONTAINERS

All single-service containers shall be stored and handled in a sanitary manner, and where necessary, shall be given bactericidal treatment immediately prior to filling and adequately drained.

Statutory Authority G.S. 130A-230.

.0123 REFRIGERATION

(a) Refrigeration rooms shall be of sanitary construction with an impervious floor, graded to drain quickly. The rooms shall be constructed so that they will not receive drainage from other portions of the plant. Floor drains shall not be connected directly to a sewer.

(b) Ice boxes, for the picked product, shall be of sanitary construction with an impervious lining and have an effective drain.

(c) The refrigeration room or ice box shall be large enough and constructed so that a full day's production, with ice, can be conveniently stored

and equipped with a thermometer located in the room or box.

(d) Ice shall be manufactured in the plant or obtained from an approved source. Packers, purchasing crushed ice, shall secure it from dealers who handle, crush and deliver it in a sanitary manner.

(e) Ice bins shall have smooth impervious ice contact surfaces and shall be constructed and located so that the bottom is above the level of the adjacent floor and drains away from the unused ice.

(f) Block ice shall be properly stored to avoid contact with contaminated surfaces and shall be thoroughly washed on an elevated metal stand or grating, with a hose provided for this purpose, before it is placed in the crushing machine. A corrosion resistant container shall be provided to catch the crushed ice falling from the crusher. (Where the crusher is located in a protected portion of the refrigeration room, this container is not required.)

(g) All facilities and equipment employed in handling and preparing ice for use shall be used for no other purpose and shall be cleaned each day the plant is in operation. Shovels shall be hung or stored in a protected manner when not in use.

(h) Where it is necessary to have ice in the packing room a metal-lined container or compartment of sanitary construction shall be provided for the sole purpose of storing such ice manufactured in the plant, purchased crush ice, or block ice that has been crushed in the plant; except that clean barrels or boxes for shipping crustacea may be used for this purpose.

Statutory Authority G.S. 130A-230.

.0124 HEALTH AND CLEANLINESS OF PERSONNEL

(a) Persons while affected with a disease in a communicable form or while a carrier of such disease or while afflicted with boils, infected wounds, or an acute respiratory infection, shall be excluded from the plant.

(b) Daily observation or inquiries of employees shall be made by the managers or supervisors to detect any sign of illness among employees.

(c) A report shall be made to the local health authority when an employee is known or suspected of having a disease in a communicable form.

(d) Employees shall wash their hands thoroughly with warm water and soap, then dip them in an approved sanitizing solution before beginning work and prior to returning to work after leaving working areas or after contact with an unprotected surface or other source of contamination. Employees engaged in picking and packing operations shall rinse their hands, following washing, in a clean sanitizing solution containing at least 100 parts per million of available chlorine or other equally effective bactericide. Fingernails shall be short and clean and ornate rings shall not be worn while picking or packing. Use of cloth wraps or cloth finger cots shall not be permitted.

(e) Appropriate hand-washing signs shall be posted in toilets or privies and at conspicuous places in both picking rooms and at the hand-washing lavatories.

(f) Pickers, packers, and handlers of unpicked cooked crustacea or picked meat shall wear clean outer garments and aprons. Aprons shall cover the front and sides of the body. Caps or hair nets shall cover the hair. Arms shall be bare to the elbow or covered with approved type arm guards. Any type of protective clothing employing ruffles and gathering of material, as well as scrap plastic, shall not be used.

(g) Clean, individual, single-service, hand paper towels shall be provided for each picker to use during picking operations.

(h) Employees shall not eat food or use tobacco in any form in the packing or picking rooms.

Statutory Authority G.S. 130A-230.

.0125 SUPERVISION

The owner or manager shall either personally supervise or shall designate an individual whose principal duty shall be to supervise and be responsible for the compliance with the rules of this Section.

Statutory Authority G.S. 130A-230.

.0126 MICROBIOLOGICAL STANDARDS

(a) Fresh cooked crustacea meat shall not contain more than 36 *Escherichia coli* MPN per 100 grams, or have a standard plate count of more than 100,000 bacteria per gram.

(b) Pasteurized crustacea meat shall contain no *Escherichia coli* or fecal coliform. Samples of pasteurized crustacea meat, taken within 24 hours of processing, shall not have a standard plate count of more than 3,000 bacteria per gram.

(c) Crustacea meat shall not contain pathogenic organisms in sufficient numbers to be hazardous to the public health.

(d) Crustacea meat found not complying with the microbiological standards as stated in (a), (b), and (c) of this Rule, may be deemed adulterated by the Division.

Statutory Authority G.S. 130A-230.

.0127 PASTEURIZATION PROCESS CONTROLS - THERMOMETERS

(a) Indicating and Recording Thermometers. Both indicating and recording thermometers shall be provided on all pasteurizing equipment and serve as time-temperature controllers. The bulbs of both thermometers shall be located so as to give a true representation of the operating temperature of the water bath. A representative of the Division shall check the accuracy of both thermometers as installed and at least once each operating season. The recording thermometer chart must be at least a 12-hour chart, and at least 10 inches in diameter.

(b) Protection of Recording Thermometer. The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or plant traffic. The thermometer mechanism shall be located so as to be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the pasteurizing cycle, except for temperature check or for emergency or repair, a record of which shall be made.

(c) Recording Thermometer Temperature Range and Accuracy. The recording thermometer shall have a range of at least 120-220 degrees F. It shall be accurate within plus or minus one degree F. between 160 degrees F. and 200 degrees F. The chart shall be scaled at a maximum of two degrees F. intervals in the range of 160 degrees F. and 200 degrees F.

(d) Indicating Thermometer Temperature Range and Accuracy. The indicating thermometer shall be a mercury thermometer with an accuracy and readability of plus or minus one degree F. between 160 degrees F. and 200 degrees F. The thermometer shall be protected against damage.

(e) Recording Thermometer Time Accuracy. The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.

(f) Use of the Recording Thermometer Chart. The pasteurization unit shall not be operated without a recording thermometer chart in place, the pen in contact with the chart, and an inked record being made of the operating time-temperature cycle. Any indication of falsification of a thermometer chart shall constitute a violation. A new chart shall be used for each day's operations and the code number or date of each batch affixed to the chart for each pasteurizing cycle. A permanent file of the used thermometer charts shall be maintained by the pasteurizer and kept available for inspection by the Division for a period of one year. The following information shall be recorded within the confines of the pen markings after the pasteurization cycle has been completed:

(1) Date of processing;

(2) Quantity of each batch processed (pounds of meat or number and size of containers);

(3) Processor's code of each pack;

(4) If the pasteurizer processes meat for someone else, then the packer's name, address, and license or certification number must be recorded;

(5) Notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the pasteurizing cycle;

(6) After the optimum temperature has been reached and during the holding time, the reading of the indicating thermometer and the time of reading shall be recorded on the chart;

(7) Written signature of the pasteurizer operator.

(g) Use of a Constant Flow Steam Control Valve. A constant flow steam control valve is required if steam is used as a source of heat.

(h) Water Bath. The water bath shall be provided with effective agitation to maintain a uniform temperature.

Statutory Authority G.S. 130A-230.

.0128 PREPARATION OF CRUSTACEA MEAT

The preparation of crustacea meat for pasteurizing shall be in accordance with the following:

(1) Preparation. Crustacea meat for pasteurization shall be prepared in compliance with existing Division regulations for fresh meat.

(2) Sealing of Containers. The containers of crustacea meat shall be sealed as quickly as possible after the meat is picked.

(3) Refrigeration. The containers of crustacea meat shall be placed immediately under ice refrigeration.

Statutory Authority G.S. 130A-230.

.0129 PASTEURIZATION OF CRUSTACEA MEAT

The pasteurization of crustacea meat shall be in compliance with the following:

(1) Pasteurizing Operation. Crustacea meat for pasteurization shall be pasteurized within 24 hours of the time it is picked. The minimum pasteurization specifications shall be the raising of the internal temperature of the container of crustacea meat to 185 degrees F. and holding at that temperature for at least one minute at the geometric center of a container approved by the Division; provided that nothing in this definition shall be construed as barring any other pasteurization process which has been found equally effective and which is approved by the Division. Each set of pasteurizing equipment shall be standardized so that the above pasteurization treatment can be obtained. The pasteurizer shall keep on file the standardization report, and his pasteurization procedure shall be performed in accordance with it.

(2) Temperature-Time Requirements. Temperature-time requirements shall be determined for each water bath and all operating conditions. Alteration of the equipment or in the stacking of containers shall require that the procedure be restandardized to meet the pasteurizing requirements in Paragraph (1) of this Rule.

(3) Chilling. The containers of meat shall be chilled by cooling to 100 degrees F. within 50 minutes to allow refrigerated storage within one hour after processing.

(4) Refrigeration. Refrigerated storage shall be provided for the chilled crustacea meat and shall maintain a storage temperature at or below 36 degrees F. but above 32 degrees F.

Statutory Authority G.S. 130A-230.

.0130 LABELING OF PASTEURIZED CRUSTACEA MEAT

Labeling of pasteurized crustacea meat shall be in compliance with the following:

(1) Designation of Contents. The label used shall clearly identify the contents of the container as pasteurized crustacea meat. Whenever the term "crab meat," "lobster meat," "shrimp" (or its equivalent), appears on the label, the word "pasteurized" shall be used in immediate conjunction in type of equal prominence.

(2) Coding. Each container shall be permanently and legibly identified with a code indicating the batch and day of processing.

(3) Refrigeration. The words "Perishable-Keep Under Refrigeration," or their equivalent, shall be prominently displayed on the label.

Statutory Authority G.S. 130A-230.

.0131 SEVERABILITY

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid, the remainder of the rules, or the application of such provisions to other persons or circumstances shall not be affected thereby.

Statutory Authority G.S. 130A-230.

.0132 APPEALS PROCEDURE

Appeals shall be conducted in accordance with G.S. 150B.

Statutory Authority G.S. 130A-230.

.0134 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) "Adulterated" means the following:

(a) Any cooked crustacea or crustacea meat that have been picked, packed or repacked in a facility which has not been permitted by the Division in accordance with these Rules;

(b) Any cooked crustacea or crustacea meat which exceed the bacteriological standards in Rule .0183 of this Section;

(c) Any cooked crustacea or crustacea meat which are putrid or unfit for human consumption;

(d) Any cooked crustacea or crustacea meat which have been exposed to any condition whereby it may have become contaminated; or

(e) Any cooked crustacea which contain any added substance, unless the substance is approved by the Division, the United States Food and Drug Administration or the North Carolina Department of Agriculture.

(2) "Code date" means the date conspicuously placed on the container to indicate the date that the product was packed.

(3) "Cook" means to prepare or treat crustacea by heating.

(4) "Crustacea meat" means the meat of crabs, lobster, shrimp or crayfish.

(5) "Division" means the Division of Environmental Health or its authorized agent.

(6) "Food-contact surface" means the parts of equipment, including auxiliary equip-

ment, which may be in contact with the food being processed, or which may drain into the portion of equipment with which food is in contact.

(7) "Fresh crustacea" means a live, raw or frozen raw crab, lobster, shrimp or crayfish which shows no decomposition.

(8) "Internal temperature" means the temperature of the product as opposed to the ambient temperature.

(9) "Misbranded" means the following:

(a) Any container of cooked crustacea or crustacea meat which is not labeled with a valid identification number awarded by regulatory authority of the state or country of origin of the cooked crustacea or crustacea meat; or

(b) Any container of cooked crustacea or crustacea meat which is not labeled as required by these Rules.

(10) "Operating season" means the season of the year during which a crustacea product is processed.

(11) "Pasteurization" means the process of heating every particle of crustacea meat in a hermetically-sealed 401 by 301 one pound container to a temperature of at least 185° F (85° C) and holding it continuously at or above this temperature for at least one minute in properly operated equipment approved by the Division; provided that nothing in this definition shall be construed as barring any other pasteurization process which has been found equally effective and which is approved by the Division.

(12) "Pasteurization date" means a code conspicuously placed on the container to indicate the date that the product was pasteurized.

(13) "Processing" means any of the following operations when carried out in conjunction with the cooking of crustacea or crustacea meat: receiving, refrigerating, air-cooling, picking, packing, repacking or pasteurizing.

(14) "Repacker" means a facility which repacks cooked crustacea meat processed by a North Carolina certified crustacea facility into other containers.

(15) "Responsible person" means the individual present in a cooked crustacea facility who is the apparent supervisor of the cooked crustacea facility at the time of the inspection. If no individual is the apparent supervisor, then any employee is the responsible person.

(16) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

Statutory Authority G.S. 130A-230.

.0135 PERMITS

(a) No person shall operate a cooked crustacea facility without a permit issued by the Division.

(b) No person shall operate a repacker facility without a repacker permit issued by the Division.

(c) Application for a permit shall be submitted in writing on an application form available from the Division.

(d) No permit shall be issued by the Division until an inspection shows that the facility and equipment comply with applicable rules of this Section.

(e) A permit issued to one person is not transferrable to another person.

(f) The permit shall be posted in a conspicuous place in the facility. All permits shall expire on March 31 of each year.

(g) Plans and specifications for proposed new construction, expansion of operations or changes in operating processes shall be submitted to the Division for review and approval prior to beginning construction or placing equipment.

(h) A permit may be revoked or suspended pursuant to G.S. 130A-23.

(i) The owner or responsible person shall sign the completed inspection sheet to acknowledge receipt of the inspection sheet.

Statutory Authority G.S. 130A-23; 130A-230.

.0136 APPLICABILITY OF RULES

The rules in this Section shall apply to the operation of all facilities and persons permitted in Rule .0135 of this Section and all other businesses and persons that buy, sell, transport or ship cooked crustacea or crustacea meat.

Statutory Authority G.S. 130A-230.

.0137 GENERAL REQUIREMENTS FOR OPERATION

(a) During the operating season the processing portion of the facility shall be used for no purpose other than the processing of cooked crustacea or crustacea meat.

(b) Retail sales of cooked crustacea or crustacea meat shall not be made from any processing portion of the facility.

(c) Accurate records of all sales shall be maintained for the following cooked crustacea or crustacea meat products:

(1) Fresh - 60 days.

(2) Frozen - 1 year.

(3) Pasteurized - 1 year.

Statutory Authority G.S. 130A-230.

.0138 SUPERVISION

(a) The owner or responsible person shall supervise the processing operation and be responsible for compliance with the rules of this Section.

(b) No unauthorized persons shall be allowed in the facility during the periods of operation.

(c) The owner or responsible person shall observe employees daily to ensure compliance with Rule .0154 of this Section.

Statutory Authority G.S. 130A-230.

.0139 FACILITY CONSTRUCTION

Cooked crustacea facilities shall be sized and constructed to permit compliance with the operational provisions of this Section.

Statutory Authority G.S. 130A-230.

.0140 FACILITY LOCATION

A cooked crustacea facility constructed after October 1, 1992 shall be located so that it will not be subject to flooding. If the facility floors are flooded, processing shall be discontinued until flood waters have receded and the facility and equipment are cleaned and sanitized. Any cooked crustacea or crustacea meat which may have been contaminated by flood waters shall be deemed adulterated and disposed of in accordance with G.S. 130A-21(c).

Statutory Authority G.S. 130A-230.

.0141 FLOORS

Floors shall be of concrete or other equally impervious material, constructed so that they may be easily cleaned and shall be sloped so that water drains.

Statutory Authority G.S. 130A-230.

.0142 WALLS AND CEILINGS

(a) Walls and ceilings shall be constructed of smooth, easily cleanable, non-corrosive, impervious material.

(b) Insulation on cooked crustacea cooler walls shall be covered to the ceiling with a smooth, easily cleanable, non-corrosive, impervious material.

(c) Doors and windows shall be properly fitted and maintained in good repair.

Statutory Authority G.S. 130A-230.

.0143 LIGHTING

(a) Natural or artificial lighting shall be provided in all parts of the facility. Minimum lighting intensities shall be as follows:

(1) 50 foot-candles on working surfaces in the picking and packing rooms and areas.

(2) 10 foot-candles measured at a height of 30 inches above the floor throughout the rest of the processing portion of the facility.

(b) Light bulbs within the processing portion of the facility shall be shatterproof or shielded to prevent product contamination in case of breakage.

Statutory Authority G.S. 130A-230.

.0144 VENTILATION

All rooms and areas shall be ventilated to eliminate odors and condensation.

Statutory Authority G.S. 130A-230.

.0145 INSECT CONTROL

All outside openings shall be screened, provided with wind curtains or be provided with other methods to eliminate the entrance of insects. All screens shall be kept in good repair. All outside doors shall open outward and shall be self-closing. The use and storage of pesticides shall comply with all applicable State and Federal laws and rules.

Statutory Authority G.S. 130A-230.

.0146 RODENT AND ANIMAL CONTROL

Measures shall be taken to keep animals, fowl, rodents, and other vermin out of the facility. The storage and use of rodenticides shall comply with all applicable State and Federal laws and rules.

Statutory Authority G.S. 130A-230.

.0147 PREMISES

(a) Premises under the control of the owner shall be kept clean at all times. Waste materials, rubbish, other articles or litter shall not be permitted to accumulate on the premises. Other items shall be properly stored.

(b) Measure shall be taken to prevent the harborage and breeding of insects, rodents and other vermin on premises.

Statutory Authority G.S. 130A-230.

.0148 WATER SUPPLY

(a) The water supply used shall be in accordance with 15A NCAC 18A .1700.

(b) A cooked crustacea facility using a non-community water supply shall be listed with the Public Water Supply Section, Division of Environmental Health.

(c) Water samples for bacteriological analysis shall be collected at least annually by the Division and submitted to the Laboratory Division of the Department or another laboratory certified by the Department for analysis.

(d) Cross-connections with unapproved water supplies are prohibited. Hot and cold running water under pressure shall be provided to food preparation, utensils and handwashing areas and any other areas in which water is required for cleaning. Running water under pressure shall be provided in sufficient quantity to carry out all food preparation, utensil washing, hand washing, cleaning and other water-using operations.

Statutory Authority G.S. 130A-230.

.0149 ICE

(a) Ice shall be obtained from a water supply approved by the Division pursuant to Rule .0148 of this Section and shall be stored and handled in accordance with these Rules.

(b) All equipment used in the handling of ice shall be used for no other purpose and shall be cleaned and sanitized at least once each day the facility is in operation.

Statutory Authority G.S. 130A-230.

.0150 PLUMBING

(a) Plumbing fixtures shall be located to facilitate the flow of processing activities and to prevent the splashing of water on food-contact surfaces or cooked crustacea and crustacea meat.

(b) Fixtures, ducts and pipes shall not be suspended over working areas.

(c) Handwash lavatories shall be located so that the supervisor can readily observe that employees wash and sanitize their hands before beginning work and after each interruption.

(d) Handwash lavatories shall be provided in the following locations:

(1) Cooking area.

(2) Packing room or area.

(3) Toilet or lounge area.

(4) Picking room.

(e) At least one handwash lavatory shall be provided for every 20 employees among the first 100 employees and at least one handwash lavatory shall be provided for every 25 employees in excess of the first 100 employees.

(f) Additional lavatories required by Paragraph (e) of this Rule shall be located in the picking room.

(g) A container shall be located near each handwash lavatory in the picking room and packing room or area to sanitize hands in a solution containing at least 100 parts per million (ppm) of available chlorine or other equally effective bactericide. A suitable testing method or equipment shall be available and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

(h) Soap and single service towels in protected dispensers, or other approved hand drying devices, shall be available near the handwash lavatories.

(i) All pre-cool rooms, picking rooms, packing rooms or areas, and cooking areas shall be provided with hosebibs and wash down hoses. Storage racks shall be provided to keep the hoses elevated off the floor when not in use.

(j) An automatically regulated hot-water system shall be provided to furnish a sufficient volume of hot water with a temperature of at least 130° F (54.5° C) to carry out all processing operations.

(k) All handwash lavatories and sinks shall be equipped with mixing faucets.

(l) A three-compartment sink with drainboards, large enough to wash the largest utensils used in the facility, shall be located in the picking room near the delivery shelf. One three-compartment sink, with drainboards, shall be provided for every 50 employees or fraction thereof.

(m) The floor drains in coolers shall not be connected directly to a sewer in cooked crustacea facilities constructed after October 1, 1992.

Statutory Authority G.S. 130A-230.

.0151 SEWAGE DISPOSAL

All sewage and other liquid wastes shall be disposed of in a public sewer system or in the absence of a public sewer system, by an on-site method approved by the Division or the Department of Environment, Health, and Natural Resources.

Statutory Authority G.S. 130A-230.

.0152 TOILETS

(a) Toilets shall be provided on the premises.

(b) Toilet tissue shall be provided.

(c) Toilet room doors shall not open directly into processing areas of the facility and shall be self-closing.

(d) Privies shall not be allowed for any cooked crustacea facility constructed after October 1, 1992.

Statutory Authority G.S. 130A-230.

.0153 SOLID WASTE

(a) Cooked crustacea scrap and other putrescible wastes shall be removed from the premises at least daily. Other solid wastes shall be removed from the premises at least weekly.

(b) Scrap containers shall be removed from the picking room immediately after filling and placed in storage areas approved by the Division.

(c) Scrap containers shall be watertight, non-corrosive and cleaned at least daily.

(d) Scrap containers shall be cleaned in an area approved by the Division.

Statutory Authority G.S. 130A-230.

.0154 PERSONAL HYGIENE

(a) All employees shall wash their hands with soap and running water before beginning work and again after each interruption. Signs to this effect shall be posted in conspicuous places in the facility by the owner.

(b) All persons handling cooked crustacea or crustacea meat shall sanitize their hands before beginning work and again after each interruption.

(c) All persons employed or engaged in the handling, picking or packing of cooked crustacea or crustacea meat shall wear clean, washable outer clothing.

(d) Employees shall not eat food, drink nor use tobacco in any form in the areas where cooked crustacea or crustacea meat are stored, processed or handled.

(e) Any person known to be a carrier of any disease which can be transmitted through the handling of cooked crustacea or crustacea meat or who has an infected wound or open lesion on any exposed portion of the body shall be prohibited from handling cooked crustacea or crustacea meat.

(f) Hair restraints shall be worn by all employees who handle cooked crustacea or crustacea meat.

(g) The arms of personnel who pick or pack cooked crustacea or crustacea meat shall be bare to the elbow or covered with an arm guard approved by the Division.

(h) Personnel who pick and pack cooked crustacea or crustacea meat shall have clean short fingernails, free from nail polish and shall not wear jewelry other than easily cleanable rings. The use of absorbent wraps or absorbent finger cots shall not be permitted.

Statutory Authority G.S. 130A-230.

.0155 PERSONAL STORAGE

Storage areas shall be provided for storing employees' street clothing, aprons, gloves and personal articles.

Statutory Authority G.S. 130A-230.

.0156 SUPPLY STORAGE

Shipping containers, boxes and other supplies shall be stored in a storage room or area. The storage room or area shall be kept clean.

Statutory Authority G.S. 130A-230.

.0157 EQUIPMENT AND UTENSIL CONSTRUCTION

All processing equipment and utensils shall be smooth, easily cleanable, durable and kept in good repair. The food-contact surfaces of equipment, utensils and processing machinery shall be easily accessible for cleaning, non-toxic, non-corrosive, non-absorbent and free of open seams.

Statutory Authority G.S. 130A-230.

.0158 FACILITY AND EQUIPMENT SANITATION

(a) The walls and floors in the picking and packing areas shall be kept clean while operating and shall be sanitized at least daily or more often as necessary to prevent contamination.

(b) All food-contact surfaces shall be washed, rinsed and sanitized prior to starting operation each day or more often as necessary to prevent contamination.

(c) Reusable picking containers and knives shall be washed, rinsed and sanitized each time crustacea meat is delivered to the packing room.

(d) Sanitizing methods are as follows:

(1) By steam in a steam chamber or box equipped with an indicating thermometer located in the coldest zone, by exposure to a temperature of 170° F (77° C) for at least 15 minutes or to a temperature of 200° F (93° C) for at least five minutes.

(2) By immersion for at least one minute in the third compartment in clean hot water at a temperature of at least 170° F (77° C). A thermometer accurate to +3° F (+1.5° C) shall be available to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170° F (77° C) in the third compartment at all times when utensils are being washed shall be provided. The heating device may be integral with the immersion compartment.

(3) By immersion for at least one minute in, or exposure for at least one minute to a constant flow of, a solution containing not less than 100 ppm chlorine residual. Utensils and equipment which have to be washed in place will require washing, rinsing and sanitizing.

(4) By other equivalent products and procedures approved in 21 CFR 178.1010 "Sanitizing solutions" from the "Food Service Sanitation Manual" published by the U.S. Food and Drug Administration. 21 CFR 178.1010 is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection, and copies may be obtained at no cost, at the Shellfish Sanitation Branch, 3441 Arendell Street, P.O. Box 769, Morehead City, North Carolina 28557. A suitable testing method or equipment shall be available and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

Statutory Authority G.S. 130A-230.

.0159 EQUIPMENT STORAGE

Equipment and utensils which have been cleaned and sanitized shall be stored to protect against contamination.

Statutory Authority G.S. 130A-230.

.0160 SEPARATION OF OPERATIONS

(a) Facility design shall provide for continuous flow of raw materials and product to prevent contamination by exposure to areas involved in earlier processing steps, refuse or other areas subject to contamination.

(b) The following processes shall be carried out in separate rooms or areas:

(1) Raw crustacea receiving or refrigeration.
(2) Crustacea cooking.
(3) Cooked crustacea air-cool.
(4) Cooked crustacea refrigeration.
(5) Picking.
(6) Packing.
(7) Picked crustacea meat refrigeration.
(8) Pasteurizing.
(9) Machine picking.
(10) Other processes when carried out in conjunction with the cooking of crustacea or crustacea meat.

Statutory Authority G.S. 130A-230.

.0161 RAW CRUSTACEA RECEIVING AND REFRIGERATION

(a) Only fresh crustacea shall be accepted for processing.

(b) Crustacea shall be cooked within two hours of receipt at the facility or be placed in a refrigerated area maintaining a temperature of 50° F (10° C) or below.

Statutory Authority G.S. 130A-230.

.0162 CRUSTACEA COOKING

(a) The cooking area or room shall be under a roof located between the area for receiving raw crustacea and the air-cool room and shall be vented to assure the removal of steam.

(b) Crustacea shall be cooked in accordance with the following:

(1) Crabs shall be cooked under steam pressure until the internal temperature of the center-most crab reaches 235° F (112.8° C). Temperature shall be measured with an accurate, indicating thermometer having a range of 170-270° F (77-132° C).
(2) Other crustacea shall be cooked until the internal temperature of the center-most crustacean reaches 180° F (83° C) and is held at this temperature for one minute. Temperature shall be measured with an accurate, indicating thermometer. Crayfish shall be culled and cleaned prior to cooking.
(3) Nothing in this Rule shall prohibit any other cooking process which has been found equally effective and approved by the Division.

(c) The retort shall be constructed to permit a working pressure of at least 20 pounds per square inch (psig). Steam inlet and venting shall provide a uniform and complete distribution of steam. Venting shall be sufficient to permit complete elimination of air from the retort. Drains and vents shall be located at least two feet above mean high tide.

(d) The retorts shall be equipped with:

(1) An accurate, indicating thermometer with a range that will include 170-270° F (77-132° C) and located with the sensor extending into the heat chamber.
(2) An operating pressure indicator, at least three inches in diameter, with a 0-30 psig range and located adjacent to the indicating thermometer.
(3) A safety valve operational at 18-30 psig, located in the upper portion of the retort, protected from tampering and designed to prevent injury to the operator.

(e) The boiler shall be of such capacity as to maintain 45 to 100 psig during cooking. The

steam line from the boiler to the retort shall be at least one and one-fourth inch inside diameter.

(f) Overhead hoists shall be equipped with chain bags or other means of preventing foreign material from falling onto the cooked product.

(g) Retort cooking baskets shall be of stainless steel or equally impervious, non-corrosive and durable material, and shall be designed to allow for equal steam disbursement, ease of handling, dumping and cleaning.

(h) All construction or replacement of retorts after October 1, 1992 shall be "flow-through" type and opening directly into the air-cool room or a protected passageway into the air-cool room.

Statutory Authority G.S. 130A-230.

.0163 COOKED CRUSTACEA AIR-COOL

(a) Cooked crustacea, after removal from the retort, shall be moved immediately to the cooked crustacea air cool area to be air cooled to ambient temperature without being disturbed. Cooked crustacea shall be stored in original cooking basket.

(b) The construction and arrangement of the air-cool room shall be designed to provide protection from contamination of the cooked crustacea. The air-cool room shall open directly into the cooked crustacea cooler or other protected area.

Statutory Authority G.S. 130A-230.

.0164 COOKED CRUSTACEA REFRIGERATION

(a) The cooked crustacea cooler shall be large enough to store all cooked crustacea and maintain a minimum temperature of 40° F (4.4° C). The cooler shall open directly into the picking room or into a clean, enclosed area leading into the picking room.

(b) Cooked crustacea shall be stored at a temperature between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature if not immediately processed. The cooler shall be equipped with an accurate, operating thermometer.

Statutory Authority G.S. 130A-230.

.0165 COOKED CRUSTACEA PICKING

(a) The picking operation shall be conducted in a manner to prevent contamination.

(b) All cooked crustacea shall be picked before a new supply is delivered to the picking table.

(c) Picked crustacea meat shall be delivered to the packing room at least every 90 minutes or upon the accumulation of five pounds per picker.

(d) Paper towels used at the picking table shall be discarded after initial use.

(e) If provided, bactericidal solutions at picking tables shall be maintained at 100 ppm chlorine solution or an equivalent bactericidal solution. A suitable testing method or equipment shall be available and used to test chemical sanitizers to insure minimum prescribed strengths.

(f) Handles of picking knives shall not be covered with any material.

(g) Picking of crustacea cooked at any facility, other than the original cooking facility, is prohibited. Mechanical picking of claws may be approved under written authority from the Division if it complies with these Rules.

Statutory Authority G.S. 130A-230.

.0166 PACKING

(a) Crustacea meat shall be packed in a container, iced and cooled to an internal temperature of 40° F (4.4° C) or below within two hours of receipt in the packing room.

(b) The storage of ice in the packing room shall be in an easily cleanable, non-corrosive, non-toxic container.

(c) Blending or combining of any of the following shall be prohibited:

(1) Fresh crustacea meat.

(2) Frozen crustacea meat.

(3) Pasteurized crustacea meat.

(4) Crustacea meat packed in another facility.

(d) Clean shipping containers shall be provided for storing and shipping of packed crustacea meat.

(e) The return of overage to a picker shall be prohibited.

(f) Washing of picked crustacea meat shall be under running potable water. The crustacea meat shall be thoroughly drained prior to packing.

(g) Any substance added to cooked crustacea or crustacea meat shall be approved and labeled according to Federal and State rules and regulations.

(h) No unauthorized personnel shall be allowed in the packing room or area.

Statutory Authority G.S. 130A-230.

.0167 PICKED CRUSTACEA MEAT REFRIGERATION

(a) The refrigeration room or ice box shall be of sufficient size so that a full day's production, with ice, can be properly stored and shall be equipped with an accurate, operating thermometer.

(b) Ice boxes shall be easily cleanable, non-corrosive, non-toxic with an impervious lining and a drain.

(c) Picked crustacea meat shall be stored between 33° F (0.5° C) and 40° F (4.4° C).

Statutory Authority G.S. 130A-230.

.0168 DELIVERY WINDOW OR SHELF

A delivery window or a non-corrosive shelf shall be provided between the picking room and packing room or area. The delivery window shall be equipped with a shelf completely covered with smooth, non-corrosive metal or other material approved by the Division and sloped to drain towards the picking room.

Statutory Authority G.S. 130A-230.

.0169 SINGLE-SERVICE CONTAINERS

(a) Single-service containers used for packing cooked crustacea and crustacea meat shall be made from approved materials.

(b) Containers shall not be reused for packing cooked crustacea and crustacea meat.

(c) No person shall use containers bearing a permit number other than the number assigned to the facility.

(d) Each container shall be legibly impressed, embossed or lithographed with the name and address of the original packer, repacker or distributor. The original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, embossed or lithographed on each container.

(e) Each container shall be permanently and legibly identified with a code date.

(f) All containers shall be stored and handled in accordance with these Rules, sanitized by a procedure as stated in Rule .0158 of this Section and drained prior to filling.

(g) All containers shall be sealed so that tampering can be easily detected.

Statutory Authority G.S. 130A-230.

.0170 FREEZING

(a) If crustacea meat is to be frozen, it shall be frozen within 48 hours of packing and the code date shall be followed by the letter "F."

(b) Frozen crustacea meat shall not be thawed prior to sale.

(c) Frozen crustacea meat shall be stored at a temperature of 0° F (-18° C) or less.

(d) The frozen storage rooms shall be equipped with an accurate, operating thermometer.

Statutory Authority G.S. 130A-230.

.0171 SHIPPING

Cooked crustacea and crustacea meat shall be shipped between 33° F (0.5° C) and 40° F (4.4° C). Frozen crustacea products shall be shipped at 0° F (-18° C) or below.

Statutory Authority G.S. 130A-230.

.0172 WHOLE CRUSTACEA OR CRUSTACEA PRODUCTS

Whole crustacea, claws or any other crustacea products shall be prepared, packaged and labeled in accordance with the rules of this Section.

Statutory Authority G.S. 130A-230.

.0173 COOKED CLAW SHIPPING CONDITIONS

(a) Vehicles used to transport cooked claws shall be mechanically refrigerated, enclosed, tightly constructed, kept clean and equipped with an operating thermometer.

(b) Cooked crab claws shall be stored and transported between 33° F (0.5° C) and 40° F (4.4° C) ambient air temperature.

(c) All vehicles shall be approved by the Division prior to use.

(d) Cooked claw shipping containers shall be marked for intended use, cleaned and sanitized prior to use and approved by the Division.

Statutory Authority G.S. 130A-230.

.0174 REPACKING

(a) Crustacea meat for repacking shall be processed in a North Carolina certified crustacea facility in compliance with Rules .0134 through .0183 of this Section.

(b) The repacker shall have a written agreement with each facility which provides crustacea meat for repacking. The Division shall be provided a copy of this written agreement.

(c) Facilities which provide crustacea meat for repacking shall be approved by the Division.

(d) Crustacea meat for repacking shall be repacked within 48 hours of the original packing.

(e) Crustacea meat for repacking shall be in compliance with the following:

(1) Packed in original shipping container or in a single service container labeled for "Repacking Only";

(2) Identified with original packer's certification number and code date; and

(3) Iced and cooled to 40° F (4.4° C) or below within two hours of receipt in packing room.

(f) Shipping of crustacea meat for repacking shall be in compliance with the following:

(1) Vehicles used to transport crustacea meat for repacking shall be mechanically refrigerated, enclosed, tightly constructed and equipped with an operating thermometer.
(2) Crustacea meat for repacking shall be stored and transported between 33° F (0.5° C) and 40° F (4.4° C).
(3) The interior shipping compartment of the vehicle shall be cleaned prior to shipment of crustacea meat for repacking.
(4) The shipment shall consist only of processed and packaged crustacea meat.
(5) Vehicles shall be approved as part of the facility certification.

(g) Repacking of crustacea meat:
(1) Crustacea meat shall not exceed 45° F (7.1° C) during the repacking process.
(2) Repacking shall be conducted separately by time or space from the routine crustacea meat picking and packing process.
(3) The food contact surfaces and utensils utilized in the repacking process shall be cleaned and sanitized prior to repacking and thereafter on 30 minute intervals during repacking.
(4) Repacked crustacea meat shall be maintained between 33° F (0.5° C) and 40° F (4.4° C).
(5) Blending or combining of any of the following shall be prohibited:
(A) Fresh crustacea meat.
(B) Frozen crustacea meat.
(C) Pasteurized crustacea meat.
(D) Crustacea meat packed in another facility.
(6) Crustacea meat shall not be repacked more than one time.
(7) All empty containers shall be rendered unusable.

(h) Labeling of repacked crustacea meat:
(1) Each container shall be legibly embossed, impressed or lithographed with the repacker's or the distributor's name and address.
(2) Each container shall be legibly embossed, impressed or lithographed with the repacker's certification number followed by the letters "RP."
(3) Each container shall be permanently and legibly identified with a code indicating the repack date.
(4) Each container shall be sealed so that tampering can be easily detected.

(i) Repacked crustacea meat shall meet bacteriological and contamination standards in Rule .0183 of this Section.

(j) Records shall be kept for all purchases of crustacea meat for repacking and sales of repacked meat for one year.

Statutory Authority G.S. 130A-230.

.0175 PASTEURIZATION PROCESS CONTROLS - THERMOMETERS

(a) All pasteurizing equipment shall have a time-temperature recording thermometer with a temperature controller (combined or separately) and an indicating thermometer. The thermometers shall be located to give a true representation of the operating temperature of the water bath. The recording thermometer chart shall be at least a 12-hour chart and at least 10 inches in diameter.

(b) The recording thermometer shall be installed so that it will be protected from vibration and from striking by loading operations or facility traffic. The thermometer mechanism shall be protected from moisture under prevailing conditions. The thermometer case shall not be opened during the pasteurizing cycle, except for temperature check or for emergency or repair. A record shall be made when the thermometer case has been opened.

(c) The recording thermometer shall have a range of at least 120-220° F (48.9-104.4° C). It shall be accurate within plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The chart shall be scaled at a maximum of 2° F intervals in the range of 160° F (71° C) and 200° F (93° C).

(d) The indicating thermometer shall be a thermometer with an accuracy and readability of plus or minus 1° F between 160° F (71° C) and 200° F (93° C). The thermometer shall be protected against damage.

(e) The recording thermometer shall be equipped with a spring-operated or electrically operated clock. The recorded elapsed time as indicated by the chart rotation shall not exceed the true elapsed time as shown by an accurate watch. The rotating chart support shall be provided with pins upon which the chart shall be affixed by puncturing the chart.

(f) The pasteurization unit shall not be operated without a recording thermometer chart in place, the pen in contact with the chart and an inked record being made of the operating time-temperature cycle. Any indication of falsification of a thermometer chart shall constitute a violation. A permanent file of the used thermometer charts shall be maintained by the pasteurizer and kept available for inspection by the Division for a period of one year. The following information shall be recorded within the

confines of the pen markings after the pasteurization cycle has been completed:

(1) Date of pasteurization.

(2) Quantity of each batch pasteurized (pounds of crustacea meat or number and size of containers).

(3) Processor's code of each pack.

(4) If the pasteurizer processes crustacea meat for someone else, then the packer's name, address and permit number must be recorded. A copy of the recording chart shall be provided to the owner of the crustacea meat.

(5) Notation of mechanical or power failure or opening of the recording thermometer case for adjustment or repair during the pasteurizing cycle.

(6) After the optimum temperature in the water bath has been reached and during the holding time, the reading of the indicating thermometer and the time of reading shall be recorded on the chart.

(7) Signature of the pasteurizer operator.

(g) A constant flow steam control valve is required, if steam is used as a source of heat.

(h) The water bath shall be provided with effective agitation to maintain a uniform temperature.

Statutory Authority G.S. 130A-230.

.0176 PREPARATION OF CRUSTACEA MEAT FOR PASTEURIZATION

The preparation of crustacea meat for pasteurization shall be in compliance with the following:

(1) Crustacea meat shall be prepared in compliance with Rules .0134 through .0183 of this Section.

(2) The containers of crustacea meat shall be sealed as quickly as possible after the crustacea meat is picked.

(3) The sealed container of crustacea meat shall be placed immediately in ice and refrigerated until pasteurized.

Statutory Authority G.S. 130A-230.

.0177 PASTEURIZATION OF CRUSTACEA MEAT

The pasteurization of crustacea meat shall be in compliance with the following:

(1) Crustacea meat for pasteurization shall be pasteurized within 48 hours of the time it is picked. The minimum pasteurization specifications shall be the raising of the internal temperature of the container of crustacea meat to 185° F (85° C) and holding at that temperature for at least one minute at the geometric center of a container. Each set of pasteurizing equipment shall be standardized so that the minimum pasteurization procedure in this Subparagraph can be obtained. The pasteurization procedure shall be performed in accordance with the standardization report. This process shall also be posted adjacent to the pasteurization vat. The pasteurizer shall keep on file the standardization report and shall provide the Division a copy of such report.

(2) Alteration of the equipment or loading of containers shall require the procedure be restandardized.

(3) The containers of crustacea meat shall be cooled to 50° F (10° C) or below within three hours.

(4) Refrigerated storage shall be provided for the cooled crustacea meat and shall maintain a storage temperature at or below 36° F (2.2° C) but above 32° F (0° C).

Statutory Authority G.S. 130A-230.

.0178 LABELING OF PASTEURIZED CRUSTACEA MEAT

Labeling of pasteurized crustacea meat shall be in compliance with the following:

(1) The label used shall clearly identify the contents of the container as pasteurized crustacea meat.

(2) Each container shall be permanently and legibly identified with a code indicating the batch and day of processing.

(3) The words "Perishable-Keep Under Refrigeration", or equivalent, shall be prominently displayed on the container.

(4) The original packer's or repacker's permit number preceded by the state abbreviation shall be legibly impressed, embossed or lithographed on each container. Each container shall be legibly impressed, embossed or lithographed with the name and address of the original packer, repacker or distributor.

Statutory Authority G.S. 130A-230.

.0179 INTERFACILITY PASTEURIZATION PROCEDURES

No person shall initiate interfacility pasteurization of crustacea meat without prior written approval by the Division. Interfacility pasteurization of crustacea meat shall be in conjunction with the following:

(1) Crustacea meat shall be packed, labeled and refrigerated in compliance with Rules .0134

through .0183 of this Section. Records shall be maintained to identify each batch of crustacea meat pasteurized.

(2) Crustacea meat shall be shipped in an enclosed, easily cleanable vehicle at a temperature between 33° F (0.5° C) and 40° F (4.4° C).

(3) Crustacea meat shall be pasteurized in compliance with Rules .0176 through .0178 of this Section. The pasteurizer shall provide a copy of each pasteurization chart to the original packer.

Statutory Authority G.S. 130A-230.

.0180 RECALL PROCEDURE

Each owner of a cooked crustacea or crustacea meat facility or repacker facility shall keep on file a written product recall procedure. A copy of this recall procedure shall be provided to the Division.

Statutory Authority G.S. 130A-230.

.0181 SAMPLING AND TESTING

Samples of cooked crustacea or crustacea meat may be taken and examined by the Division at any time or place. Samples of cooked crustacea or crustacea meat shall be furnished by the owner or operator of facilities, trucks, carriers, stores, restaurants and other places where cooked crustacea or crustacea meat are sold.

Statutory Authority G.S. 130A-230.

.0182 EMBARGO OR DISPOSAL OF COOKED CRUSTACEA OR CRUSTACEA MEAT

(a) When it has been determined by the Division that cooked crustacea or crustacea meat have not been stored, transported, handled, cooked, picked, packed or offered for sale in compliance with this Section, the cooked crustacea or crustacea meat shall be deemed adulterated.

(b) Cooked crustacea or crustacea meat prepared for sale to the public determined to be adulterated or misbranded, shall be subject to embargo or disposal by the Division in accordance with G.S. 130A-21(c). The Division may embargo, condemn, destroy or otherwise dispose of all cooked crustacea or crustacea meat found to be adulterated or misbranded.

Statutory Authority G.S. 130A-21.

.0183 BACTERIOLOGICAL AND CONTAMINATION STANDARDS

(a) Cooked crustacea or crustacea meat shall not exceed *Escherichia coli* Most Probable Number (MPN) of 36 per 100 grams of sample or exceed a standard plate count of 100,000 per gram.

(b) Pasteurized crustacea meat shall contain no *Escherichia coli* or fecal coliform. Samples of pasteurized crustacea meat, taken within 24 hours of pasteurizing, shall not have a standard plate count of more than 3,000 per gram.

(c) Cooked crustacea or crustacea meat shall not contain pathogenic organisms in sufficient numbers to be hazardous to the public health.

(d) Cooked crustacea or crustacea meat shall not be contaminated by any other substance which renders it unsafe for human consumption.

(e) Cooked crustacea or crustacea meat found not complying with the standards as stated in Paragraph (a), (b), (c) or (d) of this Rule may be deemed adulterated by the Division.

Statutory Authority G.S. 130A-230.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule(s) cited as 15A NCAC 19A .0201 - .0202 and adopt rule(s) cited as 15A NCAC 19A .0206 - .0207.

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

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

July 21, 1992
7:30 p.m.
New Bern High School
(Lecture Room)
4200 Academic Drive
(off Hwy. 17 South)
New Bern, NC

July 22, 1992
1:30 p.m.
Archives & History Bldg
(First Floor Auditorium)
109 E. Jones Street
Raleigh, NC

July 27, 1992
7:30 p.m.
Elevated Lecture Room
Simpson Administration Bldg
Asheville-Buncombe Technical College

340 Victoria Road
Asheville, NC

July 28, 1992
7:30 p.m.
Conference Center
Charlotte Mecklenburg Government Center
600 E. 4th Street
Charlotte, NC

Reasons for Proposed Actions: These proposed rules address the issue of HIV and hepatitis B transmission from health care workers to patients. They were developed in response to recommendations made by a panel of North Carolina professionals knowledgeable about infectious diseases, podiatrists, and nurses. The U.S. Congress has required that each state adopt the CDC guidelines on this topic or an equivalent policy or lose all federal public health funding. These proposed rules address infection control in general and provide for case-by-case review of HIV and hepatitis B infected health care workers who perform or assist in surgical and dental invasive procedures and for appropriate notification of patients.

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 may be submitted to: Communicable Disease Control Section, P. O. Box 27687, Raleigh, NC 27602-0629 with a copy to John Barkley, Department of Justice, P. O. Box 629, Raleigh, NC 27602-0629, (919) 733-4618. If you desire to speak at the public hearing, notify John Barkley at least 3 days prior to the public hearing. Oral presentation lengths shall be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

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 COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

.0201 CONTROL MEASURES - GENERAL

(a) Except as provided in Rules .0202 - .0209 of this Section, the recommendations and guidelines for testing, diagnosis, treatment, follow-up, and prevention of transmission for each disease and condition specified by the American Public Health Association in its publication, Control of Communicable Diseases in Man shall be the required control measures. Control of Communicable Diseases in Man is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication are available from the American Public Health Association, Department JE, 1015 15th Street, N.W., Washington, DC 20005 for a cost of fifteen dollars ($15.00) each plus three dollars ($3.00) shipping and handling. A copy is available for inspection in the Communicable Disease Control Section, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27611.

(b) In interpreting and implementing the specific control measures adopted in Paragraph (a) of this Rule, and in devising control measures for outbreaks designated by the State Health Director and for communicable diseases and conditions for which a specific control measure is not provided by this Rule, the following principles shall be used:

(1) control measures shall be those which can reasonably be expected to decrease the risk of transmission and which are consistent with recent scientific and public health information;

(2) for diseases or conditions transmitted by the airborne route, the control measures shall require physical isolation for the duration of infectivity;

(3) for diseases or conditions transmitted by the fecal-oral route, the control measures shall require exclusions from situations in which transmission can be reasonably expected to occur, such as work as a paid or voluntary food handler or attendance or work in a day care center for the duration of infectivity;

(4) for diseases or conditions transmitted by sexual or the blood-borne route, control

measures shall require prohibition of donation of blood, tissue, organs, or semen, needle-sharing, and sexual contact in a manner likely to result in transmission for the duration of infectivity.

(c) Persons with congenital rubella syndrome, tuberculosis, and carriers of Salmonella typhi and hepatitis B who change residence to a different local health department jurisdiction shall notify the local health director in both jurisdictions.

(d) Isolation and quarantine orders for communicable diseases and communicable conditions for which control measures have been established shall require compliance with applicable control measures and shall state penalties for failure to comply. These isolation and quarantine orders may be no more restrictive than the applicable control measures.

~~(e) Health care workers, including emergency responders and funeral service personnel, shall follow blood and body fluid precautions with all patients.~~

~~(f) All equipment used to puncture human skin (in medical or other settings) must be disposed of in accordance with 15A NCAC 13B after use or sterilized prior to reuse.~~

~~(g)~~ (e) An individual enrolled in an epidemiologic or clinical study shall not be required to meet the provisions of 15A NCAC 19A .0201 - .0209 which conflict with the study protocol if:

(1) the protocol is approved for this purpose by the State Health Director because of the scientific and public health value of the study, and

(2) the individual fully participates in and completes the study.

Statutory Authority G.S. 130A-135; 130A-144.

.0202 CONTROL MEASURES - HIV

The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

(1) Infected persons shall:

(a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;

(b) not share needles or syringes;

(c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;

(d) have a skin test for tuberculosis;

(e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous year.

(2) The attending physician shall:

(a) give the control measures in Paragraph (1) of this Rule to infected patients, in accordance with 15A NCAC 19A .0210;

(b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of Epidemiology and shall mail the form to the Division; the Division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and potentially exposed persons is satisfied by fulfilling the requirements of Subparagraph (2)(a) and (b) of this Rule;

(c) advise infected persons concerning proper clean-up of blood and other body fluids;

(d) advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding.

(3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.

(a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee.

(i) If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee.

(ii) If the superintendent or private school director does not establish such a committee within three days of notification,

the local health director shall establish such a committee.

(b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:

(i) notify the parents;

(ii) notify the committee;

(iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;

(iv) determine if an alternative educational setting is necessary to protect the public health;

(v) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel; and

(vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

(4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that poses a significant risk of HIV transmission, the following shall apply:

(a) When the source person is known:

(i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and shall test the source for HIV infection unless the source is already known to be infected. The attending physician of the exposed person shall be notified of the infection status of the source.

(ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Subparagraphs (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.

(b) When the source person is unknown, the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.

(c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.

(5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.

(6) When the local health director is notified pursuant to Paragraph (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall confer with the attending mental health physician or appropriate mental health authority and the physician who notified the local health director to develop an appropriate plan to prevent transmission.

(7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot

follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making appropriate recommendations to the unit housing classification committee.

(8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.

~~(9) Health care workers with HIV infection who have secondary infections or open skin lesions which would place patients at risk shall not provide direct patient care. Otherwise, these control measures do not require restrictions in the workplace of persons with HIV infection.~~

(9) ~~(10)~~ Local health departments shall provide testing for HIV infection with individual pre- and post-test counseling at no charge to the patient. Third party payors may only be billed for HIV counseling and testing when such services are provided as a part of family planning and maternal and child health services. By August 1, 1991, the State Health Director shall designate a minimum of 16 local health departments to provide anonymous testing. Beginning September 1, 1991, only cases of confirmed HIV infection identified by anonymous tests conducted at local health departments designated as anonymous testing sites pursuant to this Subparagraph shall be reported in accordance with 15A NCAC 19A .0102(a)(3). All other cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2). Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).

(10) ~~(11)~~ Appropriate counseling for HIV testing shall include individualized pre- and post-test counseling which provides risk assessment, risk reduction guidelines, appropriate referrals for medical and psychosocial services, and, when the person tested is determined to be infected with HIV, control measures.

(11) ~~(12)~~ A person charged with an offense that involves nonconsensual vaginal, anal, or oral intercourse, or that involves vaginal, anal, or oral intercourse with a child 12 years old or less shall be tested for HIV infection if:

(a) probable cause has been found or an indictment has been issued;

(b) the victim notifies the local or state health director and requests information concerning the HIV status of the defendant; and

(c) the local or state health director determines that the alleged sexual contact involved in the offense would pose a significant risk of transmission of HIV if the defendant were HIV infected. If in custody of the Department of Correction, the person shall be tested by the Department of Correction and if not in custody, the person shall be tested by the local health department. The Department of Correction shall inform the local health director of all such test results. The local health director shall inform the victim of the results of the test, counsel the victim appropriately, and instruct the victim regarding the necessity for protecting confidentiality.

(12) ~~(13)~~ A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.

(13) ~~(14)~~ Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:

(a) substance abuse counseling and treatment;

(b) mental health counseling and treatment; and

(c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.

(14) ~~(15)~~ The Division of Epidemiology shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying information obtained as a part of the partner notification program shall be destroyed within two years.

Statutory Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h).

.0206 INFECTION CONTROL - HEALTH CARE SETTINGS

(a) The following definitions shall apply throughout this Rule:

(1) "Health care organization" means hospital; clinic; physician, dentist, podiatrist, or chiropractic office; home health agency; nursing home; local health department; mental health agency; hospice; ambulatory surgical center; urgent care center; emergency room; or any other health care organization that provides clinical care.

(2) "Invasive procedure" means entry into tissues, cavities, or organs or repair of traumatic injuries. The term includes but is not limited to the use of needles to puncture skin, vaginal and cesarean deliveries, surgery, and dental procedures during which bleeding occurs or the potential for bleeding exists.

(b) Health care workers, emergency responders, and funeral service personnel shall follow blood and body fluid precautions with all patients.

(c) Health care workers who have open skin leasions which would place patients at risk for transmission of HIV or HBV if the health care worker were infected or who have infections secondary to HIV infection that pose a risk to patients shall not provide direct patient care so long as the conditions persist.

(d) All equipment used to puncture skin in medical or other settings must be disposed of in accordance with 15A NCAC 13B after use or sterilized prior to reuse.

(e) In order to prevent transmission of HIV and hepatitis B from health care workers to patients, each health care organization that performs invasive procedures shall implement a written infection control policy by July 1, 1993. The health care organization shall ensure that health care workers in its employ are trained in the principles of infection control and the practices required by the policy; require and monitor compliance with the policy; and update the policy as needed to prevent transmission of HIV and hepatitis B from health care workers to patients. The health care organization shall designate a staff member to direct these activities. By January 1, 1994, the designated staff member in each health care organization shall have successfully completed a course in infection control approved by the Department. The course shall address:

(1) Epidemiologic principles of infectious disease;

(2) Principles and practice of asepsis;

(3) Sterlization, disinfection, and sanitation;

(4) Universal blood and body fluid precautions;

(5) Engineering controls to reduce the risk of sharp injuries;

(6) Disposal of sharps; and

(7) Techniques which reduce the risk of sharp injuries to health care workers.

(f) The infection control policy required by this Rule shall address the following components that are necessary to prevent transmission of HIV and hepatitis B from infected health care workers to patients:

(1) Sterilization and disinfection, including a schedule for maintenance and microbiologic monitoring of equipment; the policy shall require documentation of maintenance and monitoring;

(2) Sanitation of rooms and equipment, including cleaning procedures, agents, and schedules;

(3) Accessibility of infection control devices and supplies;

(4) Procedures to be followed in implementing 15A NCAC 19A .0202(4) and .0203(b)(3) when a health care provider or a patient has an exposure to blood or other body fluids of another person in a manner that poses a significant risk of transmission of HIV or hepatitis B.

Statutory Authority G.S. 130A-144; 130A-145.

.0207 HIV AND HEPATITIS B INFECTED HEALTH CARE WORKERS

(a) The following definitions shall apply throughout this Rule:

(1) "Surgical invasive procedure" means surgery performed using general, regional, or local anesthesia. The term does not include injections, placement of central or peripheral lines, and endoscopic procedures that do not require incisions.

(2) "Dental invasive procedure" means any dental procedure during which bleeding occurs or the potential for bleeding exists.

(b) All health care workers who perform surgical or dental invasive procedures or vaginal deliveries and who know themselves to be infected with HIV or hepatitis B shall notify the State Health Director. Health care workers who assist in these procedures in a manner that may result in exposure of patients to their blood and who know themselves to be infected with HIV or hepatitis B shall also notify the State Health Director. The notification shall be made in writing to the Chief, Communicable Disease Control Section, P.O. Box 27687, Raleigh, N.C. 27611-7687.

(c) The State Health Director shall investigate the practice of the infected health care worker

and the risk of transmission to patients. The investigation may include review of pertinent medical and work records and consultation with health care professionals who may have information necessary to evaluate the clinical condition or practice of the infected health care worker. The State Health Director shall protect the confidentiality of the infected health care worker and may disclose the worker's infection status only when necessary to obtain vital information.

(d) If the State Health Director determines that there may be a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel to evaluate the risk of transmission to patients, and review the practice, skills, and clinical condition of the infected health care worker, as well as the nature of invasive procedures performed and techniques used. Each expert panel shall include an infectious disease specialist, and infection control expert, a person who practices the same specialty as the infected health care worker and, if the health care worker is a licensed professional, a member of the appropriate licensure board. The panel may include other experts.

(e) The expert panel shall review information collected by the State Health Director and may request that the State Health Director obtain additional information as needed. The State Health Director shall not reveal to the panel the identity of the infected health care worker. The panel shall make recommendations to the State Health Director that address the following:

(1) Restrictions that are necessary to prevent transmission from the infected health care worker to patients;

(2) Identification of patients that have been exposed to a significant risk of transmission of HIV or hepatitis B; and

(3) Periodic review of the clinical condition and practice of the infected health care worker.

(f) If, prior to receipt of the recommendations of the expert panel, the State Health Director determines that immediate practice restrictions are necessary to prevent an imminent threat to the public health, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require cessation or modification of some or all surgical or dental invasive procedures or vaginal deliveries to the extent necessary to prevent an imminent threat to the public health. This isolation order shall remain in effect until an isolation order is issued pursuant to Paragraph (g) of this Rule or until the State Health Director determines the imminent threat to the public health no longer exists.

(g) After consideration of the recommendations of the expert panel, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require any health care worker who is allowed to continue performing surgical or dental invasive procedures or vaginal deliveries to, within a time period specified by the State Health Director, successfully complete a course in infection control procedures approved by the Department of Environment, Health, and Natural Resources, Communicable Disease Control Section, in accordance with 15A NCAC 19A .0206(g). The isolation order shall require practice restrictions, such as cessation or modification of some or all surgical or dental invasive procedures or vaginal deliveries, to the extent necessary to prevent a significant risk of transmission of HIV or hepatitis B to patients. The isolation order shall prohibit the performance of procedures that cannot be modified to avoid a significant risk of transmission. If the State Health Director determines that there has been a significant risk of transmission of HIV or hepatitis B to a patient, the State Health Director shall notify the patient or require in the isolation order that the health care worker notify the patient.

(h) The State Health Director shall request the assistance of one or more health care professionals to obtain information needed to periodically review the clinical condition and practice of the infected health care worker who performs or assists in surgical or dental invasive procedures or vaginal deliveries.

(i) An infected health care worker who has been evaluated by the State Health Director shall notify the State Health Director prior to a change in practice involving surgical or dental invasive procedures or vaginal deliveries. The infected health care worker shall not make the proposed change without approval from the State Health Director. If the State Health Director makes a determination in accordance with Paragraphs (c) and (d) of this Rule that there is a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel. Otherwise, the State Health Director shall notify the health care worker that he or she may make the proposed change in practice.

(j) If practice restrictions are imposed on a licensed health care worker, a copy of the isolation order shall be provided to the appropriate licensure board. The State Health Director shall report violations of the isolation order to the appropriate licensure board. The licensure board shall report to the State Health Director any in-

formation about the infected health care worker that may be relevant to the risk of transmission of HIV or hepatitis B to patients.

Statutory Authority G.S. 130A-144; 130A-145.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to adopt rule(s) cited as 21 NCAC 19 .0102.

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

The public hearing will be conducted at 10:00 a.m. on July 20, 1992 at the Office of the North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC 27609.

Reason for Proposed Action: It is necessary to inform the public of the Board's requirements for the calling, holding, and conducting of meetings.

Comment Procedures: The record of hearing will be open for receipt of written comments from July 1, 1992 through July 31, 1992. Written comments may be either submitted at the hearing or delivered to the Board at its mailing address (c/o Patricia Holland, 205 Westview Place, High Point, North Carolina 27260). Anyone wishing to speak at the hearing should notify Charlene Taylor in writing at the Board's mailing address and requests should be received no later than July 19, 1992. Anyone whose written request to speak is not received by July 19, 1992, may not be able to speak.

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

SECTION .0100 - GENERAL PROVISIONS

.0102 MEETINGS

(a) The Board shall hold two regular meetings each year in the months of January and July on call of the Chairman, or, if the Chairman is unable for any reason to call the meeting, the Vice-chairman or the Treasurer in that order. Special meetings of the Board may be called at any time by the Chairman or any two board members.

(b) The Chairman shall conduct all meetings; in the absence of the Chairman, the Vice-chairman or the Treasurer in that order shall conduct the meeting.

(c) The officer who is scheduled to conduct the meeting shall prepare an agenda for the meeting.

(d) The Board shall set aside time at its regular meetings to hear members of the public who wish to speak to the Board. If time permits, the Board may also allow members of the public to speak at special meetings. Anyone who wishes to speak concerning an item on the agenda shall notify the presiding officer before the meeting is called to order. Anyone who wishes to speak concerning an item that is not otherwise scheduled to be on the agenda shall, at least 72 hours before the meeting, contact the scheduled presiding officer to request that the item be included. The request must include the identity of the maker and the nature of the item and must be in writing unless the maker can show to the satisfaction of the scheduled presiding officer that it was not reasonably possible to provide a written request. Anyone who speaks to the Board at a regular meeting under the provisions of this Paragraph shall be allowed a time period of five minutes, except that the presiding officer may further limit time if several persons have asked to speak. The presiding officer may limit time as needed at special meetings. At any meeting, the presiding officer may require groups to appoint a representative to speak for members of the group on an issue. Although members of the Board may ask specific questions of those speaking, the time allotted pursuant to this Paragraph shall not be used either to debate the relative merits of any proposal or to examine members of the Board.

Statutory Authority G.S. 88A-5.

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Nursing intends to amend rule(s) cited as 21 NCAC 36 .0109, .0223; and adopt rule(s) cited as 21 NCAC 36 .0325.

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

The public hearing will be conducted at 2:00 p.m. on July 31, 1992 at the North Carolina Board of Nursing Office, 3724 National Drive, Suite 201, Raleigh, NC 27612.

Reason for Proposed Actions: These Rules are being proposed for adoption or amendment to

clarify, strengthen and incorporate adopted policies.

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 the testimony. Written statements may be submitted by August 1, 1992 to the North Carolina Board of Nursing, P.O. Box 2129, Raleigh, NC 27602.

CHAPTER 36 - BOARD OF NURSING

SECTION .0100 - GENERAL PROVISIONS

.0109 SELECTION AND QUALIFICATIONS OF NURSE MEMBERS

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

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

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

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

(1) Nurse Educator includes any nurse who teaches in or directs a basic or graduate nursing program; or who teaches in or directs a continuing education or staff development program for nurses.

(2) Hospital is defined as any facility which has an organized medical staff and which is designed, used, and primarily operated to provide health care, diagnostic and therapeutic services, and continuous nursing to inpatients.

(3) Hospital Nursing Service Director ~~is~~ includes any nurse ~~who~~ whose primary position in a hospital setting requires licensure as a Registered Nurse and whose primary responsibility is ~~the~~ chief executive officer for the planning, delivery and evaluation of nursing ~~service.~~ care.

(4) ~~Employed by a hospital~~ Hospital nurse includes any nurse ~~employed by~~ whose primary position in a hospital setting requires licensure as a Registered Nurse, and whose primary responsibility include the administration, supervision or planning delivery and evaluation of nursing care, or nursing staff development.

(5) ~~Employed by a physician~~ Physician's office nurse includes any nurse ~~employed by~~ whose primary position in a ~~physician~~ physician's or group of ~~physicians licensed to practice medicine in North Carolina and engaged in private practice.~~ physicians' office, requires licensure as a Registered Nurse and whose primary responsibilities include the administration, supervision or planning, delivery and evaluation of nursing care, or nursing staff development.

(6) ~~Employed by skilled or intermediate care facility~~ Long Term Care Nurse includes any nurse ~~employed by a long term~~ whose primary position in a nursing facility (skilled or intermediate) as defined in 10 NCAC 3C .1902(23) and 10 NCAC 3H .0108(22), requires licensure as a Registered Nurse, and whose primary responsibilities include administration, supervision or planning, delivery and evaluation of nursing care or nursing staff development.

(7) Registered nurse approved to perform medical acts includes any nurse who is licensed as a Registered Nurse and is approved for practice in North Carolina as a Nurse Practitioner or Certified Nurse Midwife.

(8) Community health nurse includes any nurse ~~who functions as a generalist or specialist in areas including, but not limited to, public health, student health, occupational health or community mental health.~~ whose primary position in a public health or community health setting (e.g. student health center, occupational

health center, home care, mental health clinic, correctional institution, health department, community health center or clinic) requires licensure as a Registered Nurse and whose primary responsibilities include administration, supervision or planning, delivery and evaluation of nursing care or nursing staff development.

(e) The majority of the income of Licensed Practical Nurse members of the Board must be earned by holding positions that require licensure as a Licensed Practical Nurse and whose primary responsibilities include participation in the assessment, planning, delivery and evaluation of nursing care.

(f) ~~(e)~~ The term "nursing practice" when used in determining qualifications for registered or practical nurse categories of membership, means any position for which the holder of the position is required to hold a current license to practice nursing.

(g) ~~(f)~~ A nominee shall be listed in only one category on the ballot.

(h) ~~(g)~~ If there is no nomination in one of the registered nurse categories, all registered nurses who have been duly nominated and qualified shall be eligible for an at-large registered nurse position. A plurality of votes for the registered nurse not elected to one of the specified categories shall elect that registered nurse to the at-large position.

(i) ~~(h)~~ Separate ballots shall be prepared for election of registered nurse nominees and for election of licensed practical nurse nominees. Nominees shall be listed in random order on the ballot for licensed practical nurse nominees and within the categories for registered nurse nominees. Ballots shall be accompanied by biographical data on nominees and a passport-type photograph. Ballots shall prescribe the method of voting.

(j) ~~(i)~~ Any nominee may withdraw her/his name at any time by written notice prior to the date and hour fixed by the Board as the latest time for return for ballots. Such nominee shall be eliminated from the contest and any votes cast for that nominee shall be disregarded.

(k) ~~(j)~~ On or about June 15, the appropriate ballot and a return official envelope shall be mailed to the address on record for each currently licensed nurse on that date, together with a notice designating the latest day and hour for return of ballot which shall not be earlier than the tenth day following the mailing.

(l) ~~(k)~~ The Board of Nursing may contract with a computer or other service for receipt of envelopes with ballots and the counting of ballots.

(m) ~~(l)~~ The counting of ballots shall be conducted as follows:

(1) The certificate number and name of the voter shall be entered on the perforated section of the ballot sheet.
(2) The certificate number and name of the voter shall be matched with the registration list. In the event that there is not a match, the entire ballot sheet shall be set aside for inspection, validation, or invalidation by the Board of Nursing.
(3) Those ballots which are not set aside shall have the perforated section completely separated from the ballot portion of the sheet.
(4) Only official ballots shall be counted.
(5) A ballot marked for more names than there are positions to be filled shall not be counted for that category but shall be counted for all other categories voted correctly.
(6) If for any reason it is impossible to determine a voter's choice for a category of nurse, that ballot shall not be counted for that category, but shall be counted for all other categories clearly indicated.
(7) Ballots identified in (2), (5) and (6) of this Paragraph shall be set aside for inspection and determination by the Board of Nursing.

(n) ~~(m)~~ A plurality vote shall elect. If more than one person is to be elected in a category, the plurality vote shall be in descending order until the required number has been elected. In any election, if there is a tie vote between nominees, the tie shall be resolved by a draw from the names of nominees who have tied.

(o) ~~(n)~~ The results of an election shall be recorded in the minutes of the next regular meeting of the Board of Nursing following the election and shall include at least the following:

(1) the number of nurses eligible to vote,
(2) the number of return ballots set aside and the disposition of same,
(3) the number of ballots cast,
(4) the number of ballots declared invalid, and
(5) the number of votes cast for each person on the ballot.

(p) ~~(o)~~ The results of the election shall be forwarded to the Governor and the Governor shall commission those elected to the Board of Nursing.

(q) ~~(p)~~ All petitions to nominate a nurse, signed consents to appear on the ballot, verifications of qualifications, perforated sections of the ballot sheets containing the certificate number and name of the voter, and the ballots shall be pre-

served for a period of three months following the close of an election.

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

SECTION .0200 - LICENSURE

.0223 CONTINUING EDUCATION PROGRAMS

(a) Definitions.

(1) Continuing education in nursing is a ~~non-degree oriented,~~ planned, organized learning experience taken after completion of a basic nursing program ~~In addition, a course(s) or component(s) of a course(s) within an academic degree-oriented program~~ which prepares a nurse to perform advanced skills. Types of learning experiences that may be considered continuing education as defined in ~~Paragraph~~ Subparagraph (a)(3) of this Rule include:

(A) a non-degree oriented program;

(B) a course(s) or component(s) of a course(s) within an academic degree-oriented program; or

(C) an advanced academic degree-granting program which prepares the registered nurse for advanced practice as a clinical nurse specialist, nurse anesthetist, nurse midwife or nurse practitioner.

(2) Programs offering an educational experience designed to enhance the practice of nursing are those which include one or more of the following:

(A) enrichment of knowledge;

(B) development or change of attitudes; or

(C) acquisition or improvement of skills.

(3) Programs are considered to teach nurses advanced skills when:

(A) the skill taught is not generally included in the basic educational preparation of the nurse; and

(B) the period of instruction is sufficient to assess or provide necessary knowledge from the physical, biological, behavioral and social sciences, and includes supervised clinical practice to ensure that the nurse is able to practice the skill safely and properly.

(4) Student status may be granted to an individual who does not hold a North Carolina nursing license but who participates in a clinical component of a continuing education programs in North Carolina when:

(A) the individual possesses a current unencumbered license to practice nursing in a jurisdiction other than North Carolina;

(B) the course offering meets one of the following criteria:

(i) is part of an academic degree-granting nursing program which has approval in a jurisdiction other than North Carolina or national accreditation; or

(ii) is offered through an in-state academic institution which has Board approval for basic nursing education program(s) or national accreditation for advanced nursing education program(s); or

(iii) is approved by the Board as a continuing education offering, thereby meeting the criteria as defined in Paragraph (b) of this Rule.

(C) the individual receives supervision by a qualified preceptor or member of the faculty who has a valid license to practice as a registered nurse in North Carolina;

(D) the course of instruction has a specified period of time not exceeding twelve months;

(E) the individual is not employed in nursing practice in North Carolina during participation in the program; and

(F) the Board has been given advance notice of the name of each student, the jurisdiction in which the student is licensed, the license number, and the expiration date.

(b) Criteria for voluntary approval of continuing education programs in nursing.

(1) Planning the educational program shall include:

(A) definition of learner population; for example, registered nurse, licensed practical nurse, or both;

(B) identification of characteristics of the learner; for example, clinical area of practice, place of employment, and position; and

(C) assessment of needs of the learner; for example, specific requests from individuals or employers, pre-tests, or audits of patient records.

(2) Objectives shall:

(A) be measurable and stated in behavioral terms;

(B) reflect the needs of the learners;

(C) state desired outcomes;

(D) serve as criteria for the selection of content, learning experiences and evaluation of achievement;

(E) be achievable within the time allotted; and

(F) be applicable to nursing.

(3) Content shall:

(A) relate to objectives;
(B) reflect input by qualified faculty; and
(C) contain learning experiences appropriate to objectives.

(4) Teaching methodologies shall:
(A) utilize pertinent educational principles;
(B) provide adequate time for each learning activity; and
(C) include sharing objectives with participants.

(5) Resources shall include:
(A) faculty who have knowledge and experience necessary to assist the learner to meet the program objectives and are in sufficient number not to exceed a faculty-learner ratio in a clinical practicum of 1:10. If higher ratios are desired, sufficient justification must be provided; and
(B) physical facilities which ensure that adequate and appropriate equipment and space are available and appropriate clinical resources are available.

(6) Evaluation must be conducted:
(A) by the provider to assess the participant's achievement of program objectives and content and will be documented; and
(B) by the learner in order to assess the program and resources.

(7) Records shall be maintained by the provider for a period of three years and shall include a summary of program evaluations, roster of participants, and course outline. The provider shall award a certificate to each participant who successfully completes the program.

(c) Approval process.

(1) The provider shall:
(A) make application on forms provided by the Board no less than 60 days prior to the proposed enrollment date;
(B) present written documentation as specified in (b)(1) through (b)(7) of this Rule; and
(C) notify the Board of any significant changes relative to (b)(1) through (b)(7) of this Rule; for example, changes in faculty or total program hours.

(2) Approval is granted for a two year period. Any request to offer an approved program by anyone other than the original provider must be made to the North Carolina Board of Nursing.

(3) If a course is not approved, the provider may appeal in writing for reconsideration within 30 days after notification of the disapproval. If the course is not approved upon reconsideration, the provider may request a hearing at the next regularly scheduled meeting of the Board.

(4) Site visits may be made by the Board as deemed appropriate to determine compliance with the criteria as specified in Paragraph (b) of this Rule.

(5) The Board shall withdraw approval from a provider if the provider does not maintain the quality of the offering to the satisfaction of the Board or if there is misrepresentation of facts within the application for approval.

(6) Approval of continuing education programs will be included in published reports of Board actions. A list of approved programs will be maintained in the Board's file.

Statutory Authority G.S. 90-171.23(b); 90-171.42.

SECTION .0300 - APPROVAL OF NURSING PROGRAMS

.0325 REMOVAL OF APPROVAL

(a) Upon notification of practice(s) inconsistent with nursing laws and standards in board approved facilities, the Board of Nursing shall conduct an investigation to substantiate complaint(s).

(b) Once a complaint is substantiated, the Board shall:

(1) notify the facility of the violations in writing;

(2) specify time frame for correction of violation(s);

(3) specify actions necessary by the facility to verify compliance;

(4) provide written notice to all appropriate agencies and approved programs utilizing the facility for nurse or unlicensed personnel educational experiences of the non-compliance; and

(5) conduct a survey with a minimum of two consultants, one of whom shall be an education consultant, to verify nursing is consistent with law and standards.

(c) If findings at the time of the survey are that nursing care is consistent with law and standards, the approval status of the facility shall remain unchanged. The facility and all agencies and programs notified in accordance with Subparagraph (b)(4) of this Rule, shall receive written notice that the facility is in compliance with law and standards.

(d) If findings following the survey are that nursing care is in continuing non-compliance with law and standards, the Executive Director

shall summarily suspend approval status for student use. The facility shall be notified in writing of the findings and all appropriate agencies and programs notified in accordance with Subparagraph (b)(4) of this Rule, shall receive written notice of the facility's non-compliance with law and standards and loss of approval.

(e) Facilities desiring re-approval for student use shall:

(1) provide written documentation or present substantial evidence to demonstrate compliance with law and standards; and

(2) request a survey revisit by the Board of Nursing.

Statutory Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40; 90-171.42(b).

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Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists intends to adopt rule(s) cited as 21 NCAC 64 .0208 with changes from the proposed text noticed in the Register, Volume 6, Issue 23, page 1777.

The public hearing will be conducted at 11:00 a.m. on July 31, 1992 at 400 W. Main St., Suite 608, Durham, NC 27702.

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

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

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

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

SECTION .0200 - INTERPRETATIVE RULES

.0208 SUPERVISION OF CLINICAL PRACTICUM

The Board interprets the word "supervision" used in G.S. 90-295(3) to require that the supervision must be performed by a person who holds either a valid license under this Article or a Certificate of Clinical Competence of the American Speech-Language-Hearing Association, in the area for which supervised credit is sought, who must be physically present in the same facility and accessible to the student during the performance of the practicum. As a minimum standard of supervision, clinical supervisors of students in practicum must directly observe at least 50 percent of each evaluation session, including screening and identification activities, and at least 25 percent of each student's total contact time with each client.

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

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel/State Personnel Commission intends to amend rules cited as 25 NCAC 1C .0501 - .0504; 1E .0804, .0806 - .0807, .0812, .0815, .0817 - .0819; adopt 25 NCAC 1E .0820; 11 .2407 - .2411 and repeal 25 NCAC 1E .0810 - .0811, .0813.

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

The public hearing will be conducted at 9:00 a.m. on August 4, 1992 at the State Personnel Development Center, 101 W. Peace Street, Raleigh, North Carolina.

Reason for Proposed Action:

25 NCAC 1C .0501 - .0504 - *These rules are proposed to be amended to define what a bona fide meal period is (Fair Labor Standards Act definition) and to clarify what constituttes a meal period. A provision is also included which recognizes that part-time and some shift employees do not work the normal daily schedule and therefore allows the agency to determine appropriate schedules for them.*

25 NCAC 1E .0810, .0811, .0813 - *These rules are proposed to be repealed in order to adopt and amend rules to conform to current practices.*

25 NCAC 1E .0804, .0806 - .0807, .0812, .0815, .0817 - .0819 - *These rules are proposed to be amended to offer guidance and clarification to state agencies and universities in implementing the military leave policies.*

25 NCAC 1E .0820 - *This rule is proposed to be adopted to clarify the military leave provisions which are applicable to the State Defense Militia and to offer guidance to state agencies and universities in implementing these provisions.*

25 NCAC 1I .2407 - .2411 - *These 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 A. Coward, Office of State Personnel, 116 W. Jones Street, Raleigh, N.C. 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1C - PERSONNEL ADMINISTRATION

SECTION .0500 - WORK SCHEDULE

.0501 STANDARD WORKWEEK

The standard workweek for employees subject to the Personnel Act is 40 hours per week. The normal daily work schedule is five days per week, eight hours a day plus a ~~lunch~~ meal period. Other schedules apply to part-time employees and some shift employees; agencies are responsible for determining the appropriate schedules for these employees. Because of the nature of the various state activities, some positions require a workweek ~~of more~~ other than five days. The normal daily work schedule ~~shall~~ may not apply to educational, hospital and similar institutions with schedules geared to round-the-clock service. ~~unless they elect to adopt it.~~

Statutory Authority G.S. 126-4.

.0502 VARIABLE WORK SCHEDULE

~~It is the policy of state government that, in~~ Agencies ~~utilizing the normal daily~~ may choose to utilize a variable work ~~schedules,~~ schedule that allows employees ~~be allowed~~ to choose a daily work schedule and meal period which, subject to agency necessities, is most compatible with their personal needs. ~~this shall be referred to as a variable work schedule.~~ Supervisors are responsible for arranging operating procedures that are consistent with the needs of the agency and the public it serves, and at the same time can accommodate, as far as possible, the employee's choice of daily work schedule within the established limits. If any adjustments of employee work schedules are necessary, this should be done as fairly and equitably as possible.

Statutory Authority G.S. 126-4.

.0503 IMPLEMENTATION

(a) Each new employee shall be given detailed information about the variable work schedule and given the opportunity to select the schedule preferred prior to reporting for work. Work schedules are to be associated with individuals and not with position, with the exception that there may be positions which must be filled on some predetermined schedule. In these exceptional cases, applicants shall be informed of this predetermined schedule prior to any offer and acceptance of employment.

(b) The employee and his /her supervisor shall agree upon the schedule to be followed, consistent with the needs of the agency. The ~~lunch~~ meal period may be scheduled within the normal work hours to meet the needs of the employee and the working unit but may not be used to shorten the workday. A bona fide meal period is a span of at least 30 consecutive minutes during which an employee is completely relieved of duty. It is not counted as hours worked. Any so-called "meal period" of less than 30 consecutive minutes must be considered as hours worked for employees who are non-exempt as defined by the Fair Labor Standards Act.

(c) Each supervisor shall compile a record of the work schedules for all subordinates.

(d) Agency administrators shall be responsible for providing adequate supervision for each work unit during the hours employees are scheduled to work. This can be accomplished by sharing or by delegation of authority of supervisor.

~~(e) Three months after a work schedule has been established there shall be an "open selection period" during which each employee is given the opportunity to change the choice of work schedules. Thereafter, an "open selection period" shall be held at least every twelve months.~~

~~(f) If an employee needs to change his work schedule at a time other than during an "open selection period" this shall be permitted if the supervisor can arrange the workload so that this change is not detrimental to the functioning of the unit.~~

Statutory Authority G.S. 126-4.

.0504 LIMITATIONS

(a) An employee who arrives later than scheduled, may be permitted to make up deficit by working that much longer ~~in the afternoon~~ at the end of the workday if this is consistent with the

work need of the agency. Otherwise, the tardiness shall be charged to the appropriate leave category. Supervisors shall be responsible for taking appropriate action to correct any abuse or misuse of this privilege which may include deductions from employee's pay.

(b) If an employee reports to work early he /she may, with the supervisor's permission, begin work at that time and leave at a correspondingly early hour; ~~in the afternoon;~~ otherwise, the employee shall wait in a designated area away from ~~where other employees are at work.~~ the work station.

(c) If an employee leaves work early without permission, the time shall be deducted from the employee's pay or may be charged to the appropriate leave account if justified.

(d) An employee may not work later than scheduled unless the supervisor has approved it due to workload.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0800 - MILITARY LEAVE

.0804 PERIODS 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 Rule .0803 of this Section. On rare occasions due to annual training (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.~~

(a) Military leave with pay shall be granted to full-time or part-time permanent, trainee and probationary employees for up to 120 working hours (prorated for part-time employees) during the Federal fiscal year, beginning October 1 and ending on September 30, for any type of active military duty for members not on extended active duty.

(b) Regularly scheduled unit assemblies occurring on weekends and referred to as "drills". Although these periods do not normally require military leave, the employing agency is required to excuse an employee for all 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. Military leave with pay [from Paragraph (a) of this Rule] or vacation may be used if "drills" occur on weekdays.

(c) An employee shall be granted necessary time off when the employee must undergo a required physical examination relating to membership in a reserve component without charge to leave.

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

.0806 PERIODS OF ENTITLEMENT FOR CIVIL AIR PATROL

(a) While the Civil Air Patrol is not a reserve component, it is an auxiliary to the U.S. Air Force. Its members are not subject to obligatory service. 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 the Department 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~~ 120 hours (prorated for part-time employees) in any calendar year unless otherwise authorized by the Governor. Such service may be verified by the Secretary of the Department of Crime Control and Public Safety upon the request of the employing agency.

(b) Regularly scheduled unit training assemblies, usually occurring on weekends are not acceptable for military leave with pay, however, employing agencies are encouraged to arrange work schedules to allow employees to attend this training.

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

.0807 UNACCEPTABLE PERIODS

Employees shall not be entitled to military leave with pay for the following 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 to excuse an employee for regularly scheduled military training duty. If necessary the employee's work schedule shall be appropriately rear-~~

~~ranged 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 Parts (2), (3) and (4) of this Rule.~~

(1) ~~(2)~~ duties resulting from disciplinary actions imposed by military authorities;

(2) ~~(3)~~ for unscheduled or incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc.;

(3) ~~(4)~~ for inactive duty training (drills) performed for the convenience of the member, such as equivalent training, split unit assemblies, make-up drills, etc.

Employing agencies are not required to excuse an employee for military service performed under circumstances described in Subparagraphs (1), (2) and (3) of this Rule.

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

.0810 LEAVE WITH PAY: PHYSICAL EXAMINATION FOR MILITARY SERVICE

~~An employee shall be granted necessary time off when the employee must undergo a required physical examination relating to military service.~~

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

.0811 MILITARY LEAVE WITH DIFFERENTIAL PAY

~~Military leave with differential pay between military pay and regular state 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; 127A-116.

.0812 MILITARY LEAVE WITHOUT PAY: ATTENDANCE AT SERVICE SCHOOLS

(a) Military 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 Rule .0803 of this Section) use of all or any portion of an employee's ~~96~~ 120 hours annual military leave (prorated for part-time employees) with pay or regular vacation leave may be used in lieu of or in conjunction with military leave without pay.

(b) Military leave without pay shall be granted for attendance at service schools when such attendance is mandatory for continued retention in the military service.

(c) 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.~~ Office of the Adjutant General, North Carolina National Guard, Att: Vice Chief of Staff-State Operations.

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

.0813 EXTENDED ANNUAL ACTIVE DUTY

~~Military leave without pay shall be granted if additional time is required for annual active duty for training purposes beyond the allowable 96 working hours each year. The employee may elect to use vacation leave rather than go on leave without pay.~~

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

.0815 EMPLOYEE RESPONSIBILITY: LEAVE WITHOUT PAY

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, ~~and~~ shall be responsible for making application for reinstatement within 90 days from the date of separation from service and shall notify the agency of any decision not to return.

Statutory Authority G.S. 126-4.

.0817 RETENTION AND CONTINUATION OF BENEFITS

(a) The employee may choose to have accumulated vacation leave paid in a lump sum, may exhaust this leave, or may retain part or all of accumulated leave until return to state service; the maximum accumulation of 240 hours applies to lump sum payment.

(b) The employee shall retain all accumulated sick leave and continue to earn time toward salary increases and aggregate service. 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~~ honorable conditions. Under this provision, credit is received for such service upon filing with the Teachers' and State Employees' 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 state 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.

Statutory Authority G.S. 126-4.

.0818 REINSTATEMENT FROM LEAVE WITHOUT PAY FOR MILITARY SERVICE

(a) 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 with the same agency or with another state agency. 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.

(b) 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. In no case will the reinstated employee's salary be less than when placed in a military leave status. ~~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, at the discretion of the agency head, if it can be determined that the military experience was directly related to development in the area of state 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.

.0819 RESERVE ENLISTMENT PROGRAM OF 1963 (REP-63)

~~Military 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."~~

The employee may use all or part of his/her 120 hours of military leave with pay or regular vacation leave or a combination of the two in lieu of military leave without pay.

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

.0820 PERIODS OF ENTITLEMENT FOR MEMBERS OF THE STATE DEFENSE MILITIA

(a) The State Defense Militia is considered a reserve to the National Guard, but it is not a reserve component of the U.S. Armed Forces. Its members are not subject to obligatory service unless they are assigned to a unit that is ordered or called out by the Governor. Only under conditions described in this Rule are State employees who are members of the State Defense Militia entitled to military leave with pay. Under these conditions an employee may be granted military leave not to exceed 120 hours (prorated for part-time employees) during any calendar year.

(1) Infrequent special activities in the interest of the State, usually not exceeding one day, when so ordered by the Governor or his authorized representative.

(2) State duty for missions related to disasters, search and rescue, etc., again, only when ordered by the Governor or his authorized representative.

(b) State employees who are members of the State Defense Militia are not entitled to military leave with pay when volunteering for support of functions or events sponsored by civic or social organizations even though such support has been "authorized".

(c) Regularly scheduled unit training assemblies, usually occurring on weekends, are not acceptable for military leave with pay, however, employing agencies are encouraged to arrange work schedules to allow the employee to attend this training.

(d) Deputy status may be verified with the Office of the Adjutant General, North Carolina National Guard, ATTN: Vice Chief of Staff-State Operations (VCSOP).

Statutory Authority G.S. 126-4; 127A-16.

SUBCHAPTER II - SERVICE TO LOCAL GOVERNMENT

SECTION .2400 - BASIC REQUIREMENTS FOR A"SUBSTANTIALLY EQUIVALENT" PERSONNEL SYSTEM

.2407 AREAS NOT COVERED BY THE EQUIVALENCY EXEMPTION COVERAGE

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.

(Guide. Applicability is primarily contingent upon the limits of contractual agreements enabling the designated Federal or 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 State Personnel.)

Statutory Authority G.S. 126-11.

.2408 CONDITION OF PRIVILEGE

A substantially equivalent personnel system exemption, approved by the State Personnel Commission under NCGS 126-11, is a condition of privilege. Under such privilege, a local government jurisdiction may operate its own system of personnel administration for all employees of the jurisdiction, including those subject to the State Personnel Act. This privilege shall be continued by the State Personnel Commission so long as the local system remains substantially equivalent to the Basic Requirements for a Substantially Equivalent Personnel System. The Office of State Personnel, in its staff capacity to the State Personnel Commission, shall act on the Commission's behalf in evaluating the ongoing equivalency status of exempted systems.

Statutory Authority G.S. 126-11.

.2409 ONGOING EXPECTATIONS

In order that the Office of State Personnel shall have access to the information and materials necessary to an informed judgment of whether an exempted, local personnel system remains substantially equivalent, local jurisdictions desiring to maintain exempted systems shall comply with the following requirements:

(1) Recertification. Recertification of the commitment by a Board of County Commissioners or Area Mental Health Authority to maintain a system or portion of a system of personnel administration in accordance with the Basic Requirements for a Substantially Equivalent Personnel System may be necessary, at the discretion of the State Personnel Commission, in the following instances:

(A) Upon significant change in the membership of the Board of Commissioners or Area Authority.

(B) Upon passage of significant new legislation or policy which will apply to the local system or system portion.

(C) Upon major reorganization, restructuring, or downsizing of the personnel system of the county or Area Authority.

(2) Staffing.

(A) The Board of County Commissioners or Area Authority shall provide for the ongoing presence of a qualified staff for all exempted portions of the local personnel system.

(B) The staffing complement assigned to the personnel system by the Board of County Commissioners or Area Authority shall at all times remain reasonably adequate to assure that the day-to-day operational demands of the personnel management system are met in an efficient and expedient manner, and to assure that administrative and technical requirements for maintaining the personnel system in professionally sound order are well served.

(C) Each jurisdiction which has been granted a substantially equivalent personnel system exemption shall annually, or upon major interim change, file with the Office of State Personnel an organizational chart which accurately depicts the complement and organizational structure of the staff currently assigned to the operation of the personnel function.

(3) Filling of System Documentation. Each jurisdiction which has been granted a substantially equivalent personnel system exemption by the State Personnel Commission shall annually, or upon substantial interim change, file with the Office of State Personnel:

(A) All personnel policies currently pertaining to exempt portions of the local system, which have been adopted by the Board of County Commissioners, County Manager, Area Authority, or Area Director.

(B) Documentation which in material and substance fully illustrates the design, method, and process currently being employed in the administration of exempted

portions of the local personnel system. If there has been no substantial change in personnel policies or technical method within an annual period, the County Manager or Personnel Director shall so certify in a letter to the Local Government Coordinator, Substantially Equivalent Systems, Office of State Personnel.

(C) Jurisdictions with exempted systems shall cooperatively respond to related requests by the Office of State Personnel for additional information which is deemed essential to a complete and accurate understanding of the design and process of a local system.

(4) Records and Reports. Personnel records shall be created and maintained as necessary to serve the operational requirements of exempted portions of the local personnel system, and to maintain an auditable history of position and employee actions processed.

(5) Records Privacy. Appropriate access and privileges for employees and appropriate limitations for other persons regarding the storage, utilization, and disclosure of personnel records shall be assured according to the provisions of the Records Privacy Act (NCGS 153A-98).

(6) Complaints. Jurisdictions with exempted systems shall cooperate fully with the Office of State Personnel in responding to and resolving complaints which may arise over the course of time challenging the substantial equivalency of a local personnel system.

(7) Formal Annual Review. In addition to other informal reviews which transpire through ongoing, cooperative interchange, jurisdictions with exempted systems shall cooperate fully with the Office of State Personnel in the conduct of a comprehensive annual review, which shall have as its purpose a determination of whether an exempted personnel system remains in compliance with the Basic Requirements for a Substantially Equivalent Personnel System. Where discrepancies are identified, the Office of State Personnel shall formally declare such findings to the jurisdiction in writing, and shall work actively with the jurisdiction to effect a satisfactory resolution which shall restore compliance. Where issues of non-compliance cannot be resolved within a reasonable length of time, the Office of State Personnel shall recommend to the State Personnel Commission that the substantially equivalent exemption be rescinded.

Statutory Authority G.S. 126-11.

.2410 OSP ASSISTANCE

The Office of State Personnel is available to provide counsel and technical assistance on matters of substantial equivalency at any time. Such assistance shall be provided within the limits of available staff and administrative resources. Consultation and informal, cooperative interchange is particularly encouraged prior to major revisions in policy or technical process.

Statutory Authority G.S. 126-11.

.2411 SYSTEM ADVANCEMENTS

Changes or additions to an exempted personnel system or system portion shall be substantial equivalency in regard to new personnel legislation or rulemaking at the state or federal level.

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 17 - DEPARTMENT OF REVENUE

CHAPTER 4 - LICENSE AND EXCISE TAX DIVISION

SUBCHAPTER 4C - CIGARETTE TAX

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

In addition to those definitions as set out in G.S. 105-113.4, the following terms and phrases as used in this Subchapter shall, unless the context requires otherwise, have the following meanings:

(1) Article. Tobacco Products Tax Act or Tobacco Products Tax Article, Article 2A, Chapter 105 of the General Statutes of North Carolina;
(2) Department. North Carolina Department of Revenue;
(3) Excise Tax. The excise tax levied under G.S. 105-113.5, G.S. 105-113.6, and G.S. 105-113.35;
(4) In this State or within this State - Within the exterior limits of the State of North Carolina, and includes all territory within such limits owned by, leased by or ceded to the United States of America;
(5) Meter. Cigarette metering machine;
(6) Meter Imprints. An ink stamp imprint made upon a package of cigarettes by a meter machine to evidence the payment of the excise tax imposed thereon;
(7) Other Tobacco Product - A cigar or any other product that contains tobacco, other than a cigarette, and is intended for inhalation or oral use;
(8) Raleigh Office. Office of the license and excise tax division, Revenue Department, Raleigh;
(9) Revenue Agent. Revenue officer, auditor or other personnel of the North Carolina Department of Revenue authorized by the secretary to act in his behalf;
(10) State. State of North Carolina;
(11) Vending Machine. Dispenser or dispensing machine;
(12) Wholesale Cigarette Dealer. Any person who sells cigarettes to others for resale by them who does not qualify as a distributor under the definition of distributor in G.S. 105-113.4.

History Note: Statutory Authority G.S. 105-113.4; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 30, 1981.

SECTION .1300 - OTHER TOBACCO PRODUCTS LICENSES

.1301 LICENSE REQUIREMENTS

(a) Wholesale dealers and retail dealers, liable for excise tax on other tobacco products under G.S. 105-113.35, must obtain a continuing Other Tobacco Products Tax License on forms prescribed by the Secretary for each "place of business" as defined under G.S. 105-113.36.

(b) Before an other tobacco products license is issued, proper application must be made as directed by the Secretary. The application shall be signed and verified by oath or affirmation by the owner, if a natural person, and in the case of an association or partnership, by a member or partner thereof, and in the case of a corporation, by an executive officer thereof or by any person specifically authorized by the corporation to sign the application to which shall be attached the written evidence of his authority.

(c) The licensee shall notify the Secretary in writing of any changes in the information previously provided on the license application as such changes occur.

(d) The licensee shall be responsible for notifying the manufacturers from whom other tobacco products are purchased or received of the other tobacco products license issued by the Secretary and of any subsequent change relative to the license.

(e) No license shall be assignable or transferable and is not prorated.

History Note: Statutory Authority G.S. 105-113.35; 105-113.36; 105-262; Eff. June 1, 1992.

SECTION .1400 - MANUFACTURERS OF OTHER TOBACCO PRODUCTS

.1401 INVOICE REQUIREMENT

When requested by the Secretary, manufacturers shall provide copies of all invoices, or equivalent information, on shipments of other tobacco products for sale in this State.

History Note: Statutory Authority G.S. 105-262; Eff. June 1, 1992.

.1402 SALES TO LICENSED DEALERS ONLY

(a) No manufacturer may make shipments of other tobacco products direct to a person in this State not qualified and licensed as a wholesale or retail dealer of other tobacco products.

(b) Any manufacturer of other tobacco products shipping such products to other wholesale or retail dealers who are licensed pursuant to G.S. 105-113.36 for payment of the other tobacco products excise tax is relieved of the requirement of paying the tax.

History Note: Statutory Authority G.S. 105-113.35; 105-113.37; 105-262; Eff. June 1, 1992.

.1403 MANUFACTURERS ACTING AS RETAILER

A retail dealer who manufacturers other tobacco products and sells those products to consumers in this State is liable for the tax except for those transactions in other tobacco products which meet exemption from the tax under G.S. 105-113.35.

History Note: Statutory Authority G.S. 105-113.35; 105-262; Eff. June 1, 1992.

SECTION .1500 - LIABILITY FOR OTHER TOBACCO PRODUCTS EXCISE TAX

.1501 PRIMARY LIABILITY

(a) The wholesale dealer or retail dealer who first acquires or handles other tobacco products in this State is liable for payment of the excise tax.

(b) The wholesale dealer or retail dealer who brings other tobacco products into this State is liable for payment of the excise tax.

(1) The out-of-state wholesale dealer or retail dealer who brings such products into the State on its own truck.

(2) The in-state wholesale dealer or retail dealer who brings such products into the State on its own truck.

(c) The wholesale dealer or retail dealer who first receives or handles the other tobacco products in this State is liable for payment of the excise tax.

(1) The wholesale dealer or retail dealer who is the original consignee of other tobacco products manufactured or produced outside this State.

(2) The in-state wholesale dealer or retail dealer who first receives such products from outside the State by common carrier or contract carrier.

History Note: Statutory Authority G.S. 105-113.35; 105-262; Eff. June 1, 1992.

SECTION .1600 - MILITARY EXEMPT SALES

.1601 EXEMPT SALES LIMITED TO ARMED FORCES AND THEIR DEPENDENTS

Other tobacco products sold to the Federal Government and its instrumentalities, such as the Armed Forces Exchange Services, are exempt from the excise tax. However, sales of other tobacco products

by such services MUST BE LIMITED to members of the armed forces and their dependents who hold identification cards entitling them to make purchases through armed forces exchange services.

History Note: Statutory Authority G.S. 105-113.35; 105-262;
Eff. June 1, 1992.

.1602 DELIVERIES TO ARMED FORCES EXCHANGE SERVICES
Whenever tax exempt deliveries of other tobacco products are made by dealers to armed forces exchange services, the dealer must require a duly receipted invoice or copy thereof from the governmental agent designated to accept delivery.

History Note: Statutory Authority G.S. 105-113.35; 105-262;
Eff. June 1, 1992.

.1603 SALES OF OTHER TOBACCO PRODUCTS: BY OTHERS: NOT EXEMPT
If a person engages in the sale of any other tobacco products on a military reservation, regardless of the fact that he may have a contract with the Federal Government, whereby the Federal Government will receive a commission, flat fee or some other type of compensation on such sales, same does not exempt the sale of such products from the excise tax. In such instances, such sales would not be made by the Federal Government or an instrumentality thereof. Instead, all such sales are subject to the excise tax.

History Note: Statutory Authority G.S. 105-113.35; 105-262;
Eff. June 1, 1992.

SECTION .1700 - DESIGNATION OF EXEMPT SALES

.1701 MUST SELL AS DESIGNATED
Once other tobacco products are designated as tax exempt under G.S. 105-113.35, they must be sold in tax exempt transactions.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1702 NO DELAYED OR DEFERRED TAX PAYMENT ALLOWED
No wholesale dealer or retail dealer or customer of a wholesaler may delay payment of the tax due on other tobacco products by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of other tobacco products that will be resold in an exempt transaction.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1703 PRIOR WRITTEN NOTIFICATION REQUIRED FROM NC CUSTOMERS
A wholesale dealer may sell other tobacco products nontaxpaid to a customer who has tax exempt sales provided the customer has notified the wholesale dealer in writing that the customer intends to resell the items in exempt transactions. Where prior written notification is not provided, the wholesale dealer must remit applicable tax.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1704 INVOICING REQUIREMENTS
The wholesale dealer must separately invoice and indicate the other tobacco products designated for exempt transactions. For example, sales designated for customers with other tobacco product sales outside North Carolina must be invoiced to read, "Designated for Sale Outside North Carolina".

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1705 REPORTING REQUIREMENTS
The wholesale dealer selling the designated other tobacco products must provide this Department, as part of their monthly other tobacco products excise tax report, such information as required by the Secretary.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1706 ORIGINAL SELLER NOT LIABLE FOR TAX
The wholesale dealer, who relies on the prior written exempt intent of its customer, is not required to pay tax on the designated sales when filing a monthly report. However, the wholesaler must pay the tax due on all other taxable sales.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1707 PENALTIES FOR IMPROPER HANDLING OF DESIGNATED PRODUCT
The tax liability plus penalties and interest will be held against the wholesaler's customer who sells other tobacco products designated exempt in a taxable transaction. Customers violating designation procedures should anticipate full penalties to be held on designated products improperly handled and are not entitled to the timely payment discount.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

SECTION .1800 - MONTHLY REPORT, INVOICE, AND RECORD REQUIREMENTS

.1801 MONTHLY REPORT REQUIREMENTS
(a) Wholesale dealers and retail dealers, liable for the tax under G.S. 105-113.35, must file monthly reports on Form B-A-101 (Monthly Other Tobacco Products Excise Tax Report) with the Secretary within twenty days after the close of each month showing transactions for the preceding month. This monthly report is required whether or not any tax is shown to be due. The Secretary will provide the forms which must be filled out in detail, and any remittance must accompany these reports.
(b) Failure to file a timely report with tax due for the month will result in the Department of Revenue disallowing the 4 percent discount for timely payment and adding a 50 percent penalty and applicable interest.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1802 INVOICING REQUIREMENTS
(a) Sales invoices of wholesale dealers, whether resident or nonresident, liable for the tax shall indicate payment of the excise tax on other tobacco products by the wording "North Carolina Other Tobacco Products Tax Paid".
(b) All sales invoices of nonresident wholesale dealers shall show the point of origin and mode of transportation for all shipments of other tobacco products into this State.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

.1803 RECORDS REQUIREMENTS
Every retail dealer and every wholesale dealer and their customers must keep records of inventories, purchases, and sales of other tobacco products for at least three years. These records and inventories must be maintained separately in such a manner as can be inspected and audited by the Secretary or duly authorized representative at any time without having to go through and separate or segregate all sales of the taxpayer in order to arrive at the amount of exempt sales or inventories.

History Note: Statutory Authority G.S. 105-113.37; 105-262;
Eff. June 1, 1992.

SECTION .1900 - OTHER TOBACCO PRODUCTS VENDING MACHINES

.1901 IDENTIFICATION AND LOCATION REQUIRED

(a) No other tobacco products dispensing machine shall be allowed to operate in this State that does not have affixed thereto the identification required under the Tobacco Products Tax Article.

(b) Wholesale dealers or retail dealers owning, leasing, furnishing or operating other tobacco products vending machines shall affix to each such machine in a conspicuous place an identification sticker or device, which shall show the name, address and telephone number of the operator owning and placing such machine on location. The owner of the business wherein such machine is located shall also be responsible for seeing that such vending machine is so identified.

(c) It shall be the duty of any person, firm or corporation operating other tobacco products vending machines to have available for the Department information as to the location of any and all vending machines so operated by such operator, and make such information available at any time to the Secretary or his authorized agent.

History Note: Statutory Authority G.S. 105-65.1; 105-113.17; 105-262; Eff. June 1, 1992.

CHAPTER 7 - SALES AND USE TAX

SUBCHAPTER 7B - STATE SALES AND USE TAX

SECTION .0100 - GENERAL PROVISIONS

.0101 IMPOSITION OF AND LIABILITY FOR COLLECTING AND REMITTING TAX

(a) All retail sales of tangible personal property are subject to the four percent (three percent until July 16, 1991), three percent, two percent or the one percent sales or use tax unless specifically exempt by statute. The local sales and use tax rate remains at two percent and applies to those transactions which are subject to the general state rate of sales and use tax which increased from three percent to four percent effective July 16, 1991. The gross receipts derived by a utility from sales of electricity, piped natural gas or intrastate telephone service are subject to the three percent state rate of sales tax, other than receipts from the sale of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by contract with that federal agency to make payments in lieu of taxes. The statute was amended effective January 1, 1989, to substitute the term "local telecommunications services" for the term "intrastate telephone service," as used in the above sentence, and to levy the three percent rate of tax only on receipts derived from local telecommunications services as defined by G.S. 105-120(e). A new subdivision, G.S. 105-164.4 (a) (4c) was added, effective January 1, 1989, which levies a six and one-half percent sales tax on the gross receipts derived from toll or private telecommunications services, as defined by G.S. 105-120(e), that both originate from and terminate in the state. The provisions of G.S. 105-164.4 (a) (c) do not apply to telephone membership corporations as described in Chapter 117 of the General Statutes. The gross receipts derived by a utility from sales of electricity, piped natural gas and telecommunications services are not subject to the local sales or use tax. Wholesale sales are not subject to the tax if made pursuant to the conditions set forth in the statutory definition of wholesale sale. Every person making retail sales of taxable tangible personal property or charges for taxable utility services is required to register with the department and collect and remit all tax due on such sales.

(b) A use tax at the applicable rate is levied on taxable tangible personal property purchased or received from within or without this state for storage, use or consumption in this state. The liability for the tax is not extinguished until it is fully paid, except that payment of the tax to a vendor who charges such tax shall relieve the purchaser of further liability with respect to the tax so paid. Where retail sales or use tax is due and has already been paid in another state by the purchaser with respect to such tangible personal property, such tax may be credited against the North Carolina use tax due thereon. If the tax paid in another state is less than the North Carolina use tax due, the difference must be paid in this State. No credit shall be allowed for sales or use taxes paid in another state if that taxing jurisdiction does not grant similar credit for sales taxes paid in North Carolina. Every person outside this state who is engaged in business in this state, as hereinafter defined, is required to register with the department and collect and remit the tax due on all taxable tangible personal property sold or delivered for storage, use or consumption in this state. Every person who purchases from out-of-state vendors

any taxable tangible personal property for storage, use or consumption in this state upon which the tax has not been fully paid must register with the department and remit the tax due on such purchases. A fee is not required for registration by a consumer and a license is not issued in connection with such registration; however, all registrants will be furnished report forms to be used in reporting and remitting all tax due.

(c) Effective October 1, 1989, retail sales of motor vehicles are exempt from sales tax and are subject to the three percent highway use tax with a minimum tax of forty dollars ($40.00) applicable thereto, with certain exceptions, and a maximum tax of one thousand dollars ($1,000.00) on any one motor vehicle increasing to one thousand five hundred dollars ($1,500.00) July 1, 1993. Reference is made to 17 NCAC 7B .4601 for the treatment of sales of motor vehicles.

(d) Effective January 1, 1990, all retail sales of motor vehicle tires are subject to the one percent scrap tire disposal fee. New motor vehicle tires purchased within or without this state for use in this state are subject to the one percent fee on their cost price.

(e) Effective July 1, 1991, retail sales of new tires for motor vehicles, construction equipment, agricultural and industrial equipment, aircraft, and new tires that are sold to be placed on vehicles offered for sale, lease or rental are subject to the one percent scrap tire disposal tax. Purchases of new tires from outside North Carolina for storage, use or consumption in North Carolina or to be placed on vehicles offered for sale, lease or rental are subject to the one percent rate on the cost price of each new tire.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; October 1, 1990; May 1, 1990.

.0125 FLEA MARKETS

(a) Every person who sells tangible personal property at a flea market, other than his own household personal property, is required to obtain a Merchants Certificate of Registration License to engage in and conduct such business. When making sales at the flea market such person shall conspicuously display the license or shall display a receipt from the Department of Revenue showing that he has applied for the license in cases where he has not yet received the license. Every person who sells only his own household personal property at a flea market must certify in writing to the person from whom he leases or rents space that he will sell only his own household personal property and when selling tangible personal property at the flea market must conspicuously display a copy of the written statement. A person who leases or rents space to others at a flea market may not lease or rent space unless the person who wishes to lease or rent the space furnishes evidence that he has obtained or applied for the Merchants Certificate of Registration License or furnishes a written statement that the property which he will sell at the flea market will consist only of his own household personal property. For the purpose of this Rule, the term "flea market" means a place or location where space is leased or rented to persons for the purpose of selling tangible personal property.

(b) A person who leases or rents space to others at a flea market shall keep records of retailers to whom he has leased or rented space at the flea market. Such records shall include:

(1) the date,
(2) the name and address of the lessee,
(3) the sales and use tax registration number of the lessee or the receipt number and the name of the Revenue Officer issuing the receipt in cases where the lessee has applied for but has not yet received the Merchants Certificate of Registration License, and
(4) a copy of the certified statement of vendors who sell only their own household personal property wherever applicable.

(c) Any person required to keep records or supply information who willfully fails to keep such records or supply information shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be punished by imprisonment not to exceed 30 days, or by a fine not to exceed two hundred dollars ($200.00), or by both such fine and imprisonment. If any officer, agent, and/or employee of any person, firm or corporation shall willfully fail, refuse or neglect to make out, file, and/or deliver any reports or blanks, as required by law, or to answer any question therein propounded, or to knowingly and willfully give a false answer to any question wherein the fact inquired of is within his knowledge, or upon proper demand to exhibit to the Secretary of Revenue or her duly authorized representatives any book, paper, account, record or memorandum of such person, firm, or corporation in his possession and/or under his control, shall be guilty of a misdemeanor and fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. The willful failure,

refusal, or neglect to observe and comply with any order, direction, or mandate of the Secretary of Revenue, or to perform any duty enjoined by Subchapter 1 of the Revenue Act by any person, firm, or corporation, or any officer, agent, or employee thereof, shall, for each day such failure, refusal or neglect continues constitute a separate and distinct offense.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1986;
Amended Eff. June 1, 1992.

SECTION .0200 - GENERAL APPLICATION OF LAW TO MANUFACTURING AND INDUSTRIAL PROCESSING

.0201 TAX ON MANUFACTURING AND PROCESSING MACHINERY

(a) Sales of mill machinery, mill machinery parts and accessories to manufacturing industries and plants are taxable at the rate of one percent subject to a maximum tax of eighty dollars ($80.00) per article. Manufacturers' Certificates, Form E-575, are available from the sales and use tax division, North Carolina Department of Revenue, for use in connection with such sales as the vendor's authority to apply the one percent rate of sales or use tax, with a maximum tax of eighty dollars ($80.00) per article.

(b) Sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are subject to the one percent rate of tax, with a maximum tax of eighty dollars ($80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; May 11, 1979; September 30, 1977.

SECTION .0300 - SPECIFIC TANGIBLE PERSONALTY CLASSIFIED FOR USE BY INDUSTRIAL USERS

.0301 MILL MACHINERY

Sales of mill machinery, mill machinery parts and accessories to manufacturing industries and plants for industrial processing are subject to the one percent sales or use tax, subject to a maximum tax of eighty dollars ($80.00) per article where applicable. The following items, when sold to manufacturing industries and plants for use in their manufacturing process, are considered mill machinery, mill machinery parts and accessories within the meaning of the Sales and Use Tax Article:

(1) motors, pulleys, motor bases but not foundations, gears, belts, chains and textile rope drives, line shafting with hangers and pulleys, and other types and makes of drives connecting motors to the driven machinery for direct production processes;
(2) controls for motors consisting of:
(a) magnetic starters, push button stations, pressure and float switches, and other types of relays operating motor controllers;
(b) compensators of auto transformer starters;
(c) thermal relay types of motor starters;
(d) drum controllers and resistors;
(e) disconnecting switches when built as a part of magnetic starters;
(f) oil switches;

(g) synchronous motor controllers if a part of production machinery, but not otherwise;
(3) repair and renewal parts for motors and motor controllers as production machinery;
(4) steam engines, gasoline engines, diesel engines, motor generators;
(5) pumps for industrial processes, air compressors, air hoses and nozzles, and pipe for carrying compressed air from compressor to hose for cleaning machinery and equipment; pumps used to remove waste of a manufacturing process;
(6) moistening or humidifying equipment on or adjacent to machinery when the function of this equipment is the conditioning of materials for processing; This includes piping located on or immediately adjacent to mill machinery and which supports and supplies water to moistening or humidifying equipment, but does not include general piping in the mill supplying water to moistening or humidifying equipment. General piping in the mill is taxable at the state rate of four percent (three percent until July 16, 1991) and any applicable local sales or use tax;
(7) that portion of the purchase price of general air conditioning systems allocated to conditioning materials for processing;
(8) boiler room machinery with flue cleaners, and brushes for boiler tubes, when the boilers are operated for power generation or supplementary thereto in connection with manufacturing processes; stokers, shovels, and other equipment used in boiler rooms for feeding fuels and water to power units; Smoke stacks which are attached to and are a part of the boilers; Equipment as used here does not include storage places for fuels and water, or reserve tanks, bins or other similar items located either inside or outside power rooms or buildings. Storage tanks, bins or other facilities for water, fuel, raw materials or manufactured products are not considered as mill machinery or accessories to such machinery and are therefore subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax. However, tanks, bins and other facilities in which mixing, blending or other processing action takes place are classified as mill machinery or accessories and are therefore subject to the one percent rate of tax when such items are used in the manufacturing operation;
(9) conveyors, hoists and hoist cables, (but not track or other fixtures determined to be a part of and which lend support to the building or structure) roving trucks and other materials handling equipment, including lift trucks, used in individual mills for transporting materials or spindles or like articles from inventory to the manufacturing process, transporting materials during temporary interruptions in the manufacturing process in the mill or moving the finished product from the manufacturing or processing line into shipping and storage areas or yards at the individual mill or plant; Included for the purpose of this Paragraph are work tables, with seats and other accessories thereto at which employees work on materials in process; racks, bins, canvas baskets and similar equipment for handling goods in process; and roving cans;
(10) hand tools designed for use on a particular machine, such as special wrenches supplied by makers of textile machinery for special machines; hammers, screwdrivers, blow torches, soldering irons, rubber mallets and similar general-use tools and machines used in repair shops to repair mill machinery or along the production line to perform work necessary as a part of the manufacturing processes and all files for general and specific use in a mill or manufacturing plant;
(11) metal-cutting and wood-cutting lathes and their accessories in all kinds of manufacturing plants, factories and mills; band saws, circular saws, all hack saws and blades; shapers and accessories, jointers, planers; drill presses; welding machines; torches; and all other manufacturing machinery and accessories thereto; spinners' whisks, comber brushes and other brushes, in hosiery mills and cotton mills, designed for use on particular machines; polishing wheels, sanding machines and drums, portable or stationary; sandpaper, emery cloth, rubbing tow, paint brushes and filler brushes, steel wool, rubbing waste or cloths or other hand or machine devices for polishing or other finishing processes on a manufactured product; oils and lubricants for use in lubricating production machinery; and wiping cloths, cleaning compounds and paint for mill machinery, mill machinery parts and accessories; chemicals or other materials used to clean ingredient or component parts of manufactured products but which do not enter into or become an ingredient or component part of property being manufactured;
(12) dyehouse thermometers, recording charts for mill machinery, hank scales and yarn scales; and tachometers and other testing devices used for checking performance or output of machinery;
(13) air compressors, steam hose and air hose for cleaning mill machinery;
(14) cloth pencils and mill crayons for marking cloth, lumber or other ingredients in process;
(15) dynamite and other explosives used in mining and quarrying whether or not such mining or quarrying is carried on as a regular or continuous business within itself, or as a part of a manufacturing industry; Sales of explosives used in excavation in connection with building or con-

struction are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax;

(16) machinery and equipment used in packaging manufactured products as a part of the manufacturing process;

(17) pollution abatement equipment used in the manufacturing process.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; January 3, 1984.

SECTION .0700 - SPECIFIC INDUSTRY PURCHASES

.0713 ELECTROPLATING INDUSTRIES

(a) Receipts derived from electroplating tangible personal property belonging to users or consumers are not subject to sales or use tax. However, such persons are liable for remitting the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax on all metal and other tangible personal property purchased for use in the operation of their businesses.

(b) Receipts derived from electroplating tangible personal property for persons who will sell same at retail or wholesale are not subject to sales or use tax. Persons doing this type of electroplating are classified as manufacturers and their purchases of metal and other tangible personal property which enters into or becomes an ingredient or component part of property being electroplated for sale are exempt from tax under the provisions of G.S. 105-164.13(8). Purchases by such persons of items which are properly classified as mill machinery or mill machinery parts and accessories are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article as set forth by G.S. 105-164.4(a)(1d)b.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991.

SECTION .1100 - SALES OF BULK TOBACCO BARNS: FARM MACHINES AND MACHINERY

.1101 FARM MACHINES: MACHINERY: BULK TOBACCO BARNS

(a) Sales to farmers of machines and machinery, and parts therefor or accessories thereto for use by them in planting, cultivating, harvesting or curing of farm crops including nursery stock, or to dairy operators, poultry farmers, egg producers, and livestock farmers for use by them in the production of dairy products, poultry products, eggs, or livestock are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article of merchandise. Sales of machines and machinery, and the parts therefor or accessories thereto, to farmers for any purpose or use not defined in this Rule, or to any person other than a farmer as herein defined, even though for a use or purpose herein defined, are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax without limitation. In other words, to qualify for the one percent rate of tax and the eighty dollar ($80.00) maximum tax per article, the transaction must be a sale of a machine or machinery, or parts therefor or accessories thereto, to a farmer for one of the uses or purposes herein defined and unless all three conditions are met, the sale is subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax without limit. The following sales of tangible personal property to farmers qualify for the one percent rate of tax with an eighty dollar ($80.00) maximum tax per article of merchandise:

(1) Sales to farmers of bulk tobacco barns, racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm product are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article of merchandise. The sale to farmers of a bulk curing barn with perforated floors, curers, racks, fans, motors, dampers and flues will constitute the sale of one article and an eighty dollar ($80.00) maximum tax will be applicable thereto.

(2) Sales to farmers of grain, feed, or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

(3) Sales to farmers of commercially manufactured portable swine equipment or facilities and accessories thereto; and sales to farmers for installing on the farm of all bulk feed handling equipment which has been designed and constructed to be used for raising, feeding, and the production of livestock and poultry products and all cages used in the production of livestock and poultry products are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article of merchandise. The sale of the total number of poultry cages to be served by the same automatic feeder, automatic waterer or automatic egg collector constitutes the sale of a single article that is separate and distinct from a feeder, waterer or egg collector. The statute was expanded to include sales to farmers of commercially manufactured swine, livestock or poultry equipment or facilities and accessories thereto. Effective September 1, 1987, this Subparagraph is rescinded as a result of a statutory amendment to G.S. 105-164.13(4c). See 17 NCAC 7B .1123 for information in regard to the exemption from sales and use taxes for sales of articles described in this Subparagraph.

(4) Sales of containers to farmers and producers for use in the planting, producing, transporting or delivery of their products are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article of merchandise when such containers do not go with and become a part of the sale of the product at wholesale or retail.

The Farmer's Certificate, Form E-599, may completed by a farmer and accepted by a retail or wholesale merchant as the authority for applying the one percent rate of tax, maximum eighty dollars ($80.00) per article, to the sale or purchase of tangible personal property which is farm machinery or parts and accessories thereto, as defined by Statute and in this Rule. The use of the certificate is optional. It is to be used only by farmers in the manner and for the purpose described on the back side of the certificate.

(b) The following are examples of sales of machines and machinery and the parts therefor and accessories thereto, which qualify for the one percent rate of tax with the eighty dollars ($80.00) maximum when sold to general farmers for use by them in planting, cultivating, harvesting or curing farm crops:

(1) tractors,
(2) plows,
(3) harrows,
(4) cultivators,
(5) mowers,
(6) planters,
(7) corn pickers and snappers,
(8) manure spreaders,
(9) manure loaders,
(10) harvester threshers,
(11) rotary tillers,
(12) fertilizer distributors,
(13) wind-rowers,
(14) forage blowers,
(15) stalk cutters,
(16) seeders,
(17) grain loaders,
(18) harvesters,
(19) cotton pickers,
(20) rotary hoes,
(21) corn and hay elevators,
(22) tobacco curers,
(23) tobacco flues,
(24) tobacco trucks or slides,
(25) wagons,
(26) non-highway trailers,
(27) mechanical rakes,
(28) balers,
(29) rod weeders,
(30) combines,

(31) tobacco transplanters,
(32) shredders for corn stalks,
(33) power loader lifts,
(34) platform carriers,
(35) portable insecticide sprayers,
(36) chain saws,
(37) motor oils, greases, lubricants and anti-freeze;
(38) hydraulic fluids.

(c) Examples of items which are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax when sold to general farmers:

(1) lawn mowers;
(2) snow plows;
(3) oil storage tanks and fittings;
(4) drainage tile;
(5) paint, cleaning compounds and brushes;
(6) baler twine;
(7) tobacco sticks and tobacco twine;
(8) tools for maintaining machinery and equipment;
(9) plastic mulch, plant bed covers and tobacco canvas.

(d) The lists in Paragraphs (b) and (c) of this Rule are not intended to be exclusive, but are for illustrative purposes only. If there is any question whatever as to the tax status of any item which does not appear therein, such question should be submitted to the secretary, together with a detailed statement of the business of the purchaser, the design and structure of the article, and its use, to the end that the applicable rate of tax may be correctly determined.

(e) The word farmer as used in this Rule includes dairy operators, poultry farmers, egg producers, livestock farmers, nurserymen, greenhouse operators, orchardmen and other persons coming within the generally accepted definition of the word. It does not include a person who merely cultivates a garden for personal use.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; February 1, 1988; March 1, 1984.

.1123 CERTAIN SALES TO COMMERCIAL LIVESTOCK AND POULTRY FARMERS

(a) Sales to commercial livestock and poultry farmers of materials to be used exclusively in the construction, repair or improvement of any enclosure or structure specifically designed, constructed, and used for commercial purposes for housing, raising, or feeding livestock and poultry or for housing equipment necessary for these activities, including work space used solely for these commercial activities, are exempt from sales and use taxes. Likewise, sales of materials for the above described uses to contractors performing contracts with commercial livestock and poultry farmers and subcontractors performing contracts with general contractors who have contracts with commercial livestock and poultry farmers shall be exempt. The exemption from tax extends only to building materials, as such, which are used in the construction, repair or improvement of such enclosures or structures and which become a part of such enclosures or structures. The exemption does not extend to sales of equipment and machinery used to equip such enclosures or structures prior to September 1, 1987. Effective September 1, 1987, the exemption was expanded to include sales of commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used for such above commercial purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosures, or structures.

(b) For the purpose of this Rule, the words "swine, livestock and poultry" include swine, cattle, horses, mules, sheep, chickens, turkeys and other similar domestic animals and fowl usually held or produced on a farm for commercial purposes. The word "commercial" shall mean "held or produced for income or profit." It does not include one who merely produces swine, livestock or poultry for one's personal use or consumption and not for sale. Commercial swine, livestock or poultry farmers, and contractors performing contracts with commercial swine, livestock or poultry farmers and subcontractors performing contracts with general contractors who contract with commercial swine, live-

stock or poultry farmers may obtain Commercial Swine, Livestock and Poultry Farmers' Certificate, Form E-599S, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to exempt such purchases from sales and use taxes.

History Note: Statutory Authority G.S 105-164.4; 105-164.6; 105-262;
Eff. February 1,1987;
Amended Eff. June 1, 1992; February 1, 1988.

SECTION .1500 - FINANCE COMPANIES: FINANCE CHARGES AND CARRYING CHARGES

.1501 FINANCE COMPANIES

(a) If a finance company maintains a regular place of business wherein repossessed tangible personal property is sold or placed on display for sale as an adjunct to the principal business of the finance company, such finance company must register with the department and collect and remit the applicable state and local tax on its sales.

(b) If a finance company, as an incident only of its finance business, has occasion, from time to time, to repossess articles of tangible personal property upon which payments have become delinquent and sells such tangible personal property either at public auction or at private sale, such sales shall be deemed occasional sales and are not subject to the tax.

History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991.

SECTION .1600 - SALES TO OR BY HOSPITALS: EDUCATIONAL: CHARITABLE OR RELIGIOUS INSTITUTIONS: ETC.: AND REFUNDS THERETO

.1602 REFUNDS TO INSTITUTIONS: ETC.

(a) Subject to the terms and conditions herein set forth, hospitals not operated for profit, educational institutions not operated for profit, churches, orphanages, and other charitable or religious institutions or organizations not operated for profit are entitled to semiannual refunds of sales and/or use taxes paid by them in North Carolina on their direct purchases of tangible personal property used in carrying on their nonprofit work. For refund purposes, purchases by contractors of building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure being erected, altered or repaired under contract with any such institution or organization and which are used in carrying on the nonprofit activities of such institution or organization are deemed to be direct purchases. The provisions of this Rule apply to out-of-state institutions and organizations to the extent of sales or use taxes paid by them in this state on purchases of tangible personal property for use in carrying on charitable, religious or educational activities within or without this state which are not for profit.

(b) In addition to the provisions in (a) of this Rule for refunds of sales and/or use taxes paid by hospitals not operated for profit, all other hospitals not specifically excluded herein are entitled to semiannual refunds of sales and or use taxes paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals.

(c) The refund provisions contained in this Rule do not apply to the tax on taxable sales by the institutions and organizations named in Paragraph (a) of this Rule and no part thereof shall be refunded or claimed as a refund. Institutions and organizations properly registered for sales and use tax purpose may purchase the tangible personal property which they resell without paying tax thereon to their suppliers provided they have furnished such suppliers with properly executed certificates of resale, Form E-590. Certificates of resale may not be used by any institution or organization named in this Rule, or by any other vendee, in making purchases of tangible personal property to be used or consumed by such purchaser.

(d) Refund claims of the organizations and institutions named in Paragraph (a) of this Rule must be filed with the North Carolina Department of Revenue covering the first six months of the calendar year on or before the 15th day of October following the close of the first six months period. Refund

claims covering the second six months of the calendar year must be filed on or before the 15th day of April following the close of the second six months period. Refund claims filed after the due date shall be subject to the following penalties for late filing:

(1) refund claims filed within 30 days after the due date, 25 percent;

(2) refund claims filed more than 30 days after the due date but within six months of the due date, 50 percent.

The amount of the penalties in this Rule shall be deducted from the face amount of the refund due the claimant. The statute prohibits the payment of any refund claim not filed within the stipulated time.

(e) All refund claims must be substantiated by proper documentary proof and only the taxes actually paid by the claimant during the period for which the claim for refund is filed may be included in the claim. Any local sales or use taxes included in the claim must be separately stated in the claim for refund. In cases where more than one county's tax has been paid, a breakdown must be attached to the claim showing the amount of each county's local tax separately.

(f) As to taxes paid on the claimant's purchases for use, other than those made by contractors performing work for the claimant, invoices or copies of invoices showing the property purchased, the cost thereof, the date of purchase and the amount of state and local sales or use tax paid during the refund period will constitute proper documentary proof.

(g) To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of state and local sales or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of state and local sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statements must be shown separately from the state sales or use taxes. The contractor's statements must not contain sales or use taxes paid on purchases of tangible personal property by such contractors for use in performing the contract which does not annex to, affix to or in some manner become a part of the building or structure being erected, altered or repaired for the institutions and organizations named in Paragraph (a) of this Rule. Examples of property on which sales or use tax has been paid by the contractor and which should not be included in the contractor's statement are scaffolding, forms for concrete, fuel for the operation of machinery and equipment, tools, equipment repair parts, equipment rentals and blueprints.

(h) The refund provisions set forth in this Rule apply only to institutions and organizations described in Paragraphs (a) and (b) of this Rule, but do not apply to nonprofit fraternal, civic or patriotic organizations, notwithstanding that such organization may perform certain charitable functions. The refund provisions set forth in this Rule do not apply to organizations, corporations and institutions which are owned and controlled by the United States, the state or a unit of local government except hospital facilities created under Article 12 of Chapter 131 of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under G.S. 105-154.14(b) instead of annual refunds under G.S. 105-164.14(c). Any nonprofit hospital owned and controlled by a unit of local government may submit a written request to receive semiannual refunds under G.S. 105-164.14(b) instead of annual refunds under G.S. 105-164.14(c). The request is effective beginning with the six-months refund period following the date of the request and applies to sales or use taxes paid on or after the first day of the refund period for which the request is effective.

(i) The refund provisions of this Rule are not applicable to sales taxes incurred by employees on purchases of food, lodging or other taxable travel expenses paid by employees and reimbursed by the type institutions and organizations named in Paragraph (a) of this Rule. Such expenses are personal to the employee since the contract for food, shelter and travel is between the employee and the provider and payment of the tax is by the employee individually and personally. Such institutions and organizations have not incurred and have not paid any sales tax liability. In such cases, it has chosen to reimburse a personal expense of the employee. The refund provisions of this Rule do not apply to sales tax paid by the organizations and institutions named in Paragraph (a) of this Rule on charges by a utility for electricity, piped natural gas and local, toll or private telecommunications services; to the occupancy taxes levied and administered by certain counties and cities in this state; to the highway use taxes paid on the purchase, lease or rental of motor vehicles; to the scrap tire disposal fee levied on new motor vehicle tires; or to the scrap tire disposal tax levied on new motor vehicle tires. Such taxes should not be included in any claim for refund filed by such institutions and organizations.

History Note: Statutory Authority G.S. 105-164.14; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; May 1, 1990; February 1, 1988.

SECTION .1900 - TIRE RECAPPERS AND RETREADERS: TIRE AND TUBE REPAIRS

.1905 SALES TO TIRE RECAPPERS

(a) Sales to tire recapppers of camelback or other rubber products, cement and rubber solvent, cord fabric, wheel weights and other items of a similar nature which enter into or become an ingredient or component part of the recapped tires or are attached to and delivered with the tires to the customer are exempt from tax.

(b) The gross receipts derived by a utility from sales of electricity and piped natural gas to tire recappers for use in connection with the operation of the recapping plant are subject to the three percent state rate of tax. Sales of other fuel to tire recappers for use in connection with the operation of the recapping plant are subject to the one percent rate of tax.

(c) Sales to tire recappers of mill machinery, or parts and accessories therefor, for use exclusively in the recapping process are subject to the one percent rate of tax, with a maximum tax of eighty dollars ($80.00) per article. Sales to contractors and subcontractors of mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are subject to a one percent rate of tax, with a maximum tax of eighty dollars ($80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by tire recappers in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto. The following items when sold to tire recappers for use exclusively in the recapping process are considered to be mill machinery or mill machinery parts and accessories within the meaning of the Sales and Use Tax Article:

(1) wire brushes;
(2) mold lube;
(3) curing tubes and rims;
(4) molds and matrices;
(5) buffing equipment;
(6) buffing discs;
(7) buffing rasps;
(8) rasp teeth;
(9) crayon for marking tires;
(10) tire trimmers;
(11) boilers;
(12) tire handling equipment used exclusively between the beginning and ending steps of the recapping process;
(13) inspection spreaders used exclusively to inspect casing being recapped;
(14) spinners used for applying cement used on casings being recapped;
(15) pre-condensing tanks for air lines used for applying cement, dusting buffed casings, and inflating curing tubes;
(16) casing balancers used exclusively in balancing casing to be recapped;
(17) tread builders used to apply tread rubber to casing being recapped;
(18) air compressors used exclusively in retreading or recapping process;
(19) dust collectors;
(20) knives, stitchers, rollers, shears, awls, splicing tools, etc., used to perform work on the ingredient material or the manufactured product;
(21) thermometers, pyrometers, and durometers used in testing mold heat and cure hardness of the rubber used in the recapping process;

(22) bagging and debagging equipment;
(23) sprayers used exclusively in the recapping process;
(24) matrix loaders;
(25) steam traps and valves used in steam lines for curing molds;
(26) mold cleaners.

(d) The following are examples of items which are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax when sold to tire recappers for use or consumption:

(1) motor vehicle jacks;
(2) tire tools not used between the beginning and ending recapping processes;
(3) balancing machinery used after recapping process is completed;
(4) equipment used to remove tires from the rim before the recapping process begins;
(5) administrative equipment such as office supplies, file cabinets and other office equipment;
(6) cleaning compound for janitorial and sanitary purposes;
(7) uniforms for employees;
(8) advertising materials;
(9) lubricants, repair parts and accessories for motor vehicles;
(10) inspection bags;
(11) gloves.

(e) The lists in (c) and (d) of this Rule are not intended to be exclusive but are for illustrative purposes only. If there is any question as to the tax status of any item not on the lists, it may be submitted to the Secretary of Revenue for a determination as to the applicable rate of tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; May 1, 1985; May 11, 1979.

.1906 SCRAP TIRE DISPOSAL FEE

(a) Between January 1, 1990 and June 30, 1991, a scrap tire disposal fee of one percent is levied on the sales price of each retail sale of a new motor vehicle tire. The fee is not due on tires sold for any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment, any vehicle designed primarily for use in work off the highway, or a manufactured home. "Sales price" includes the amount of any federal manufacturer's excise tax imposed on such tires. The one percent fee is imposed on tire retailers' net taxable sales of new motor vehicle tires and it is to be collected and paid in the same manner as the State sales tax. However, the fee is not a part of the tax base on which the sales tax is to be computed. It does not apply to:

(1) sales of recapped tires,
(2) receipts from the lease or rental of tires,
(3) sales of tires for resale,
(4) the sale of used motor vehicle tires,
(5) factory installed tires which after use are replaced with new tires and then sold at retail,
(6) tires which are sold to motor vehicle dealers to be mounted on and sold as a part of a new or used motor vehicle, or
(7) sales to the United States Government or any agency thereof.

(b) Motor vehicle tires purchased outside of North Carolina for use in this State will be subject to the one percent fee on the cost price of each new tire to be paid in the same manner as the State use tax under G.S. 105-164.6. Every person located outside this State engaged in business in this State is required to register with the Department and collect and remit the scrap tire disposal fee on all retail sales of new motor vehicle tires sold or delivered for storage, use or consumption in this State. The exemptions and exclusions under the Sales and Use Tax Law and the "storage and use exclusion," as well as the lower rates of tax imposed by the Sales and Use Tax Law, do not apply to this fee levy. The refund provisions of G.S. 105-164.14(a), (b) and (c) do not apply to this fee levy.

(c) The fee levy constitutes a separate collection program from sales tax for the Sales and Use Tax Division and is to be reported on the Waste Tire Disposal Fee Report, Form E-500 G, which is provided by the Department.

(d) Every person engaged in the business of selling new motor vehicle tires at retail or making purchases subject to the scrap tire use fee and whose total scrap tire fee liability is consistently less than twenty thousand dollars ($20,000) per month must file on or before the 15th day of each calendar month a report for the previous month and remit the taxes due with such report. When the total

amount of the scrap tire disposal fee for which a taxpayer is liable is consistently less than twenty-five dollars ($25.00) per month, such taxpayer may file a quarterly return with remittance of the tax on or before the 15th day of January, April, July and October of each year for the preceding three months' period upon making application to the Secretary to use such basis of reporting. A report must be filed for each reporting period. Reports for the periods in which no sales are made should be marked "no sales." A taxpayer who is consistently liable for at least twenty thousand dollars ($20,000) per month in scrap tire disposal fees shall, as directed by the Secretary of Revenue, file a return on a semimonthly basis. These returns are due within ten days after the end of each semimonthly period. The semimonthly reporting periods are the first through the 15th day of each month and the 16th through the last day of each month. In determining the amount of tax due from a taxpayer for a reporting period, the Secretary shall consider the total amount due from all places of business owned or operated by the same person as the amount due for that period.

History Note: Statutory Authority G. S. 105-262; 105-264; 130A-309.55; 130A-309.56; Eff. October 1, 1990; Amended Eff. June 1, 1992.

.1907 SCRAP TIRE DISPOSAL TAX

(a) Effective July 1, 1991, the Scrap Tire Disposal Fee was moved to Article 5B of Chapter 105 of the General Statutes and became the Scrap Tire Disposal Tax. The definitions contained in G.S. 105-164.3 of the Sales and Use Tax Statute are applicable to Article 5B except that the term "sale" does not include "lease or rental." The exemption for tires leased or rented was removed effective July 1, 1991. Under the amended statute, the taxable event for tires that are purchased for the purpose of lease or rental occurs at the time the tires are purchased and the scrap tire tax is due at that time. The receipts from the lease or rental of tires are not subject to the scrap tire tax but they are subject to the sales or use tax. The levy was expanded and, effective July 1, 1991, the one percent tax also applies to the retail sales of new tires for construction equipment, agricultural and industrial equipment, aircraft, and new tires that are sold to be placed on vehicles offered for sale, lease or rental. Sales of these tires are to be reported with sales of new motor vehicle tires on line 1 of the Scrap Tire Disposal Tax Report, Form E-500G. The scrap tire tax shall be computed on the selling price of the tire including the federal excise tax but excluding the sales tax. Tires that continue to be exempt from the one percent Scrap Tire Disposal Tax are bicycle tires and other tires for vehicles propelled by human power.

(b) Purchases of new tires from outside North Carolina for storage, use or consumption in North Carolina or to be placed on a vehicle offered for sale, lease or rental are subject to the one percent rate on the cost price of each new tire. These tire purchases are to be reported on line 2 of the Scrap Tire Disposal Tax Report. The exemptions in G.S. 105-164.13 and the refunds authorized by G.S. 105-164.14 for various groups and organizations do not apply to the taxes imposed by this Article.

(c) The Scrap Tire Disposal Tax is not to be reported on a tire vendor's sales and use tax report but it is to be reported on the Scrap Tire Disposal Tax Report, Form E-500G. Taxpayers who are making sales or purchases of tires that are subject to the tax in accordance with the above information must register for this purpose.

History Note: Statutory Authority G. S. 105-262; 105-264; 130A-309.55; 130A-309.56; Eff. October 1, 1991; Amended Eff. June 1, 1992.

SECTION .2400 - VETERINARIANS

.2402 SALES BY VETERINARIANS

(a) Sales of drugs and medicines on the written prescription of a veterinarian, whether from an inventory of medicines and drugs maintained by the veterinarian or whether by or through an independent pharmacy or drug store, are exempt from sales or use tax. The terms "medicines" and "drugs" shall mean medicines in the generally accepted sense of the term and also includes remedies and tonics for internal use, vaccines, vitamins, ointments, liniments, antiseptics and other medicinal substances having preventive and curative properties in the prevention, treatment or cure of disease in animals.

(b) When a veterinarian maintains an inventory of medicines and drugs from which sales are made pursuant to a veterinarian's written prescription, to persons who actually receive the medicines or drugs

for subsequent administration, such sales are exempt from sales or use tax provided adequate records are maintained which clearly segregate such prescription sales. In the absence of a written prescription, a copy of which is kept on file, veterinarians making such prescription sales must clearly show on the patients' medical records, cards or charts the diagnosis of the illness or ailment, the kind and amount of medicines or drugs prescribed, the sales price of such medicines or drugs and the frequency with which such medicines or drugs are to be administered to the patient. Records must be maintained that show charges to customers for professional services and such records must be kept in a manner so that such prescription sales of medicines and drugs can be related or traced to the patients' medical records, cards or charts. The foregoing does not apply to medicines or drugs that are administered by the veterinarian to the patient in connection with the treatment of patients since veterinarians are the users of any such medicines or drugs so administered.

(c) Sales of medicines or drugs by a pharmacy on the written prescription of a veterinarian are exempt from sales or use tax. Sales of medicines and drugs by a pharmacy pursuant to a veterinarian's telephone (oral) prescription are exempt from sales or use tax provided the prescription is reduced to writing, signed by the pharmacist and filed in the same manner as an original written prescription. Medicines or drugs sold pursuant to the refilling of a veterinarian's prescription are likewise exempt from tax. Vendors making sales of medicines or drugs pursuant to a veterinarian's prescription or refilling the same must keep sales records which will clearly segregate such prescription sales. All original prescriptions must be filed and kept available for inspection by the Secretary of Revenue or her authorized agent.

(d) Veterinarians who maintain an inventory for the purpose of making sales of medicines, drugs, flea powder, soap, pet food, dog collars and similar items at retail must register with the Department and collect and remit the applicable tax on such sales. A veterinarian who uses tangible personal property in rendering professional services and also makes sales of the same type property may, in connection with such purchases, furnish Certificates of Resale, Form E-590, to his vendors. The veterinarian is then liable for remitting the applicable use tax on the property which is used and the applicable sales tax on sales of such property to users or consumers.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; August 1, 1986; May 11, 1979.

SECTION .2600 - LIABILITY OF CONTRACTORS: USE TAX ON EQUIPMENT BROUGHT INTO STATE: BUILDING MATERIALS

.2602 CONTRACTORS: SUBCONTRACTORS: RETAILER-CONTRACTORS

(a) Contractors are deemed to be consumers of tangible personal property which they use in fulfilling contracts and, as such, are liable for payment of the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on such property. When a contractor or a subcontractor makes taxable purchases of tangible personal property from suppliers outside this State who charge the North Carolina four percent state and any applicable local sales or use tax thereon or from suppliers in this State, they should remit the tax on such purchases to their suppliers. When a contractor or subcontractor makes taxable purchases of tangible personal property for use in this State from a supplier outside this State who does not collect the North Carolina four percent state and any applicable local sales or use tax thereon, such contractor or subcontractor must remit the tax directly to the department. Where the purchaser is a contractor, the contractor and owner shall be jointly and severally liable for said tax, but the liability of the owner shall be deemed satisfied if before final settlement between them the contractor furnishes to the owner an affidavit certifying that said tax has been paid. Where the purchaser is a subcontractor, the contractor and subcontractor shall be jointly and severally liable for said tax, but the liability of the contractor shall be deemed satisfied if before final settlement between them the subcontractor furnishes the contractor an affidavit certifying that said tax has been paid. The liability of the subcontractor for such tax does not extend to the property owner.

(b) The term retailer-contractor shall mean any person who engages in the business of selling building materials, supplies, equipment, and fixtures at retail and, in addition to such business, enters into contracts for constructing, building, erecting, altering or repairing buildings or other structures, and for the installation of equipment and fixtures to buildings and, in the performance of such contracts, consumes or uses such materials or merchandise. When a retailer-contractor as herein defined makes purchases of the above named tangible personal property, a part of which he will use in performing contracts and

a part of which he will sell at retail, the retailer-contractor should furnish his supplier a properly executed certificate of resale. The supplier should keep the executed certificate for his records as his authority for not charging tax on the transaction. The retailer-contractor then becomes liable for remitting, directly to the department, tax on the sales price of any tangible personal property sold at retail, and tax on the cost price of any tangible personal property used in the performance of a contract.

(c) Contractors are required to remit use tax at the applicable rate on the storage or use of motor vehicles, machines, machinery, tools and other equipment brought into this state for use in construction or repair work. The tax is to be applied and computed in the manner set forth in 17 NCAC 7B .2601.

(d) Sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are subject to the one percent rate of tax, with a maximum tax of eighty dollars ($80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendors' authority to apply the one percent rate of tax thereto.

(e) Construction materials purchased or sold on and after July 16, 1991, (the effective date of the increase in the state tax rate to four percent) to fulfill a lump-sum or unit price contract entered into or awarded before July 16, 1991, or entered into or awarded pursuant to a bid made before July 16, 1991, will continue to be taxable at the three percent state rate of tax and the local tax of two percent. Form E-589, Affidavit to Exempt Contractors From the Additional One Percent State Tax Effective July 16, 1991, must be executed by the contractor or subcontractor to obtain the three percent state rate.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; February 8, 1981; May 11, 1979.

.2611 BUILDING MATERIALS

(a) All building materials, supplies, fixtures and equipment of every kind and description which become a part of or are annexed to any building or other structure are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax, except for the reduced rates and exemptions described below. Vendors of such items are required to register and to collect and remit the tax on their sales to contractors and other users or consumers.

(b) If the contractor purchases from a vendor outside the state any building materials, supplies, fixtures or equipment for use in the construction, erection, alteration or repair of a building or other structure in this state and the vendor does not collect the tax thereon, such contractor must remit the use tax directly to the department. The Sales and Use Tax Law provides that in such cases the tax is a joint liability of the contractor and the owner. The liability of the owner will be satisfied if he obtains from the contractor before settlement an affidavit that the tax due has been paid.

(c) Construction materials purchased or sold on and after July 16, 1991, (the effective date of the increase in the state tax rate to four percent) to fulfill a lump-sum or unit price contract entered into or awarded before July 16, 1991, or entered into or awarded pursuant to a bid made before July 16, 1991, will continue to be taxable at the three percent state rate of tax and the local tax of two percent. Form E-589, Affidavit to Exempt Contractors From the Additional One Percent State Tax Effective July 16, 1991, must be executed by the contractor or subcontractor to obtain the three percent state rate.

(d) Sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants are subject to the one percent rate of tax, with a maximum tax of eighty dollars ($80.00) per article where applicable. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined

in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto.

(e) Sales to commercial livestock and poultry farmers of materials to be used exclusively in the construction, repair or improvement of any enclosure or structure specifically designed, constructed, and used for commercial purposes for housing, raising, or feeding livestock and poultry or for housing equipment necessary for these activities, including work space used solely for these commercial activities, are exempt from sales and use taxes. Likewise, sales of materials for the above described uses to contractors performing contracts with commercial livestock and poultry farmers and subcontractors performing contracts with general contractors who have contracts with commercial livestock and poultry farmers shall be exempt. The exemption from tax extends only to building materials, as such, which are used in the construction, repair or improvement of such enclosures or structures and which become a part of such enclosures or structures. The exemption does not extend to sales of equipment and machinery used to equip such enclosures or structures prior to September 1, 1987. Effective September 1, 1987, the exemption was expanded to include sales of commercially manufactured swine, livestock, and poultry facilities to be used for commercial purposes for housing, raising, or feeding of swine, livestock, or poultry or for housing equipment necessary for these commercial activities; building materials, supplies, fixtures, and equipment to be used in the construction, repair, or improvement and that become a part of an enclosure or structure specifically designed, constructed and used for such above commercial purposes; and commercially manufactured swine, livestock, and poultry equipment, parts and accessories therefor placed or installed in or affixed to such facilities, enclosure, or structures.

(f) For the purpose of this Rule, the words "swine, livestock and poultry" include swine, cattle, horses, mules, sheep, chickens, turkeys and other similar domestic animals and fowl usually held or produced on a farm for commercial purposes. The word "commercial" shall mean "held or produced for income or profit." It does not include one who merely produces swine, livestock or poultry for one's personal use or consumption and not for sale. Commercial swine, livestock or poultry farmers, and contractors performing contracts with commercial swine, livestock or poultry farmers and subcontractors performing contracts with general contractors who contract with commercial swine, livestock or poultry farmers may obtain Commercial Swine, Livestock and Poultry Farmers' Certificate, Form E-599S, from the Sales and Use Tax Division, North Carolina Department of Revenue, or any of its field offices, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to exempt such purchases from sales and use taxes.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; February 1, 1988; May 11, 1979.

SECTION .2700 - DENTISTS: DENTAL LABORATORIES AND DENTAL SUPPLY HOUSES

.2702 SALES TO DENTAL LABORATORIES

(a) Sales to dental laboratories of tangible personal property which becomes a component part of false teeth, dentures or artificial restoration of teeth being fabricated by such laboratories are not subject to sales or use tax.

(b) Sales to dental laboratories of machinery and equipment, and accessories thereto for use directly in the fabricating of false teeth are subject to the one percent rate of sales or use tax with a maximum tax of eighty dollars ($80.00) per article. Sales to contractors and subcontractors purchasing such machinery and equipment or parts and accessories thereto for use by them in the performance of contracts with dental laboratories and sales to subcontractors of such machinery and equipment or parts and accessories thereto for use by them in the performance of contracts encompassed in such contracts with dental laboratories are taxable at the one percent rate of sales or use tax, subject to a maximum tax of eighty dollars ($80.00) per article where applicable when the machinery and equipment or parts and accessories thereto are used by such dental laboratories directly in the fabricating of false teeth. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and

furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto.

(c) Sales to dental laboratories of tangible personal property which does not become a component part of false teeth, or which is not used directly in the fabricating of the false teeth are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264; Eff. February 1, 1976; Amended Eff. June 1, 1992; October 1, 1991; January 1, 1982; May 11, 1979.

SECTION .2800 - FLORISTS: NURSERYMEN: GREENHOUSE OPERATORS AND FARMERS

.2801 FLORISTS: NURSERYMEN: GREENHOUSE OPERATORS AND FARMERS

(a) Retail sales of wreaths, bouquets and similar items are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

(b) Retail sales of flowers, potted plants, shrubbery and similar nursery stock and retail sales of fruits, vegetables and other farm products are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax unless the product in question is a product of the farm and is sold in its original state by the producer of the product who is not primarily a retail merchant at the location where the product is sold.

(c) For the purpose of the exemption afforded by G.S. 105-164.13(4.2), nurserymen and greenhouse operators are considered to be farmers. Nursery stock which is not sold during the season in which it was purchased by the nurserymen, greenhouse operators and other farmers but is retained until the next season and growth is added thereto by virtue of such retention is considered to be a product of the farm and is exempt from sales and use taxes when sold by such nurserymen, greenhouse operators or farmers who are not selling primarily as retail merchants.

(d) Nurserymen, greenhouse operators and other types of farmers that make retail sales of farm products that they have produced which are in their original state are not liable for collecting and remitting sales tax on these sales unless they are selling primarily in their capacity as retail merchants. Such vendors are selling primarily as producers when the total dollar sales volume of their produced farm products in the original state regularly exceeds fifty percent of the total dollar sales volume of their purchased products and their produced products. Such vendors are selling primarily in their capacity as retail merchants when their total dollar sales volume of purchased products regularly exceeds fifty percent of the total dollar sales volume of their purchased and produced products. Such classification shall remain in effect until either category of sales on a regular basis has changed to another principal type. If such producer-vendors operate more than one location, the preceding is applicable to the total dollar sales volume of each location separately. The total dollar sales volume to be used in determining the classification of "producer" or "retail merchant" shall include all sales of tangible personal property without regard to any items or sales that might otherwise be exempt from tax by the Sales and Use Tax Statutes.

(e) If such vendors are not classified primarily as retail merchants on the basis of the total dollar sales volume, sales of their produced products in the original state are exempt from tax; however, retail sales of any farm products or any other taxable merchandise acquired by purchase are subject to any applicable tax. If such vendors are classified primarily as retail merchants on the basis of the total dollar sales volume, they shall be liable for tax accordingly; i.e., all retail sales of both types of products shall be subject to the tax unless specific sales are statutorily exempt from tax.

(f) When vendors who are not primarily retail merchants make sales of farm products produced by them and products acquired by purchase, separate records must be maintained of sales of products produced by them. Records of purchased products, as well as sales thereof, must be kept and maintained in a manner that can be accurately and conveniently checked by the agents of the Secretary of Revenue; otherwise, all sales are subject to the tax.

(g) Producers making taxable sales must register with the Department of Revenue for the purpose of collecting and remitting the tax due thereon.

(h) When nurserymen, greenhouse operators, florists or other persons make taxable sales of shrubbery, young trees or similar items, and as a part of the transaction transplant them to the land of the purchaser for a lump sum or a flat rate, the entire amount of the transaction is subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax unless such

vendors segregate on the invoice that portion of the charge which is for the property sold and that portion of the charge which is for transplanting.

(i) For the purpose of the exemption afforded by G.S. 105-164.13(4.2), nurserymen and greenhouse operators are considered to be farmers; therefore, the fact that they may be selling tangible personal property primarily as a retailer and not as a producer does not preclude certain of their purchases of tangible personal property for use from the one percent state rate of tax with a maximum tax of eighty dollars ($80.00) per article levied pursuant to G.S. 105-164.4(a)(1d)a. G.S. 105-164.4(a)(1d)a. levies the above state rate of tax on sales to farmers of machines and machinery and parts therefor and accessories thereto for use by them in planting, cultivating, harvesting or curing farm crops. Regulation 17 NCAC 7B .1101 provides additional information regarding the above levy.

(j) Effective September 1, 1990, G.S. 105-164.13(6) was repealed removing the exemption from tax for retail sales of ice. G.S. 105-164.13(4b) was rewritten to add an exemption for ice sold to be used to preserve agricultural, aquacultural and commercial fishery products until the products are sold at retail. Sales of ice for resale continue to be exempt from tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; March 1, 1987; June 1, 1985.

SECTION .2900 - VENDING MACHINES

.2901 SALES THROUGH VENDING MACHINES

(a) Any person who makes sales of tangible personal property by means of vending machines is required to register with the Department of Revenue and pay sales tax on the sales price of tangible personal property in excess of one cent per sale. One cent sales through vending machines are exempt from sales tax when made by the owner or lessee of the vending machines. Effective July 1, 1989, the sales price of tangible personal property sold through coin-operated vending machines, other than closed container soft drinks subject to the excise tax under Article 2B of the Revenue Act or tobacco products, is considered to be 50 percent of the total amount for which the property is sold through the vending machines. All bottled soft drinks containing 35 percent or more of natural fruit or vegetable juice and all bottled natural milk drinks containing 35 percent or more natural liquid milk are exempt from the excise tax imposed by the Soft Drink Tax Article, but the exemption does not apply to any vegetable or fruit drink to which has been added any coloring, artificial flavoring or preservative. Effective October 1, 1991, all bottled soft drinks containing 100 percent natural fruit or vegetable juice without added ingredients of any kind other than vitamins and that are registered with the Soft Drink Excise Tax Unit, are exempt from the excise tax imposed by the Soft Drink Tax Article. This exemption does not apply to any fruit or vegetable drink to which has been added any sugar, salt, preservatives, artificial flavoring, coloring, and carbonation. The receipts from sales of these items exempt from the soft drink tax will be subject to the tax on 50 percent of the total amount for which these items are sold through vending machines. Records must be kept to support such exempt sales as required by G.S. 105-164.22 and G.S. 105-164.24.

(b) If a person operates a number of vending machines from which taxable sales are made at various locations in this state, one retailer's license may be held by such person at his principal place of business and the tax may be accounted for in one return reflecting the total gross receipts derived from sales through all vending machines operated in this state.

History Note: Statutory Authority G.S. 105-164.4; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; July 1, 1989.

SECTION .3100 - RADIO AND TELEVISION STATIONS; MOTION PICTURE THEATRES

.3104 BROADCASTING ACCESSORIES

Sales of slide or film projectors, screens, photographic supplies and equipment, including cameras, bulbs, film, blank videotape cassettes, chemicals, paper and other photographic developing equipment to television companies operating under the regulation and supervision of the Federal Communications

Commission are subject to the one percent rate of tax with an eighty dollar ($80.00) maximum tax per article when such items are used in producing pictures and similar material used in the programming of the television station. This Rule has no application to sales of the above items to amateur or commercial photographers.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992.

.3107 MOTION PICTURE PRODUCTION FIRMS

(a) Sales to motion picture production firms of cameras, film and props or building materials used in the construction of sets which are used in the actual filming of movies for sale, lease or rental are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article. The sale of chemicals and equipment used to develop and edit film which is used to produce release prints qualifies for the one percent rate of tax.

(b) Sales of machinery and equipment and other property to motion picture production firms for use in receiving tangible personal property and other activities such as raw materials storage, finished goods storage, distribution or administration is subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

(c) The purchase of film by a movie production company which becomes a component part of release prints that are actually produced and sold, leased or rented to its customers are exempt from sales and use tax. Also, chemicals which are used to develop release prints that are for sale, lease or rental are exempt from tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. June 1, 1992.

SECTION .3200 - TELEPHONE AND TELEGRAPH COMPANIES

.3204 CELLULAR TELEPHONE COMPANIES

(a) Those firms known as cellular telephone companies, which are licensed by the Federal Communications Commission and which provide their customers, on a commercial basis, access to local telecommunications company lines to make and receive telephonic quality communications by use of radio frequencies come within the purview of the statutes and this Rule as they relate to the one percent rate of tax on specified equipment. Sales to such firms of microwave transmitters and receivers, antennas, radio channel units, and central office telecommunications equipment, switchboard or private branch exchange equipment and prewritten computer programs used in providing telecommunications services to subscribers are subject to the one percent sales or use tax with a maximum tax of eighty dollars ($80.00) per single article. Sales to such firms of towers to support antennas used to transmit and receive signals of microwave radios used in providing such telephonic quality communications are subject to the one percent sales or use tax with a maximum tax of eighty dollars ($80.00). For the purpose of applying the maximum tax, a tower is considered to be a single article only when the complete tower is sold by the same vendor. Sales of antenna cable used in transmitting the radio signals from the microwave antenna to the microwave transmitter or receiver are subject to the one percent rate of tax with no maximum tax applicable thereto.

(b) The gross receipts derived by a cellular telephone company from providing intrastate, local, toll or private telecommunications services, including basic service charges, system access charges and general usage charges, are subject to the three percent or six and one-half percent sales tax as provided in 17 NCAC 7B .3201 (f). Sales or leases of radio telephone equipment to subscribers are subject to the four percent (three percent until July 6, 1991) state and any applicable local sales or use taxes.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. June 1, 1992.

SECTION .3300 - ORTHOPEDIC APPLIANCES

.3302 ITEMS NOT ORTHOPEDIC APPLIANCES

Sales of therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease or incapacity are exempt from sales and use tax when sold on the written prescription of a physician. dentist or other professional person licensed to prescribe; however, this exemption does not apply to the sale of a motor vehicle or to sales to persons not made pursuant to a written prescription of a physician, dentist of other professional person licensed to prescribe. Vendors making sales of therapeutic, prosthetic, or artificial devices pursuant to written prescriptions must keep sales records which clearly segregate such prescription sales. All original prescriptions must be filed and kept available for inspection by the Secretary of Revenue or her authorized agent. The items listed in this Rule are not orthopedic appliances within the meaning of G.S. 105-164.13(12) and are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax when sold to users or consumers in this state unless sold pursuant to a written prescription as provided herein:

(1) athletic supporter;
(2) ball o foot cushions;
(3) bunion protector;
(4) bunion reducer;
(5) foot cushion;
(6) heel cushions;
(7) shoe insoles;
(8) toe flex;
(9) walk strate pads;
(10) wigs;
(11) heating pads;
(12) heat lamps;
(13) oxygen regulators (medical);
(14) oxygen tents;
(15) vaporizers.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; February 1, 1986.

SECTION .3400 - MEMORIAL STONE AND MONUMENT DEALERS AND MANUFACTURERS

.3401 MEMORIAL STONE SALES

(a) Except as provided in Paragraph (b) of this Rule, sales of memorial stones to users or consumers are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax. Where the seller of a memorial stone or monument agrees to install such stone or monument upon a foundation, a segregation must be made of materials used and installation charges involved, on an invoice given to the customer at the time of the sale. The seller may deduct the installation labor costs or services from the gross proceeds of the sale only when a segregation of the billing is made to the customer; otherwise, the total charge is taxable.

(b) The first one thousand five hundred dollars ($1,500.00) of all funeral expenses, including gross receipts from tangible personal property furnished and services rendered by funeral directors, morticians and undertakers, or by monument and memorial stone dealers, shall be exempt from sales or use taxes. The term "funeral expenses", as used in this Rule, shall include charges by monument or memorial stone dealers for the sale and installation of memorial stones and monuments purchased by the estate of a deceased person and allowed as a funeral expense. It shall also include charges by monument and memorial stone dealers for the sale and installation of memorial stones and monuments purchased by a family member or other person responsible for the funeral expenses within one year after the death of the deceased person. The one thousand five hundred dollars ($1,500.00) exemption is applicable to the total charge for the sale and installation of a memorial stone or monument notwithstanding that the installation charge may be separately stated on the invoice at the time of the sale and in the vendor's records. Vendors making sales of memorial stones and monuments or services subject to the one thousand five hundred dollars ($1,500.00) exemption must keep sales invoices, books and other records showing the name of the purchaser, the total sales price of the tangible personal property, the date of

the sale, the date of the death of the deceased person and the total sales price of all tangible personal property and services furnished.

History Note: Statutory Authority G.S. 105-164.3 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; July 1, 1990.

SECTION .3500 - MACHINISTS: FOUNDRYMEN: AND PATTERN MAKERS

.3501 MACHINISTS: FOUNDRYMEN: PATTERN MAKERS

(a) Sales to users or consumers of dies, castings, patterns, tools, machinery and any other tangible personal property made by machinists, foundrymen or pattern makers, and parts and other tangible personal property fabricated and sold for use or consumption on or with such items of tangible personal property, are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax unless such sales qualify for the one percent rate of tax under the provisions of Paragraph (b) of this Rule or are wholly exempt from the tax under the provisions of Paragraph (c) of this Rule.

(b) The following sales of any such tangible personal property are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per single article:

(1) Sales of molds, patterns or dies by machinists, foundrymen, pattern makers or others and any other property classified as mill machinery, mill machinery parts and accessories to manufacturing industries and plants.

(2) Sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts encompassed in such contracts with manufacturing industries and plants. Such mill machinery or mill machinery parts and accessories must be for use by a manufacturing industry or plant in the production process, as the term "production" is defined in 17 NCAC 7B .0202(a)(1), to qualify for the one percent rate of tax with a maximum of eighty dollars ($80.00) per article when purchased by such contractors or subcontractors. Contractors and subcontractors may obtain Contractor's and Subcontractor's Certificate, Form E-580, from the Sales and Use Tax Division, North Carolina Department of Revenue, to be executed by them and furnished to their vendors in connection with such purchases as the vendor's authority to apply the one percent rate of tax thereto.

(3) Sales to farmers if such property is classified as farm machinery, or parts and accessories therefor, under the provisions of 17 NCAC 7B .1100.

(4) Sales to commercial laundries, or pressing and dry cleaning establishments of machinery, or parts and accessories therefor, for use by the vendee in the direct performance of the cleaning and pressing service.

(5) Sales of any such machinery, or parts and accessories therefor, to freezer locker plants for use in the direct operation of such plants.

(c) The following sales of any such property to the following are exempt from tax:

(1) Commercial fishermen for use by them in the commercial taking or catching of shrimp, crab, oysters, clams, scallops and fish, both edible and nonedible.

(2) For use or consumption by or on ocean-going vessels plying the high seas in interstate or foreign commerce in transporting freight or passengers for hire exclusively.

(d) The tax due hereunder shall be computed at the applicable rate on the full selling price of such property, including charges for any services that go into the fabrication, manufacture or delivery thereof.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262; 105-264;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; January 1, 1982; May 11, 1979.

SECTION .3600 - FUNERAL EXPENSES

.3601 FUNERAL EXPENSES

(a) Except as otherwise provided in Paragraph (b) of this Rule, all funeral expenses, including gross receipts from tangible personal property furnished or services rendered by funeral directors, morticians or undertakers are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax. Where coffins, caskets, vaults and memorial stones or monuments are provided by the same funeral home and a separate charge is paid for services, the provisions of this Rule shall apply to the total for both. For additional information regarding the sale and installation of memorial stones and monuments, see 17 NCAC 7B .3400.

(b) The first one thousand five hundred dollars ($1,500) of the charge for such tangible personal property furnished or services rendered, or both, shall not be subject to the tax. In addition to the statutory exclusion, the following charges may also be excluded from taxable receipts provided such charges are separately and accurately identified in the funeral directors' records: those services which have been taxed pursuant to G.S. 105-164.4(4); those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of the deceased; burial permit fees for interment in church cemeteries; stone deposits advanced to city and church cemeteries to guarantee the erection of a grave stone within a given time; transportation charges by common carriers for transporting the deceased from the place of death to the place of interment; honorariums; ambulance service in cases of final illness where the bill was not paid prior to death and is subsequently added to the funeral bill; cemetery lots; cash advances; grave opening fees; charges for telephone calls to friends and relatives of the deceased for the convenience of and at the request of the family of the deceased when billed separately to the family; charges for death certificates procured by or at the specific direction of the family or personal representative of a deceased person; and amounts paid directly to the funeral director by agencies of the federal government except death benefit payments by the Social Security Administration which require the authorization of the surviving

(c) Sales to funeral directors, morticians and undertakers of graveside equipment, embalming fluid, cosmetics, disinfectants, chairs, flower racks, casket trucks and other supplies or equipment for use in conducting their businesses are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-164.13; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; February 1, 1987; February 1, 1986.

SECTION .4400 - LEASE OR RENTAL

.4403 MAINTENANCE OF LEASED PROPERTY

(a) Sales of tangible personal property to registered lessors or retailers for the purpose of lease or rental exclusively are wholesale sales and not subject to tax provided properly executed certificates of resale are furnished to the vendors of such property. Sales of lubricants, repair parts and accessories to such lessors or retailers who use them to repair, recondition or maintain such lease or rental personal property are also wholesale sales when properly executed certificates of resale are provided to vendors of this type property. Lessors are responsible for payment of any applicable state and local tax on the cost price of such items if they are used for a purpose other than repairing or maintaining leased or rented property or if they are resold as such. Any tax due thereon is to be paid to the Secretary of Revenue on the lessors' or retailers' sales and use tax returns.

(b) When the lessee purchases lubricants and repair parts to maintain tangible personal property being leased or rented, the lessee is liable for payment of the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on the cost price of such purchases to the vendors or to the Secretary of Revenue. If a separate maintenance agreement for a fixed fee where no separate charge is made for parts and labor is executed by the lessor and lessee whereby the lessor or the lessee agrees, for a consideration separate from the lease payments, to maintain property being leased or rented, purchases of repair parts and lubricants by either party are subject to the tax payable by the purchaser thereof as described in this Rule.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; March 1, 1984.

.4416 HIGHWAY USE TAX AND ALTERNATE GROSS RECEIPTS TAX

(a) G.S. 105-187.5 provides that, effective October 1, 1989, lessors of motor vehicles may elect to pay the highway use tax to the Commission of Motor Vehicles when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental or may elect to collect and remit the tax to the Secretary of Revenue on the lease or rental receipts derived therefrom. Any credit allowed by a vendor in the lease agreement for the equity in a traded-in vehicle is considered a part of the gross receipts derived from the lease or rental of a motor vehicle and is subject to the highway use tax. Effective April 23, 1991, G.S. 105-187 was amended by adding Section 11 which allows lessors of motor vehicles the option of paying the highway use tax to the Commissioner of Motor Vehicles rather than the alternate gross receipts tax to the Secretary of Revenue on motor vehicles held in their inventory for lease prior to October 1, 1989, and leased or rented on or after that date. To make the election allowed by this Section, a retailer must complete a form provided by the Division of Motor Vehicles. That Division will notify the Secretary of Revenue of a retailer who makes an election under this Section. If this election is made, no credit will be allowed for any tax paid on the purchase or rental of a motor vehicle under the Sales and Use Tax Law and for any tax paid on gross receipts under the Highway Use Tax Act. The taxes collected under this Section will be credited to the General Fund.

(b) Effective October 1, 1989, the rate of highway use tax on motor vehicle lease or rental receipts will be eight percent for the first 90 continuous days of lease or rental of a vehicle to the same person, and the rate will reduce to three percent for the remainder of the continuous period during which the vehicle is leased or rented to that person. The maximum tax of one thousand dollars ($1,000.00) [effective July 1, 1993, the maximum tax will increase to one thousand five hundred dollars ($1,500.00)] applicable to the sale of a motor vehicle applies when the vehicle is leased or rented to the same person for more than 90 continuous days and the tax paid by a person from the first day of such period applies toward the maximum tax.

(c) Effective July 1, 1991, the Highway Use Tax Act was amended to define long-term and short-term lease or rental. Long-term lease or rental means a written agreement to lease or rent property for at least 365 continuous days to the same person. Short-term lease or rental is a lease for less than 365 continuous days. The rate of tax on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent. The maximum tax of one thousand dollars ($1,000.00) [effective July 1, 1993, the maximum tax will increase to one thousand five hundred dollars ($1,500.00)] applies to a continuous lease or rental of a motor vehicle to the same person.

(d) A retailer who elects to pay tax to the Secretary of Revenue on the gross receipts from the lease or rental of a motor vehicle must make this election when applying for a certificate of title for the vehicle. To make the election, the retailer must complete a form provided by the Division of Motor Vehicles, MVR 608 (Rev. 10-90). Once made, an election is irrevocable. The eight percent rate of tax will be deposited in the General Fund. The three percent rate of tax will be deposited to the Highway Trust Fund. The two rates of tax on motor vehicle lease receipts are reported on the same forms which will be provided to motor vehicle lessors by the Department of Revenue upon request.

History Note: Statutory Authority G.S. 105-187.3; 105-187.4; 105-187.5; 105-187.6; 105-187.8; 105-187.9; 105-187.11; 105-262;
Eff. October 1, 1991;
Amended Eff. June 1, 1992.

SECTION .4500 - LAUNDRIES: DRY CLEANING PLANTS: LAUNDERETTES: LINEN RENTALS: AND SOLICITORS FOR SUCH BUSINESSES

.4501 RECEIPTS OF LAUNDRIES: ETC.

(a) The gross receipts derived from the following are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax:

(1) services rendered by pressing clubs, cleaning plants, hat blocking establishments, dry cleaning plants, laundries, including wet or damp wash laundries and businesses known as launderettes and launderalls, and all similar type businesses;
(2) the rental of clean linen, towels, wearing apparel and similar items;
(3) soliciting cleaning, pressing, hat blocking and laundry or linen rental business;
(4) rug cleaning services performed by persons operating rug cleaning plants or performed by any of the businesses named in this Rule when the rug cleaning service is performed at the plant;

receipts from rug cleaning services performed at the customer's location by any of the businesses included in this Rule are not subject to sales and use tax;

(5) charges for laundering or dry cleaning linen, towels, wearing apparel and similar items owned by lessors which is held for lease or rental.

Effective July 1, 1988, receipts derived from coin or token-operated washing machines, extractors and dryers are exempt from sales or use taxes. Retail sales of detergents, bleaches and other taxable items of tangible personal property through vending machines continue to be subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

(b) Charges by the businesses named in (a) of this Rule for alterations or storage of garments are not a part of the gross receipts subject to tax when such charges are separately stated on their invoices and in their records. When such charges are not separately stated, the total charge is subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax. Sales of thread, buttons, zippers, pockets, and other similar tangible personal property to such businesses for use or consumption in making repairs and alterations to garments being laundered, cleaned or pressed are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

(c) When in addition to the services named in Paragraph (a) of this Rule, the herein-named businesses make retail sales of tangible personal property for which a separate charge is made, such sales are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales tax. Any charge for labor or services rendered in applying or installing such property are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of the sale and in the vendor's records; otherwise, the total amount is subject to tax.

(d) Retailers of the services named in Paragraph (a) of this Rule are liable for the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on the gross receipts derived from their services; however, the tax does not apply to gross receipts from such services performed for resale by retailers that pay the tax on their receipts from the services.

History Note: Statutory Authority G.S. 105-164.4; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; August 1, 1988.

SECTION .4600 - MOTOR VEHICLES AND BOATS

.4601 SALES AND PURCHASES OF AUTOMOBILES AND OTHER MOTOR VEHICLES

(a) The Sales and Use Tax Article was amended, effective October 1, 1989, to provide an exemption from sales and use taxes for sales of motor vehicles, the separate sales of a motor vehicle body and a motor vehicle chassis when the body is to be mounted on the chassis, and the sale of a motor vehicle body to be mounted by the manufacturer thereof on a motor vehicle chassis that temporarily enters the state for that purpose. Effective July 1, 1991, motor vehicle bodies mounted upon motor vehicles chassis that were titled and registered before the body was installed thereon are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

Prior to October 1, 1989, sales of motor vehicles, as defined in Paragraph (b) of this Rule, to users or consumers were subject to the two percent rate of tax with a maximum tax of three hundred dollars ($300.00) applicable to the sale of any one motor vehicle. The tax was to be computed on the gross sales price of the motor vehicle less any allowance for a motor vehicle taken in trade as a credit or part payment on the sales price thereof. The gross sales price of the motor vehicle included any parts or accessories installed thereon at the time of the sale, labor for installing such parts or accessories, freight and any other charges for preparing the vehicle for sale. Parts or accessories sold separately from the sale of a motor vehicle are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax; however, charges for labor to install such parts or accessories are not subject to tax when separately stated on the customer's invoice and in the vendor's records.

Prior to October 1, 1989, separate sales of a new motor vehicle chassis and a new motor vehicle body to be installed thereon, whether sold by the same or different retailers, were subject to the maximum tax on sales of motor vehicles. Such sales are treated as a single sale. Retailers making sales of this nature must retain in their permanent records evidence of the amount of tax paid on the purchase of a new body or chassis and compute the amount of additional tax to be charged by determining the difference between the tax already paid and the amount of tax due on the combined selling price of such

body and chassis subject to the maximum tax. When a new motor vehicle body was sold to be installed on a used motor vehicle chassis, the tax was to be computed on the sales price of the new motor vehicle body, subject to the maximum tax without regard to any tax previously paid on the used chassis. Effective July 1, 1991, G.S. 105-164.13(32) was rewritten to exempt the sale of a motor vehicle body to be mounted on a motor vehicle chassis when the certificate of title has not been issued for the chassis. Motor vehicle bodies mounted upon motor vehicle chassis that have been previously titled and registered will be subject to the state rate of three percent or four percent plus the applicable local sales tax. Prior to October 1, 1989, the lease receipts derived from the lease or rental of a motor vehicle to a user or consumer in this state were subject to the two percent sales or use tax. The maximum tax of three hundred dollars ($300.00) was applicable to the receipts derived from the lease or rental of a motor vehicle for a stipulated period of time. Persons who leased or rented motor vehicles were to collect and remit the tax on the separate retail sale of a motor vehicle in addition to the tax imposed on the lease or rental of the motor vehicle.

(b) Motor Vehicle defined: For the purposes of the Sales and Use Tax Article, the term motor vehicle means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

(1) a moped as defined in G.S. 20-4.01(27)(d1);
(2) special mobile equipment as defined in G.S. 20-4.01(44);
(3) a tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11);
(4) a farm tractor or other implement of husbandry;
(5) a manufactured home; or
(6) road construction or road maintenance machinery or equipment.

(c) Special Mobile Equipment Defined: Every truck, truck-tractor, industrial truck, trailer, or semitrailer on which have been permanently attached cranes, mills, well-boring apparatus, ditch digging apparatus, air compressors, electric welders or any similar type apparatus or which have been converted into living or office quarters, or other self-propelled vehicles which were originally constructed in a similar manner which are operated on the highway only for the purpose of getting to and from a nonhighway job and not for the transportation of persons or property or for hire. This shall also include trucks on which special equipment has been mounted and used by the American Legion or Shrine Temples for parade purposes, trucks or vehicles privately owned on which fire-fighting equipment has been mounted and which are used only for fire-fighting purposes, and vehicles on which are permanently mounted feed mixers, grinders, and mills although there is also transported on the vehicle molasses or other similar type feed additives for use in connection with the feed-mixing, grinding or milling process.

(d) Prior to October 1, 1989, the sales or use tax was to be computed on the gross sales price of a motor vehicle less any allowance for a motor vehicle taken in trade as a part of the consideration for the purchased vehicle. Prior to October 1, 1989, sales of all motor vehicles accepted in trade or repossessed by vendors were subject to sales or use tax regardless of the fact that such motor vehicles may have been acquired by trade or repossessed by vendors. Prior to October 1, 1989, when property, other than motor vehicles, was taken in trade as a part of the consideration for a purchased vehicle, the sales or use tax was to be computed and paid on the full gross sales price of the motor vehicle without any deduction whatever on account of any trade-in credit or allowance. The sale of used property, other than a motor vehicle, by the dealer who accepted same in trade would then be exempt from tax. Effective October 1, 1989, motor vehicles are exempt from sales and use taxes and the sale of used property, other than a motor vehicle, taken in trade as a part of the consideration for the purchased vehicle is subject to sales tax. Repair parts withdrawn from inventory by a dealer and installed upon such property for sale are not subject to the tax. Certificates of resale may be executed by registered dealers when purchasing repair parts for resale or for use in reconditioning such property for sale.

(e) Prior to October 1, 1989, sales of motor vehicles to a registered merchant for resale were not subject to tax when supported by properly executed Resident and Nonresident Retail or Wholesale Merchant's Certificate of Resale, Form E-590, or other evidence in writing adequate to support the conclusion that he was registered with the Department of Revenue or in a taxing jurisdiction outside this state for sales and use tax purposes and that the property was being purchased for the purpose of resale. Certificates of resale may also be executed by registered motor vehicle leasing firms when purchasing motor vehicles which they will lease or rent to their customers since such firms must remit tax on their lease or rental receipts. Prior to October 1, 1989, sales of motor vehicles to out-of-state merchants who accept delivery of the vehicles in this state for resale in their respective states are not subject to tax provided such merchants are registered for sales and use tax purposes in a taxing jurisdiction

outside this state and furnish the North Carolina merchant a properly completed certificate of resale. Reference is made to 17 NCAC 7B .3201 for further information regarding sales to nonresident merchants.

(f) Prior to October 1, 1989, sales of motor vehicles to nonresident purchasers which were delivered to them in North Carolina for immediate transportation to and use in another state in which such vehicles are required to be registered were not subject to sales tax. For the purpose of the exemption, the term "immediate transportation to . . . another state" means to either drive or transport the vehicle outside North Carolina en route to its state of registration within seventy-two hours after the purchase thereof; however, purchases of motor vehicles by military personnel for use in North Carolina are taxable notwithstanding that such persons might have registered the motor vehicles in their home states. The seller must have obtained from the purchaser and furnished to the Secretary of Revenue an Affidavit for Exemption of Motor Vehicle Sold for Immediate Transportation and Use Outside of North Carolina, Form E-599B, stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the Secretary may require. The exemption was fully allowed when the affidavit was filed with the seller's sales and use tax report for the month during which the sale was made and such report was timely filed. When an affidavit concerning a sale of a motor vehicle to a nonresident purchaser was not filed with the retailer's sales and use tax report for the month in which the sale of the vehicle was made and the failure to file the affidavit is discovered on or after August 12, 1989, it shall be accepted if it is filed within 30 days after such discovery, but no refund shall be made of sales and use taxes already paid. An affidavit filed within this 30-day period is subject to a penalty of 25 percent of the tax applicable to the sales price of the motor vehicle. If the affidavit is submitted to the Secretary of Revenue after the end of this 30-day period, no exemption shall be allowed. The provisions of this Paragraph are not applicable to sales of motor vehicles which are subject to the highway use tax after September 30, 1989.

History Note: Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; Eff. February 1, 1976; Amended Eff. October 1, 1991; July 1, 1990; February 1, 1988; March 1, 1987.

.4602 AIRCRAFT: BOATS: RAILWAY CARS: LOCOMOTIVES: MANUFACTURED HOMES

(a) Effective August 1, 1989, the maximum sales tax on retail sales of aircraft, boats, railway cars or locomotives increased from three hundred dollars ($300.00) to fifteen hundred dollars ($1,500.00). The rate of tax applicable to such sales of aircraft, boats, railway cars or locomotives three percent (two percent until July 16, 1991) state tax and is payable to the Secretary of Revenue on vendors' sales and use tax reports.

Effective October 1, 1989, the term "motor vehicle", as set forth under G.S. 105-164.3(8b), excludes a manufactured home. G.S. 105-164.3(8a) defines a "manufactured home" as a structure that is designed to be used as a dwelling and:

(1) Is built on a permanent chassis;
(2) Is transportable in one or more sections;
(3) When transported, is at least eight feet wide or 40 feet long; and
(4) When erected on a site, has at least 320 square feet.

Retail sales of manufactured homes will continue to be subject to the two percent rate of sales tax with a maximum tax of three hundred dollars ($300.00) per article including all accessories attached to the manufactured home when it is delivered to the purchaser. Each section of a manufactured home that is transported to the site where it is to be erected is a separate article. Dealers must continue to remit sales tax to the Secretary of Revenue on their retail sales of manufactured homes.

(b) A retail sale of a boat with a boat trailer is considered to be the sale of two separate articles. The retail sale of the boat trailer, a motor vehicle within the meaning of the statute, is subject to the three percent highway use tax with a maximum tax of one thousand dollars ($1,000.00) applicable to the trailer. The retail sale of the boat is subject to the three percent (two percent until July 16, 1991) rate of tax with a maximum tax of fifteen hundred dollars ($1,500.00) applicable to the sale of any boat except for those sales exempt from tax under the provisions of G.S. 105-164.13(9). The tax shall be computed on the gross sales price of the boat, including charges for the boat motor, fenders, boat and motor controls, compasses, windshields, horns, lights, or any other parts or accessories, all of which must be attached thereto at the time of delivery to the purchaser, labor for installing such parts and accessories, freight or any other charge for preparing the boat for sale. Life jackets, life rings, cushions, flares, fire extinguishers and rope are considered to be safety equipment rather than accessories to the

boat and sales of such items at retail are subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax notwithstanding they are sold with the boat. Parts and accessories, including boat motors, fenders, boat and motor controls, lights, windshields, horns and other above-named items sold separately from the sale of a boat are also subject to the four percent (three percent until July 16, 1991) state tax and any applicable local sales or use tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991; July 1, 1990; January 3, 1984; May 11, 1979.

.4603 MOTOR VEHICLE SERVICE BUSINESSES

(a) Persons engaged in the business of repairing automobiles and other motor vehicles are liable for collecting and remitting the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on the sales price of any parts, accessories or other tangible personal property which they furnish in connection with repairing their customers' vehicles. Charges for labor to install the parts, accessories and similar property are not subject to tax if such charges are separately stated on the customers' invoices and in the vendor's records; otherwise, the total charges are subject to the tax.

(b) Sales of repair parts, accessories and other tangible personal property to automotive repair shops for resale in connection with repairing their customers' vehicles are not subject to tax when supported by certificates of resale, Form E-590.

(c) Sales of tools, equipment and supplies to automotive repair shops for use in conducting their business are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax and vendors making such sales are required to collect and remit same. Certificates of resale are not applicable to sales of this nature. If, in addition to repairing motor vehicles, a repair shop actually makes sales of tools, equipment, supplies, and similar items to its customers, such repair shop may purchase such items under a certificate of resale. Vendors selling tools, equipment, supplies and similar items to a repair shop, or similar business which does not ordinarily and customarily engage in reselling such articles at retail should require from such vendee a certificate of resale with each order for such articles. Such vendee is then liable for collecting and remitting the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on its sales of tools, equipment, supplies and similar items.

(d) The total charge for all tangible personal property, including windshields, window glass, seat covers, floor mats, head liners, runners, channels, pig rings, felt, tacks, screws, thread, tape, windlass, welt cord, and similar items installed in or upon motor vehicles or other articles by persons selling and installing such property are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax. The charge for labor performed or other services rendered in installing the same are also subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax unless such charges are separately stated on the customer's invoice and in the vendor's records. All tax due hereunder must be collected and remitted to the department by the person selling and performing such installation service. Sales of tangible personal property for resale in connection with glass repair and reupholstery jobs are not subject to tax when supported by properly executed certificates of resale; however, any tools, supplies or other property sold for use in performing such work are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

(e) Persons engaged in the business of painting or refinishing motor vehicles are the users or consumers of tangible personal property which they purchase for use in the performance of such services. Sales to such businesses of paint, primer, sandpaper and belts, masking tape, putty and other finishing or refinishing materials, including those named in Paragraph (f) of this Rule, tools, supplies and any other tangible personal property for use in body repair, painting or refinishing work are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax. If, in addition to such body repair, painting or refinishing work, said businesses purchase tangible personal property such as automobile fenders, doors, windshields or other parts or accessories, and sell the same to their customers, such businesses are liable for collecting and remitting the tax on such sales irrespective of whether the sales are made in connection with repair or refinishing jobs.

(f) Sales of soap, wax, polish, glaze, undercoating, scotchguard, finish protectants and other related materials to motor vehicle dealers and other businesses that use such materials to wash, wax, and/or apply a protective coating to automobiles are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax thereon.

History Note: Statutory Authority G.S. 105-164.3; 105-164.4; 105-164.5; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991.

.4604 SPECIAL EQUIPMENT-ACCESSORIES: MOTOR VEHICLES

(a) Effective October 1, 1989, retail sales of motor vehicles, including all accessories attached to the vehicles when delivered to the purchaser, are exempt from sales tax. Prior to October 1, 1989, retail sales of motor vehicles with special accessories such as pulling devices, hole digging devices, aerial working devices or other special accessories which are attached to and a part of such motor vehicles when they are delivered to purchasers are subject to the two percent rate of tax with a maximum tax of three hundred dollars ($300.00) applicable to each such vehicle. The term "motor vehicle", as used in this Rule, means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

(1) a moped as defined in G.S. 20-4.01(27)(d1);
(2) special mobile equipment as defined in G.S. 20-4.01(44);
(3) a tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11);
(4) a farm tractor or other implement of husbandry;
(5) a manufactured home; or
(6) road construction or road maintenance machinery or equipment.

(b) Persons selling such special equipment or accessories at retail which they mount upon a motor vehicle chassis or body belonging to others must collect and remit the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax thereon. Any charges for labor or services rendered in installing or applying such items are not subject to tax provided such charges are segregated from the charge for the tangible personal property sold on the invoice given to the customer at the time of sale and in the vendor's records; otherwise the total amount is subject to tax.

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; July 1, 1990; December 1, 1988.

.4618 MOTOR VEHICLE SUPPLIES

History Note: Statutory Authority G.S. 105-164.4; 105-164.6; 105-262;
Eff. February 1, 1976;
Amended Eff. October 1, 1991;
Repealed Eff. June 1, 1992.

.4619 HIGHWAY USE TAX

(a) Effective October 1, 1989, retail sales of motor vehicles are exempt from sales tax and subject to the three percent highway use tax under Article 5A of Chapter 105 of the General Statutes with a minimum tax of forty dollars ($40.00) applicable thereto, with certain exceptions, and a maximum tax of one thousand dollars ($1,000.00) on any one motor vehicle increasing to one thousand five hundred dollars ($1,500.00) July 1, 1993. The highway use tax must be paid to the Commissioner of Motor Vehicles by the dealer, the purchaser, or other applicant for a certificate of title at the time of making application. The basis for the tax on sales of motor vehicles by retailers will be the sales price of the motor vehicles including all accessories attached thereto at the time of delivery of the vehicles to the purchasers less the amount of any allowance given by the retailer for motor vehicles taken in trade.
The basis for the tax on sales of motor vehicles for which a certificate of title is issued because of a sale of the vehicle by the seller who is not a retailer is the market value of the vehicle, less the amount of any allowance given by the seller for a motor vehicle taken in trade for the purchased motor vehicle. The retail value of a motor vehicle for which a certificate of title is issued because of a reason other than the sale of the motor vehicle is the market value of the vehicle. The market value of the vehicle is presumed to be the value of the vehicle set forth in a schedule of values adopted by the Commissioner of Motor Vehicles not to exceed the wholesale value.

(b) Effective October 1, 1989, the statute provides that the highway use tax will not be applicable to motor vehicles delivered to purchasers on or after October 1, 1989, pursuant to written contracts of sale entered into before that date, but they will be subject to the sales tax at the rate of two percent with

the three hundred dollars ($300.00) maximum tax per vehicle. The highway use tax will not be applicable to the transfer of a motor vehicle to:

(1) the insurer under G.S. 20-109.01 of the Motor Vehicle Laws because the vehicle is a salvage vehicle;
(2) to either a manufacturer, as defined in G.S. 20-285, for resale; or
(3) to a motor vehicle retailer for the purpose of resale.

(c) Effective October 1, 1989, only the minimum tax of forty dollars ($40.00) will be imposed when a certificate of title is issued as a result of the transfer of a motor vehicle:

(1) by a gift between a husband and wife or a parent and child;
(2) by will or intestacy;
(3) by a distribution of marital property as a result of a divorce;
(4) to a secured party who has filed a security interest in the motor vehicle with the Department of the Secretary of State;
(5) to a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-110; or
(6) to the same owner to reflect a change in the owner's name.

(d) Effective August 1, 1991, the highway use tax will not be applicable when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) to the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle;
(2) to either a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale;
(3) to the same owner to reflect a change or correction in the owner's name;
(4) by will or intestacy;
(5) by a conveyance between a husband and wife or a parent and child;
(6) by a distribution of marital property as a result of a divorce.

(e) Effective August 1, 1991, only the minimum tax of forty dollars ($40.00) will be imposed when a certificate of title is issued as a result of the transfer of a motor vehicle:

(1) to a secured party who has a perfected security interest in the motor vehicle;
(2) to a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under Section 351 or Section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with G.S. 55-11-06.

A maximum tax of one hundred fifty dollars ($150.00) [one hundred dollars ($100.00) effective October 1, 1989 until August 1, 1991] applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days. Credit is allowed for tax paid to another state; however, the tax credit does not reduce the tax due below the forty dollars ($40.00) minimum.

(f) When a purchaser of a motor vehicle returns the vehicle to the seller within 90 days after the purchase of the vehicle and receives a motor vehicle replacement or a refund of the purchase price paid to the seller, the purchaser may obtain a refund of the tax paid on the certificate of title issued for the returned vehicle less the minimum tax of forty dollars ($40.00) by submitting an application for refund to the Commissioner of Motor Vehicles.

(g) G.S. 105-187.5 provides that, effective October 1, 1989, lessors of motor vehicles may elect to pay the highway use tax to the Commissioner of Motor Vehicles when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental or may elect to collect and remit the tax to the Secretary of Revenue on the lease or rental receipts derived therefrom. Effective April 23, 1991, G.S. 105-187 was amended by adding Section 11 which allows lessors of motor vehicles the option of paying the highway use tax to the Commissioner of Motor Vehicles rather than the alternate gross receipts tax to the Secretary of Revenue on motor vehicles held in their inventory for lease prior to October 1, 1989, and leased or rented on or after that date. To make the election allowed by this Section, a retailer must complete a form provided by the Division of Motor Vehicles. That Division will notify the Secretary of Revenue of a retailer who makes an election under this Section. If this election is made, no credit will be allowed for any tax paid on the purchase or rental of a motor vehicle under the Sales and Use Tax Law and for any tax paid on gross receipts under the Highway Use Tax Act. The taxes collected under this Section will be credited to the General Fund.

Effective October 1, 1989, the rate of highway use tax on motor vehicle lease or rental receipts will be eight percent for the first 90 continuous days of lease or rental of a vehicle to the same person, and the rate will reduce to three percent for the remainder of the continuous period during which the vehicle

is leased or rented to that person. The maximum tax applicable to the sale of a motor vehicle applies when the vehicle is leased or rented to the same person for more than 90 continuous days and the tax paid by a person from the first day of such period applies toward the maximum tax. Effective July 1, 1991, the Highway Use Tax Act was amended to define long-term and short-term lease or rental. Long-term lease or rental means a written agreement to lease or rent property for at least 365 continuous days to the same person. Short-term lease or rental is a lease for less than 365 continuous days. The rate of tax on the gross receipts from the short-term lease or rental of a motor vehicle is eight percent and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent. The maximum tax applies to a continuous lease or rental of a motor vehicle to the same person. A retailer who elects to pay tax to the Secretary of Revenue on the gross receipts from the lease or rental of a motor vehicle must make this election when applying for a certificate of title for the vehicle. To make the election, the retailer must complete a form provided by the Division of Motor Vehicles. Once made, an election is irrevocable. The eight percent rate of tax will be deposited in the General Fund. The three percent rate of tax will be deposited to the Highway Trust Fund. Separate forms for reporting the separate rates of tax on motor vehicle lease receipts will be provide by the Department of Revenue to motor vehicle lessors upon receipt of their request for such forms.

(h) G.S. 105-187.5(d) was rewritten to authorize the Secretary of Revenue to administer the tax imposed on the gross receipts from the lease or rental of motor vehicles in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed on the gross receipts from the lease or rental of motor vehicles. The Division of Motor Vehicles may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this Section and the Division of Motor Vehicles shall reimburse the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this Section, the Secretary may audit any sales of motor vehicles made by the retailer.

History Note: Statutory Authority G.S. 105-187.3; 105-187.4; 105-187.5; 105-187.6; 105-187.8; 105-187.9; 105-262;
Eff. October 1, 1990;
Amended Eff. June 1, 1992; October 1, 1991.

SECTION .4700 - PRINTERS AND NEWSPAPER OR MAGAZINE PUBLISHERS

.4701 COMMERCIAL PRINTERS AND PUBLISHERS

(a) All retail sales of tangible personal property by commercial printers or publishers are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax unless such sales are subject to a lesser rate of tax under the provisions of G.S. 105-164.4(1) or are exempt by statute. The following sales are exempt from sales or use tax:

(1) charges for advertising space in newspapers, magazines and other publications;

(2) sales of newspapers by newspaper street vendors and by newspaper carriers making door to door deliveries and sales of magazines by magazines vendors making door to door sales;

(3) charges made by printers for imprinting or binding books or forms or other similar items which are owned by their customers;

(4) sales to manufacturers, producers, wholesalers and retailers of wrapping paper, labels, bags, cartons and other similar items when such items are used for packaging, shipping, or delivering tangible personal property sold at wholesale or retail, and when such items constitute a part of the sale of such tangible personal property and are delivered with it to the customer;

(5) sales of advertising supplements and any other printed matter ultimately to be distributed with or as a part of a newspaper;

(6) sales of paper, ink and other tangible personal property to commercial printers and commercial publishers for use as ingredient or component parts of free circulation publications, and sales by printers of free circulation publications to the publishers of these publications. As used in this Rule, the term "free circulation publications" means shoppers' guides that:

(A) are published on a periodic basis at recurring intervals;

(B) are mailed or distributed house-to-house, by street distributors, in racks, or in any other manner at other locations without charge to the recipient;

(C) contain advertising of a general nature for the sale of goods and services by a variety of businesses, trades or industries and are not limited to advertising the sale of goods or services by a particular business, trade or industry; and

(D) make space available to all advertisers for the purpose of inducing readers to purchase the goods and services of the advertisers.

The term does not include house organs or trade, professional, or similar types of publications. The ratio of news to advertising in a publication is not a factor in determining whether the publication is a free circulation publication.

(7) printed material which is sold by a printer to a purchaser within or without this state is exempt from sales or use tax when such printed material is delivered in this state by the printer to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this state, if the purchaser does not thereafter use the printed material in this state. Printed material which is sold by a printer to a purchaser within or without this state is exempt from sales or use tax when the printed material is delivered by the printer directly to a mailing house or to a common carrier or to the United States Postal Service for delivery to a mailing house in this state which will preaddress and presort the material and deliver it to a common carrier or to the United States Postal Service for delivery to recipients outside this state designated by the purchaser.

(A) Sales of printed material by a printer located within or without this state which is delivered directly to the purchaser in this state for the original purpose of preparing and delivering the printed material to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state are exempt from sales and use tax provide such purpose is consummated. A purchaser of such printed material for preparation and delivery to prospective customers and other recipients outside this state must furnish the vendor a written statement certifying that the printed material is being purchased for use in a mailing program which is in place at the time of purchase; otherwise, the vendor must collect and remit the tax on such sales. Sales of printed materials to a user or consumer in this state to be placed in the purchaser's inventory for use as needed are subject to sales or use taxes notwithstanding that all or a portion of the printed material may be delivered to the United States Postal Service or a common carrier for delivery to prospective customers or other recipients outside this state.

(B) A printer who sells printed material which is delivered to an in-state or out-of-state purchaser at a point within this state or which is delivered to a common carrier or the United States Postal Service for delivery to the purchaser at a point within this state who prepares the material to be mailed to prospective customers or other recipients without charge and transports the material outside this state to be delivered to the United States Postal Service or a common carrier or to a mailing house outside this state for delivery to designated recipients is liable for sales or use tax except as provided herein.

(C) The sale of printed materials by vendors other than printers and other types of tangible personal property which is provided without charge to recipients, whether it be advertising materials or gifts or donations, are subject to sales or use tax even though the items in question may be mailed to designated recipients outside this state. For example, a purchaser in this state buys tangible personal property other than printed material from a printer which is given to a donee within or without this state and directs that the item can be shipped or mailed to the donee. This transaction is subject to sales or use tax.

(b) Retail sales of advertising circulars, catalogues, booklets, pamphlets, forms, tickets, letterheads, envelopes and similar items and retail sales of books, magazines, periodicals, newspapers and other publications are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax unless such sales are exempt from tax by statute. When publications, other than magazines, are sold by subscription, the tax accrues at the time the subscription is accepted.

(c) Sales of paper, ink, and other tangible personal property to commercial printers or publishers for use as an ingredient or component part of the printed matter which they produce for sale are exempt from the tax.

(d) Sales to commercial printers and publishers of machinery and equipment and parts therefor and accessories thereto for use directly in the production of newspapers, magazines and other printed matter for sale are subject to the one percent rate of tax with a maximum tax of eighty dollars ($80.00) per article. Included herein are custom made plates and dies when title thereto does not pass to the printers' customers. Sales to commercial printers and publishers of tangible personal property such as wood and metal which is used to fabricate plates and dies for use in the production of printed matter for sale are likewise subject to the one percent rate of tax when title to the plates and dies does not pass

to the printers' customers. Sales to commercial printers and publishers of machinery, equipment, film, and similar items of tangible personal property for use or consumption directly in the production of such plates and dies are also subject to the one percent rate of tax. It is a printing trade practice that title to lithographic and gravure plates and dies is retained by the printer or publisher. Unless it is otherwise agreed in writing, the secretary will consider such items to be purchased by the printer or publisher for use or consumption and taxable at the one percent rate of tax on the cost price thereof.

(e) Sales to commercial printers of custom made plates and dies for resale are exempt from sales or use tax when supported by certificates of resale, Form E-590. Sales to commercial printers of tangible personal property such as wood and metal which becomes a component part of printing plates produced by such printers for sale to customers are likewise exempt from sales or use tax when supported by certificates of resale, form E-590. However, sales to commercial printers of machinery, equipment, film, and similar items of tangible personal property which do not enter into or become a component part of such plates and dies but are used or consumed by the printer in the direct production of such plates and dies are subject to the one percent rate of tax. When, at the request of the customer, commercial printers purchase custom made printing plates and dies for use in the direct production of the printed matter or when they purchase wood and metal which becomes a component part of printing plates and dies fabricated by the printer for use in the direct production of printed matter and title to the plates and dies passes to the printers' customers, such items can be properly purchased for resale. The printer is, of course, liable for collecting and remitting the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax on the total retail sales price of such plates and dies including charges for tangible personal property and art work or any other services that go into the manufacture or delivery thereof. In such cases, the printer's sales invoices and records must show that the plates and dies are actually sold to the customer; otherwise, such items will be deemed to have been used by the printer, and the cost price of same will be subject to the one percent rate of tax.

(f) Sales to commercial printers and publishers of tangible personal property which is not resold as such or which does not become an ingredient or component part of the tangible personal property which they produce for sale or which is not production machinery or parts therefor and accessories thereto are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax without any maximum tax.

(g) The provisions of Paragraphs (c) and (d) of this Rule have no application to sales of printing equipment and supplies to firms which operate print shops for the production of printed matter for their own use and not for sale. Purchases of printing equipment and supplies by such firms are subject to the four percent (three percent until July 16, 1991) state and any applicable local sales or use tax.

History Note: *Statutory Authority G.S. 105-164.4; 105-164.5; 105-164.6; 105-164.13; 105-262; 105-264;*
Eff. February 1, 1976;
Amended Eff. June 1, 1992; October 1, 1991; February 1, 1988; April 1, 1986.

SECTION .5400 - FORMS USED FOR SALES AND USE TAX PURPOSES

.5458 UTILITIES AND MUNICIPALITIES SALES TAX REPORT FORM: E-500E

The Utilities and Municipalities Sales Tax Report, Form E-500E, is to be filed by municipalities remitting sales tax on electricity and utilities remitting sales tax on electricity, piped gas and telecommunications services. Effective October 1, 1990, the return is to be filed either monthly or quarterly. The return is to be used to remit the tax collected on the above-stated utility services.

History Note: *Statutory Authority G.S. 105-164.4(a)(4a); 105-164.4(a)(4c); 105-262;*
Eff. October 1, 1990;
Amended Eff. June 1, 1992.

.5460 USE TAX REPORT FORM: E-554

The Use Tax Report Form, E-554, is to be used by nonbusiness purchasers who purchased taxable merchandise outside of North Carolina for use in this state. A state and local use tax may be due on the purchase price, including transportation charges, regardless of whether the purchase was made in the other state or whether the merchandise was delivered to the purchaser in North Carolina. Examples of merchandise subject to the use tax include records, books, furniture, jewelry, and clothing purchased

out of state by means including mail or telephone. The tax must be reported on the Use Tax Report Form, E-554, to avoid penalty and interest.

History Note: Statutory Authority G.S. 105-164.3; 105-164.6; 105-164.8; 105-262; Eff. June 1, 1992.

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

Food and Drug Protection

2 NCAC 9L .0509 - Consultant's Educational and Experience Reqmnts	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Plant Industry

2 NCAC 48A .0239 - Permit to Sell Bees	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
2 NCAC 48A .0240 - Form BS-11	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
2 NCAC 48A .0611 - Program Participation and Payment of Fees	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

4 NCAC 3C .0807 - Subsidiary Investment Approval	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3C .0901 - Books and Records	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3C .0903 - Retention: Reproduction/Disposition of Bank Records	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3D .0302 - Administration of Fiduciary Powers	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 3H .0102 - Regional Bank Holding Company Acquisitions	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

Board of Alcoholic Control

4 NCAC 2R .0701 - Standards for Commission and Employees	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2R .0702 - Disciplinary Action of Employee	*RRC Objection*	*05/21/92*
4 NCAC 2R .1008 - Conflicts of Interest	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2R .1205 - Closing of Store	*RRC Objection*	*05/21/92*
4 NCAC 2S .0102 - Applications for Permits: General Provisions	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .0106 - Special Requirements for Hotels	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .0503 - Pre-Orders	*RRC Objection*	*05/21/92*
4 NCAC 2S .0527 - Guest Rooms Considered Residence	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .0529 - Mixed Beverages Catering Permits in "Dry Areas"	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 2S .1008 - Advertising of Malt Beverages and Wine by Retailers	*RRC Objection*	*05/21/92*

Agency Revised Rule	*Obj. Removed*	*05/21/92*

Community Assistance

4 NCAC 19L .0103 - Definitions	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 19L .0403 - Size and Use of Grants Made to Recipients	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 19L .0407 - General Application Requirements	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
4 NCAC 19L .1301 - Definition	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

Savings Institutions Division: Savings Institutions Commission

4 NCAC 16F .0001 - Permitted Activities	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 16F .0008 - Finance Subsidiary Transactions With Parent	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 16F .0009 - Issuance of Securities by Finance Subsidiaries	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
4 NCAC 16F .0011 - Holding Company Subsidiaries/Finance Subsidiaries	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	*RRC Objection*	*05/21/92*

Environmental Management

15A NCAC 2B .0101 - General Procedures	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0104 - Considerations in Assigning Water Supply Class	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0202 - Definitions	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0211 - Fresh Surface Water Classifications and Standards	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
15A NCAC 2B .0301 - Classifications: General	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Radiation Protection

15A NCAC 11 .0338 - Specific Terms and Conditions of Licenses	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
15A NCAC 11 .0339 - Expiration of Licenses	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

HUMAN RESOURCES

Facility Services

10 NCAC 3J .2801 - Supervision	*RRC Objection*	*04/16/92*
Agency Revised Rule	*RRC Objection*	*04/16/92*

Agency Revised Rule	*Obj. Removed*	*05/21/92*
10 NCAC 3J .3401 - Applicability - Construction	*RRC Objection*	*04/16/92*
Agency Revised Rule	*RRC Objection*	*04/16/92*
10 NCAC 3L .0902 - Lieense	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .0903 - Application for and Issuance of License	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .0904 - Inspections	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .0905 - Multiple Premises	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*
10 NCAC 3L .1202 - Case Review and Plan of Care	*RRC Objection*	*04/16/92*
	Obj. Removed	*05/21/92*

Mental Health: General

10 NCAC 14M .0704 - Program Director	*RRC Objection*	*05/21/92*

INSURANCE

Agent Services Division

11 NCAC 6A .0802 - Licensee Requirements	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

LABOR

Elevator and Amusement Device

13 NCAC 15 .0402 - Responsibility for Complianee	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
13 NCAC 15 .0429 - Go Karts	*RRC Objection*	*04/16/92*
Agency Revised Rule	*Obj. Removed*	*04/16/92*

LICENSING BOARDS AND COMMISSIONS

Cosmetic Art Examiners

21 NCAC 14N .0107 - Special Arrangements for Disabled	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

Dietetics/Nutrition

21 NCAC 17 .0002 - Requirement of License	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0003 - Qualifications for Licensure	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0004 - Applications	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0005 - Examination for Licensure	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0007 - Provisional License	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*
21 NCAC 17 .0012 - Suspension, Revocation and Denial of License	*RRC Objection*	*05/21/92*
Agency Revised Rule	*RRC Objection*	*05/21/92*
21 NCAC 17 .0014 - Code of Ethics for Professional Practice/Conduct	*RRC Objection*	*05/21/92*

Agency Revised Rule	*RRC Objection*	*05/21/92*

Nursing

21 NCAC 36 .0301 - Approval Body	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*05/21/92*

STATE PERSONNEL

Office of State Personnel

25 NCAC 1H .0603 - Special Recruiting Programs	*RRC Objection*	*05/21/92*
25 NCAC 1J .1005 - Eligibility for Services	*RRC Objection*	*05/21/92*

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 Fearrington, Petitioner v. University of North Carolina at Chapel Hill, Respondent* (91 OSP 0905).

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
BDA	Board of Dental Examiners
BME	Board of Medical Examiners
BMS	Board of Mortuary Science
BOG	Board of Geologists
BON	Board of Nursing
BOO	Board of Opticians
CFA	Commission for Auctioneers
COM	Department of Economic and Community Development
CPS	Department of Crime Control and Public Safety
CSE	Child Support Enforcement
DAG	Department of Agriculture
DCC	Department of Community Colleges
DCR	Department of Cultural Resources
DCS	Distribution Child Support
DHR	Department of Human Resources
DOA	Department of Administration
DOJ	Department of Justice
DOL	Department of Labor
DSA	Department of State Auditor
DST	Department of State Treasurer
EDC	Department of Public Instruction
EHR	Department of Environment, Health, and Natural Resources
ESC	Employment Security Commission
HAF	Hearing Aid Dealers and Fitters Board
HRC	Human Relations Commission
IND	Independent Agencies
INS	Department of Insurance
LBC	Licensing Board for Contractors
MLK	Milk Commission
NHA	Board of Nursing Home Administrators
OAH	Office of Administrative Hearings
OSP	Department of State Personnel
PHC	Board of Plumbing and Heating Contractors
POD	Board of Podiatry Examiners
SOS	Department of Secretary of State
SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
WRC	Wildlife Resources Commission

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. DHR, Caswell Center	89 OSP 0284	West	01/10/92
Cathy Faye Barrow v. DHR, Craven County Health Department	89 DHR 0715	Morgan	03/09/92
Barbara Trivette v. Department of Correction	90 OSP 0133	Morgan	05/20/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01/13/92
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01/13/92
Jolene H. Johnson v. DHR, Division of Medical Assistance	90 DHR 0685	Morgan	02/21/92
Dover W. Walker v. Department of Environment, Health, & Natural Resources	90 OSP 0873 91 OSP 0180	Chess	05/06/92
Joseph F. Nunes v. DHR, Division of Social Services, CSE	90 CSE 1036	Morgan	04/15/92
Sgt. Carl Edmunds v. DHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02/04/92
Rafael Figueroa v. DHR, Division of Social Services, CSE	90 CSE 1138	Morgan	03/30/92
Sammie L. Frazier v. DHR, Division of Social Services, CSE	90 CSE 1167	Morgan	03/24/92
Melvin A. Edwards v. Department of Correction	90 OSP 1175	Nesnow	06/09/92
Richard A. Boyett v. DHR, Division of Social Services, CSE	90 CSE 1184	Morgan	03/30/92
Lance McQueen v. DHR, 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
Antonio S. Henderson v. DHR, Division of Social Services, CSE	90 CSE 1391	Becton	05/04/92
Fernando Guarachi v. DHR, 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

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHR 0003	West	01/06/92
Gloria Jones Medbill v. Children Special Health Services	91 EHR 0142	Morgan	03/11/92
Shonn S. Peek v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0147	Gray	04/16/92
Willie C. Rorie v. DHR, Division of Social Services, CSE	91 CSE 0166	Morgan	04/13/92
Thomas Such v. EHR and William W. Cobey Jr.	91 OSP 0202	Becton	02/20/92
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 DHR 0215	Morgan	02/27/92
Gliston L. Morrisey 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
Galen E. Newsom v. Department of Correction	91 OSP 0282	Becton	06/08/92
Deborah W. Clark v. DHR, 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

CASE NAME	CASE NUMBER	ALJ	FILED DATE
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Britthaven, Inc. d/b/a Britthaven of Louisburg v. DHR, Division of Facility Services, Licensure Section	91 DHR 0360	Morgan	06/04/92
Fred A. Wilkie v. Wildlife Resources Commission	91 OSP 0398	Chess	04/20/92
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. DHR, Division of Facility Services, Licensure Section	91 DHR 0467	Gray	02/18/92
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 DHR 1265	Morrison	04/08/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Larry Madison Chatman, t a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02/20/92
Lester L. Baker Jr. v. Bd of Trustees//Teachers' St Employees' Retirement Sys	91 DST 0639	Becton	05/28/92
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 DHR 0666 91 DHR 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 DHR 0707	Chess	02/27/92
The Carrolton of Williamston, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0740	Morgan	06/04/92
Alcoholic Beverage Control Commission v. Spring Garden Bar & Grill Inc., T/A Spring Garden Bar & Grill	91 ABC 0753	Morrison	05/08/92
Nalley Commercial Properties v. Department of Environment, Health, & Natural Resources	91 EHR 0757	Becton	05/08/92
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

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Daniel W. Sherrod v. DHR, O'Berry Center	91 OSP 0791	Mann	06/09/92
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 Reseue 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
Thomas A. Ritter v. Department of Human Resources	91 OSP 0907	Mann	05/19/92
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
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t/a Great, American Food Store	91 ABC 0923	Becton	02/26/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01/09/92
Benjamin C. Dawson v. Department of Correction, Central Prison	91 OSP 0942	West	06/11/92
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
James K. Moss Sr. v. DHR, Division of Social Services, CSE	91 CSE 0985	Reilly	05/18/92
David J. Anderson v. DHR, Division of Social Services, CSE	91 CSE 0989	Morgan	04/20/92
David Lee Watson v. DHR, Division of Social Services, CSE	91 CSE 0992	Reilly	05/18/92
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
Joe L. Williams Jr. v. DHR, Division of Social Services, CSE	91 CSE 1014	Morrison	04/30/92
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

CASE NAME	CASE NUMBER	ALJ	FILED DATE
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
Elijah Jefferson Jr. v. DHR, Division of Social Services, CSE	91 CSE 1055	Gray	04/20/92
Randy Quinton King v. CCPS, State Highway Patrol	91 OSP 1064	Gray	03/24/92
Ronnie C. Glenn v. DHR, Division of Social Services, CSE	91 CSE 1066	Nesnow	05/05/92
James D. Robinson v. DHR, Division of Social Services, CSE	91 CSE 1068	Gray	04/29/92
William H. Hogsed v. DHR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92
David L. Brown v. DHR, Division of Social Services, CSE	91 CSE 1074	Morrison	03/31/92
Gary A. Hamper v. DHR, Division of Social Services, CSE	91 CSE 1077	Morrison	06/03/92
Donald M. Washington v. DHR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
William F. Driscoll v. DHR, Division of Social Services, CSE	91 CSE 1080	Mann	04/28/92
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
Gerald Richardson v. DHR, Division of Social Services, CSE	91 CSE 1112	Morgan	05/06/92
Edmund D. Hester v. DHR, Division of Social Services, CSE	91 CSE 1113	Mann	04/21/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
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
John H. Price v. DHR, Division of Social Services, CSE	91 CSE 1142	Morgan	05 06 92
Jerry Dexter Morrison Sr. v. DHR, Division of Social Services, CSE	91 CSE 1144	Nesnow	05 21 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
United Screen Printers, Inc. v. FHR, Division of Environmental Management	91 EHR 1179	Mann	06 04 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
William P. Reid v. DHR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02 04 92
Jeddie R. Bowman v. DHR, Division of Social Services, CSE	91 CSE 1195	Morrison	04 30 92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Ronald G. Bolden v. DHR, Division of Social Services, CSE	91 CSE 1208	Gray	02/26/92
Wayne Phillip Irby v. DHR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02/04/92
Tony Hollingsworth v. DHR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02/10/92
Charles W. Norwood Jr. v. DHR, Division of Social Services, CSE	91 CSE 1215	Mann	05/19/92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02/14/92
Angela McDonald McDougald v. DHR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02/28/92
Sering O. Mbye v. DHR, Division of Social Services, CSE	91 CSE 1228	Mann	03/11/92
Jimmie McNair, D.B.A. Pleasure Plus v. Alcoholic Beverage Control Commission	91 ABC 1235	Gray	05/04/92
Michael L. Braton v. DHR, Division of Social Services, CSE	91 CSE 1238	Mann	06/05/92
Arthur Thomas McDonald Jr. v. DHR, Division of Social Services, CSE	91 CSE 1252	Morrison	03/31/92
Stanford Earl Kern v. DHR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02/04/92
Gene Weaver v. DHR, Division of Social Services, CSE	91 CSE 1264	Reilly	03/25/92
James T. White v. DHR, Division of Social Services, CSE	91 CSE 1271	Gray	02/27/92
Ronald Brown and Regina Brown v. DHR, Division of Facility Services	91 DHR 1278	Becton	02/25/92
Terrance Freeman v. DHR, Division of Social Services, CSE	91 CSE 1283	Nesnow	05/04/92
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Peter Gray Coley v. DHR, Division of Social Services, CSE	91 CSE 1297	Reilly	04/21/92
Enos M. Cook v. DHR, Division of Social Services, CSE	91 CSE 1303	Morrison	04/13/92
Raymond Vaughan v. DHR, Division of Social Services, CSE	91 CSE 1304	Reilly	03/09/92
Stevie Wayne Yates v. EHR and The Jones County Health Department	91 EHR 1305	Mann	05/29/92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01/14/92
Alex Page v. DHR, Division of Facility Services, CSE	91 CSE 1323	Reilly	06/03/92
David Martin Strode v. DHR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
Mary T. Blount v. EHR and Hyde County Health Department	91 EHR 1331	Reilly	05/21/92
Anthony T. McNeill v. DHR, Division of Social Services, CSE	91 CSE 1336	Becton	04/20/92
D. C. Bass v. Department of Crime Control and Public Safety	91 OSP 1341	Chess	04/07/92
Wallace Day Care Center v. DHR, Division of Facility Services	91 DHR 1343	Nesnow	05/04/92
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

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Betty Davis, D/B/A ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1408	Chess	03/30/92
Bill Jones Jr. and Jessie F. Jones v. Department of Human Resources	91 DHR 1411	Nesnow	05/01/92
Leroy Robinson, Frank's Lounge v. Alcoholic Beverage Control Commission	91 ABC 1416	Gray	05/28/92
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Connie Flowers v. EHR and Hyde County Health Department	91 EHR 1420	Reilly	05/21/92
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
All States Asbestos Professionals v. EHR, Office of General Counsel	91 EHR 1432	Nesnow	06/02/92
James R. Fath v. Crime Victims Compensation Commission	91 CPS 1451	Morrison	04/15/92
Janet Thompson v. DHR, Div/Facility Svcs, Durham Cty Dept/Social Svcs	91 DHR 1452	Gray	05/19/92
AB&S Exteriors (Arthur F. Williams Jr., Pres) v. Department of Labor, Wage & Hour Division	92 DOL 0001	Chess	05/18/92
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
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

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Robert Gooden v. Department of Labor, Wage & Hour Division	92 DOL 0009	West	05/14/92
Mrs. Gillie L. Edwards, Swift Mart #3 v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0022	Morrison	05/18/92
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
Margaret Coggins v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0095	Becton	04/28/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03/13/92
Paula Dail v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0098	Becton	04/28/92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02/26/92
Merle M. Lee v. Department of Correction	92 OSP 0167	Reilly	06/10/92
Charles W. Parker v. Department of Agriculture	92 OSP 0177	Reilly	04/27/92
Potters Industries, Inc. v. William J. Stuckey, St Purchasing Off, & NC Div of Purchase & Contract	92 DOA 0180	Nesnow	05/20/92
Brunswick County v. Department of Environment, Health, & Natural Resources	92 EHR 0195	Morrison	04/21/92
Jessie Draft, Owner Sabrina's Day Care Ctr v. Department of Human Resources	92 DHR 0197	Reilly	06/01/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Connestee Falls Property Owners Assoc, Inc. v. Wildlife Resources Commission	92 WRC 0207	Chess	05/28/92
John Marley Jr. v. Department of Correction	92 OSP 0213	Reilly	05/18/92
N.C. Private Protective Services Board v. Lawrence Donnell Morrissey	92 DOJ 0215	Chess	05/13/92
N.C. Private Protective Services Board v. Sherrill David Beasley	92 DOJ 0216	Chess	05/13/92
Percy Lee Davis v. Caledonia Correctional Inst.	92 OSP 0230	West	06/04/92
Timothy B. Milton v. Crime Victims Compensation Commission	92 CPS 0265	Reilly	05/18/92
Leon Scott Wilkinson v. Criminal Justice Education & Training Standards Comm	92 DOJ 0280	West	04/24/92
Thomas L. Rogers v. DHR, Division of Youth Services	92 OSP 0287	Gray	04/30/92
Larry A. Person Sr. v. Department of Transportation	92 OSP 0304	Reilly	05/28/92
Paul M. Fratazzi, LPN v. Polk Youth Institute	92 OSP 0325	Nesnow	05/01/92
Robert S. Scheer v. Department of Crime Control & Public Safety	92 CPS 0339	Gray	05/18/92
Jimmy Wayne Livengood v. Department of Correction	92 OSP 0352	Nesnow	05/27/92
Jeffrey Mark Drane v. Private Protective Services Board	92 DOJ 0372	Mann	05/12/92
Danny G. Hicks v. Private Protective Services Board	92 DOJ 0373	Mann	05/12/92
Max Bolick v. Private Protective Services Board	92 DOJ 0374	Mann	05/12/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Fred Henry Hampton v. Criminal Justice Education & Training Stds Comm	92 DOJ 0393	West	04/23/92
N.C. Alarm Systems Licensing Board v. Eddie Sisk	92 DOJ 0495	Nesnow	06/04/92

STATE OF NORTH CAROLINA COUNTY OF BURKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 90 OSP 1175

MELVIN A. EDWARDS, Petitioner	)	
v.	)	RECOMMENDED DECISION
N.C. DEPARTMENT OF CORRECTION, Respondent	)	

The above-captioned matter was heard before Dolores O. Nesnow, duly-appointed Administrative Law Judge, on January 22 and 23, 1992, in Morganton, North Carolina.

APPEARANCES

For Petitioner: Phyllis Palmieri
Martha Chapman
Catawba Valley Legal Services, Inc.
200 Avery Avenue
Morganton, North Carolina 28655
ATTORNEYS FOR PETITIONER

For Respondent: Valerie Bateman,
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
ATTORNEY FOR RESPONDENT

ISSUE

Was Petitioner dismissed because of handicap discrimination?

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. 126-36, 168A-1, et seq.
25 N.C. Admin. Code 01D.0518
State Personnel Manual
Department of Correction Administrative Memo 1.07.27-88

PROCEDURAL BACKGROUND

On November 13, 1990, Petitioner filed a Petition for Contested Case appealing the termination of his employment which had been determined by Respondent to be a voluntary resignation.

On December 26, 1990, Petitioner filed a Prehearing Statement alleging: (a) that he was dismissed without just cause and (b) that he was dismissed because of a handicapping condition.

On December 28, 1990, upon Motion of the Respondent, the undersigned allowed a Stay of the contested case to give the Respondent time to investigate the matter further.

On April 5, 1991, during the Stay period, the Respondent issued another letter of dismissal to Petitioner informing him that he was being dismissed retroactive to July 14, 1990. This dismissal was based upon unacceptable personal conduct.

On April 8, 1991, the undersigned Allowed the Petitioner's Motion to Lift the Stay.

On July 17, 1991, upon Motion of the Respondent, the undersigned issued an Order dismissing the Petitioner's just cause issue because he was not a permanent State employee, but allowing his appeal based on handicap discrimination.

STIPULATED AGREEMENT

1. The deposition testimony of Jeffrey Becker, Respondent's Personnel Director, was admitted in whole in lieu of live testimony, by agreement of the parties.

STIPULATED FACTS

1. Petitioner was employed at McDowell Correctional Center on August 10, 1979, with a pay grade of 60.

2. Petitioner was promoted at McDowell on April 1, 1986 from Correctional Officer to Correctional Sergeant, with a pay grade of 64.

3. Petitioner resigned from McDowell for stress-related personal reasons on July 15, 1988.

4. Petitioner was hired at Western on June 21, 1989, as a Correctional Officer with a pay grade of 62.

5. Petitioner was involuntarily resigned without written notice on August 6, 1990, effective July 13, 1990 due to his failure to report to work.

6. On March 26, 1991, the Respondent notified Petitioner that the Respondent had determined the agency had erroneously accepted Petitioner's resignation without written notice.

7. On April 5, 1991, Petitioner was dismissed for unacceptable personal conduct for failing to report a DWI charge and for failing to report a charge of failure to give proper information at the scene of an accident.

Based upon careful consideration of the stipulations, testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

ADJUDICATED FACTS

1. Petitioner regularly worked the second shift at Western Youth Institute (WYI).

2. Petitioner, like other WYI employees, held a part-time position as a clerk in a convenience store, The Fast Track, located near WYI.

3. At 11:00 p.m. on Friday, July 13, 1990, Petitioner began to work the third shift at the Fast Track.

4. At 7:00 a.m. on Saturday, July 14, 1990, Petitioner's relief, a fellow WYI employee, did not report for work. Petitioner remained and worked the day shift.

5. A customer of Petitioner's visited him at the Fast Track and gave him a mixed drink comprised of vodka and orange juice.

6. During that shift, a Morganton Public Safety Officer received a call that Petitioner was acting strangely and was having difficulty making change.

7. The Officer visited the Fast Track and questioned Petitioner but no action was taken.

8. After work, as Petitioner was leaving the Fast Track parking lot, he backed into a vehicle driven by Shane Chrisco. Petitioner stopped, spoke to Chrisco and provided Chrisco with insurance information.

9. Neither Chrisco nor Petitioner called the police to investigate the accident.

10. Petitioner was scheduled to report to the second shift at WYI on July 14, 1990, but, as a result of working sixteen hours at the Fast Track, he was not going to report for work at WYI.

11. Petitioner intended to drive home and call in his absence to WYI to comply with WYI's policy that an employee call in absences to the shift lieutenant on the shift to which that employee is assigned.

12. On his way home, at approximately 2:45 p.m., Petitioner ran a stop sign and collided with another automobile.

13. Petitioner was transported to and treated at the emergency room of McDowell General Hospital in McDowell County as a result of the accident. He was later charged with DWI.

14. At some time on July 14, 1990, Petitioner's wife, Evangeline "Angie" Edwards called WYI to report that Petitioner had been in a wreck and was in the hospital.

15. Mrs. Edwards speaks with a heavy accent and is sometimes difficult to understand.

16. Later that day, Petitioner was released from the hospital and went home.

17. At some time after the parking lot accident, Mr. Chrisco discovered that he did not have the correct insurance information. He then called the police and reported the accident.

18. When Mr. Chrisco reported the parking lot accident to the police, it was listed by the police as a hit and run and a warrant was issued for the Petitioner.

19. During the night the Petitioner began to turn blue, was noncommunicative and showed other signs of distress. Petitioner's wife brought him to the emergency room at the Memorial Mission Hospital in Asheville. Petitioner was tested and later released.

20. On Sunday, July 15, 1990, Ms. Edwards called WYI and told them that her husband could not report for work. When asked to explain what had happened or when Petitioner would be returning, Mrs. Edwards would not or could not provide any further information.

21. Upon recommendation of the emergency room physician at Memorial Mission Hospital, on Monday evening, July 16, 1990, Petitioner and his wife, Evangeline Edwards, met with Dr. Stephen Pike, Ph.D., a clinical psychologist.

22. Petitioner asked Dr. Pike to contact his employer and signed a release allowing the doctor to talk with his employer.

23. On July 17, 1990, Ms. Edwards again contacted Lt. Steve Bailey and informed him that Petitioner was not coming to work and that he was not in the hospital but that he was unable to come to the phone and was unable to work. She explained he was under a doctor's care, identified the doctor as Dr. Pike, and informed Bailey that the doctor would contact Bailey to explain what was going on with Petitioner.

24. Petitioner was not scheduled to work on July 18 or 19.

25. Lt. Mace attempted to contact the Petitioner on several occasions but was not successful. On each occasion, either there would be no answer, or the Petitioner would not be at home, or he was at home but his wife would not let him talk with Lt. Mace.

26. From July 14, 1990, until August 1, 1990, Petitioner was absent from work.

27. On July 24, 1990, Lt. Mace called the Petitioner's home and spoke with Mrs. Edwards to advise her that the doctor had not called.

28. When Lt. Mace finally made contact with Mrs. Edwards, he pleaded with Mrs. Edwards to allow him to talk with the Petitioner. He told her that it was very important for the Petitioner to get in contact with the Unit. Mrs. Edwards told Lt. Mace that the Petitioner could not come to the phone, that his doctor would be calling them, she refused to discuss his condition, and started to cry.

29. Later on July 24, 1990, Lt. Bailey was contacted by Dr. Pike and informed that Petitioner was being treated for depression.

30. Earlier, Lieutenant Bailey had been directed to investigate the Petitioner's absence because rumors had circulated that Petitioner had been arrested for DWI, possibly involving a hit and run.

31. On Monday, July 25, 1990, Lt. Mace submitted his report to Leon Morrow, Superintendent of WYI, which indicated in part that Petitioner had hit a car in the lot of the Fast Track on Saturday, July 14, 1990, and that an incident report was filed on Sunday, July 15, 1990, which indicated that Petitioner had given the owner of the vehicle incorrect insurance information.

32. Prior to July 25, 1990, Petitioner himself did not contact his employer to report his absences or his DWI charge.

33. Although WYI encourages its employees to call in their own absences to their shift lieutenants, calls from family members are accepted.

34. Earlier, in July of 1989, Petitioner received an oral warning for being absent without notifying his supervisors.

35. On July 25, 1990, because Dr. Pike encouraged him to do so, Petitioner contacted Superintendent Morrow, and discussed his treatment for depression, his problems, counseling, and medication. He also reported his DWI.

36. During that conversation, Morrow requested that Petitioner submit a written statement including a request for leave and a statement concerning his legal problems, which Petitioner subsequently did.

37. Morrow asked Petitioner when he thought he could return to work and Petitioner indicated that he would return to work on August 1, 1990.

38. Morrow told Petitioner on July 25, 1990, that he would "make no promises" concerning granting Mr. Edwards' request for leave, but that Petitioner should come to see him before his 3:00 p.m. shift on August 1 and they would discuss Petitioner's request for leave.

39. At that time, Mr. Morrow believed that he did not have enough information to make a decision about whether disciplinary action should be taken against the Petitioner because he had received conflicting reports about whether the Petitioner had actually been in the hospital or in jail.

40. Employee absences are of critical concern to prison administrations because the inmate population must be monitored and controlled and a full complement of correctional officers is essential.

41. The sick leave policy for the state provides that the agency may require a statement from a medical doctor or other acceptable proof that the employee was unable to work because of personal illness, family illness or death in the family. (25 NCAC 1E .0304)

42. On July 31, 1990, Petitioner obtained a letter from Dr. Pike verifying that he had been under the doctor's care and was released to work on August 1, 1990.

43. On July 31, 1990, Petitioner obtained a return to work slip from Dr. Uhren, a family physician who had seen Petitioner during this time and prescribed an antidepressant. The note verified that he had been under the doctor's care from 7/14/90 to 7/31/90.

44. Lt. Mace was instructed to call the Petitioner on July 31 and remind him that he was expected to report to work the next day. Lt. Mace spoke with Petitioner's wife and asked her to give him the message.

45. At approximately 9:00 a.m. on August 1, 1990, Petitioner went to the magistrate's office and accepted service of a warrant for hit and run.

46. On August 1, 1990, Petitioner went to WYI at approximately 1:00 p.m. to check on the status of his leave request. Morrow was not in so Petitioner went to the assembly room, the room where the officers meet prior to shift change, and checked out the duty roster.

47. The shift change was not scheduled to occur until 3:00 p.m. and the officers meet in the assembly room for "report" at 2:45 p.m.

48. Petitioner did not see his name on the duty roster where it normally would be. Petitioner believed that elimination of an officer's name from the duty roster meant that the officer had been separated from employment.

49. Because Morrow had made no assurances to Petitioner that his request for leave would be granted, Petitioner concluded that he was discharged. He left the facility to avoid embarrassment.

50. On August 1, Mr. Morrow had been on the upper floors of the building from lunch time to about two-thirty. Mr. Morrow came back to his office at 2:30 or 2:45 and waited for the Petitioner to come in. A few minutes after three, Mr. Morrow proceeded to walk down the hallway and look for the Petitioner. He did not see the Petitioner. Mr. Morrow asked his secretary and other persons in the office if they had seen him and they had not.

51. Mr. Morrow had planned to give the Petitioner a chance to explain his absences and the nature of the charges against him.

52. Mr. Morrow determined that the Petitioner had failed to report to work. Mr. Morrow did not consider that there was some miscommunication between himself and the Petitioner because their telephone conversation on July 25 had been clear and because the Petitioner had been recently reminded the day before to come in.

53. Ms. Billie Cox, WYI's personnel clerk, saw Petitioner sometime around lunchtime on August 1, 1990. Ms. Cox saw Petitioner walk into Morrow's secretary's office, then come out and wait in the hall for several minutes. She later told Morrow that Petitioner had been there.

54. Mr. Morrow considered the reports that the Petitioner had been involved in a hit and run accident, a stop sign violation, a DWI violation and what appeared to be at least two different car accidents in two different counties to be reports of serious criminal offenses. The reports of Petitioner's DWI appeared serious because they appeared to involve a hit and run accident.

55. Later on August 1, 1990, Leon Morrow contacted the DOC Personnel Office in Raleigh and asked what to do with an employee who did not come in as requested. Morrow was directed to the policy on "voluntary resignation without notice." 25 NCAC 01D .0518

56. A certified letter dated August 6, 1990, signed by Leon Morrow, was sent to Petitioner, informing him that the DOC had decided to accept Petitioner's "voluntary resignation without notice."

57. On November 8, 1990, Melvin Edwards filed a petition for a contested case hearing.

58. On December 21, 1990, counsel for the DOC sought and was granted a stay of the proceedings in this contested case to allow for an investigation surrounding the Petitioner's voluntary resignation.

59. On March 26, 1991, Petitioner received a letter from the DOC signed by L.V. Stephenson, that advised him that the DOC had "erroneously accepted (his) resignation without notice" and directed him to appear at a predismissal conference at WYI on April 4, 1991.

60. On April 4, 1991, Petitioner responded to the letter through his counsel, and provided an affidavit responding to the grounds for dismissal listed.

61. Petitioner was then notified by a letter dated April 5, 1991, signed by L.V. Stephenson, that he had been dismissed, effective July 14, 1990, for unacceptable personal conduct for failing to report a DWI charge, for failing to report a charge of failure to give proper information at the scene of an accident and for violating the departmental rule, DOC Administrative Memo 1.07.27-88, which requires DOC employees to report criminal charges within 24 hours.

62. The policy on secondary employment provides that:

> The employment responsibilities to the state are primary for any employee working full-time; any other employment in which that person chooses to engage is secondary. An employee shall have approval from the agency head before engaging in any secondary employment. The purpose of this approval procedure is to determine that the secondary employment does not have an adverse effect on the primary employment and does not create a conflict of interest. (25 NCAC 1C .0701)

63. Petitioner understood that his secondary employment was never to interfere with his primary obligation to the Department of Correction.

Based upon the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. In a discrimination case, Petitioner has the burden of proof and must establish a prima facie case of discrimination. If the Petitioner establishes a prima facie case, the employer must produce evidence of a legitimate, non-discriminatory reason for Petitioner's discharge. Once the employer has rebutted the prima facie case, the employee has the opportunity to demonstrate that the employer's proffered reasons for its decision were pretextural.

2. In order to establish his prima facie case, Petitioner must first establish that he is a member of a protected class, i.e., a handicapped person.

3. N.C. Gen. Stat. 168-1 provides that the definition of handicapped persons shall include those individuals with physical, mental and visual disabilities.

4. N.C. Gen. Stat. 168A-3 defines handicapped person as any person who has a physical or mental impairment which substantially limits one or more major life activities. Mental impairment is defined as any mental disorder, such as mental retardation, organic brain syndrome, mental illnesses, specific learning disabilities and other developmental disabilities but does not include any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.

5. In Pressman v. UNC, 78 N.C. App 296, 337 S.E.2d 644 (1985), cert. granted, 315 N.C. 589, 341 S.E.2d 28 (1986), it was determined that a person suffering from occasional episodes of stress, depression and mental exhaustion is not a "handicapped person" as defined by Chapter 168.

6. Petitioner's episodes of stress and depression is not a handicapping condition such as to afford him the protections of that protected category.

7. Petitioner has, therefore, failed to establish a prima facie case of handicap discrimination.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

That Respondent's decision to terminate Petitioner's employment be affirmed.

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 Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required 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. G.S. 150B-36(a).

The agency is required by G.S. 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 and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 9th day of June, 1992.

Dolores O. Nesnow
Administrative Law Judge

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 91 OSP 0282

GALEN E. NEWSOM, Petitioner	)	
v.	)	RECOMMENDED DECISION
N.C. DEPARTMENT OF CORRECTION Respondent	)	

This matter was heard before Brenda B. Becton, Administrative Law Judge, on October 28, 1991 and January 8, 1992 in Raleigh, North Carolina. The record closed on April 24, 1992 when the parties completed the filing of their post-hearing submissions.

APPEARANCES

For Petitioner: BROUGHTON, WILKENS, WEBB & JERNIGAN, Attorneys at Law, Raleigh, North Carolina; William Woodward Webb appearing.

For Respondent: Valerie L. Bateman, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

ISSUES

1. Did the Petitioner engage in the alleged conduct?

2. If so, does such conduct constitute unacceptable personal conduct within the meaning of North Carolina General Statutes section 126-35 and the rules and policies of the Office of State Personnel and the Respondent-Agency?

3. Did the Respondent conduct a meaningful pre-dismissal conference with the Petitioner?

4. Did the Respondent have "just cause" to dismiss the Petitioner?

STATUTES AND RULES INVOLVED

N.C. Gen. Stat. §126-35

25 NCAC 1J .0606 - .0608

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. From October 21, 1985 until December 14, 1990, the Petitioner, a permanent State employee, was employed as a probation/parole officer and later as a Correctional Trainer II with the Respondent.

2. On December 12, 1990, between the hours of 6:00 p.m. and 6:30 p.m. at the Corner Cafe in Salemburg, North Carolina, the Petitioner, while conversing about various incidents involving firearms, unholstered his State issued weapon, placed the barrel to the head of Mr. Benny Pope, and said, "I'm going to kill you!" in order to illustrate an incident that had happened to him and to show how quickly an incident can occur. The Petitioner immediately reholstered his weapon and the group he was dining with concluded their meal.

3. The Petitioner was a firearms instructor with the Respondent. Mr. Pope is also an instructor with the Respondent's Office of Staff Development and Training.

4. The Petitioner's weapon was unloaded. It was a standard operating procedure for the firearms instructors to check their weapons for ammunition and to remove any ammunition before leaving the range. In addition, the Petitioner never carries a loaded weapon while he is conducting firearms training.

5. Mr. Pope and the two trainees seated with the Petitioner were all aware that the Petitioner was demonstrating an incident that had occurred previously when he unholstered his weapon.

6. There were several people in the restaurant who witnessed the Petitioner pointing the gun at Mr. Pope. No one, however, said anything to the Petitioner or to the people he was with at the time the incident took place.

7. Mr. Pope did not report the incident to anyone at work. The Respondent apparently learned of the incident from other law enforcement personnel who were also patronizing the Corner Cafe.

8. Prior to this incident there was no written policy prohibiting demonstrations of various law enforcement techniques from occurring at the Corner Cafe which is frequented by law enforcement officials, including instructors and trainees.

9. At the time that this incident occurred, the Respondent did not have any written policy, rule, or regulation regarding appropriate or inappropriate use of weapons.

10. Anne B. Porter is the Operations Manager for the Respondent's Office of Staff Development and Training ("OSDT") and she supervised the Petitioner's supervisor, Hank Snyder, a Training Co-ordinator.

11. At approximately 1:00 p.m. on December 13, 1990, Ms. Porter was notified by Dan Lilly, another Operations Manager at OSDT, of the incident involving the Petitioner that had occurred on December 12, 1990. Ms. Porter accompanied Mr. Lilly and Mr. Monroe Waters, the Deputy Secretary of the Department of Corrections, to Salemburg to investigate the incident.

12. The Justice Academy at Salemburg Academy is used by the Respondent as a training site and the Petitioner had been involved in training a probation parole intensive officer's class.

13. When Ms. Porter, Mr. Lilly, and Mr. Waters arrived at the Academy, the Director had arranged for them to meet with some police officers who had witnessed the gun incident in the office of the Assistant Director of the Academy.

14. Subsequently, on the evening of December 13, 1990, the Petitioner, upon admitting that the incident at the Corner Cafe did occur, was instructed to relinquish his State automobile, pager, and all State issued equipment immediately and not to teach that evening or to go near any training being conducted by the Respondent's employees. He was also told to report to the Office of Staff Development and Training the next morning.

15. On the morning of December 14, 1990 at approximately 7:45 a.m., the Petitioner sought out Bertis H. Sellers, the Director of the Office of Staff Development and Training, to discuss the December 12, 1990 incident and to determine the effect the incident was going to have on his employment with the Respondent. Because Mr. Sellers had a meeting to attend, the conversation between him and the Petitioner was brief. Mr. Sellers listened to what the Petitioner had to say about the incident and about keeping his job, and then told the Petitioner that he did not have all the facts yet that would enable him to discuss the incident with him and that he would discuss the incident with later.

16. At approximately 10:00 a.m. on December 14, 1990, the Petitioner was advised by Ms. Porter to return home and await further instructions.

17. During the day, while the Petitioner was at home, meetings between management officials of the agency took place.

18. At approximately 2:00 p.m., the Petitioner received a telephone call from Ms. Porter instructing him to return to work. He was not informed of the specific reason why he was being recalled.

19. The Petitioner returned to work at about 2:30 p.m. and waited in the anteroom of the Director's office until Mr. Sellers was ready to meet with him. He was not informed, while he was waiting, of the precise nature of the meeting with Mr. Sellers. He had not been instructed to be prepared to defend or explain his action on the evening of December 12, 1990. He had not been told that he could bring witnesses or that he could request that witnesses be present for examination or cross-examination.

20. Sometime after 4:00 p.m. on December 14, 1990, the Petitioner met with Mr. Sellers in the presence of Ms. Porter. When the Petitioner entered the office, Mr. Sellers told him that they were there to discuss the incident that had taken place in the Corner Cafe in Salemburg, and then handed the Petitioner a pre-dismissal conference form and asked him to sign it.

21. After reading the pre-dismissal form, the Petitioner refused to sign it because no conference had yet taken place and he felt that his signing the form would verify and acknowledge that he had been given a meaningful pre-dismissal conference. Petitioner then asked what was the point of having a conference since Mr. Sellers already had a dismissal letter laying on his desk.

22. After the Petitioner refused to sign the pre-dismissal conference form, Mr. Sellers told the Petitioner that he had no choice but to dismiss him and handed the Petitioner a previously prepared letter of dismissal which contained the allegations against the petitioner and asked him if he had anything to say or write in response to the allegations. The Petitioner's response was, "What's the point?"

23. When Mr. Sellers met with the Petitioner on the afternoon of December 14, 1990, he knew that he was going to dismiss the Petitioner unless the Petitioner could offer some reason why he should not do so. Although he had prepared the letter dismissing the Petitioner prior to the pre-dismissal conference, Mr. Sellers would have torn the dismissal letter up had the Petitioner given him some reason to change his mind about dismissing him.

24. Students in firearms classes are taught to never unholster their weapon, unless it is being used in self-defense, and to never point their weapon at other people.

25. The Petitioner testified that he did not want his job with the Respondent back, that he wanted to be allowed to resign, and that he wanted to receive three and one-half months salary and his attorney's fees.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. North Carolina General Statutes section 126-35 provides, 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. A permanent State employee may be dismissed for (1) inadequate performance of duties or (2) personal conduct detrimental to state service. Leiphart v. North Carolina School of the Arts, 80 N.C. App. 339, 342 S.E. 2d 914 (1986).

3. Prior to dismissal for cause relating to performance of duties, a permanent State employee is entitled to three separate warnings that his/her performance is unsatisfactory. Jones v. Department of Human Resources, 300 N.C. 687, 268 S.E.2d 500 (1980).

4. Dismissal for personal conduct detrimental to state service requires no prior warning. 25 NCAC 1J .0608.

5. The Petitioner does not contest the Respondent's finding that the incident took place on December 12, 1990. Rather, even though he concedes that his action reflected poor judgment on his part, he argues that his conduct did justify his dismissal. The issue, then, is when is the failure to exercise good judgment an offense for which one could reasonably be expected to be dismissed without warning.

6. In order for actions resulting from the failure to exercise good judgment to constitute a dismissible offense, the conduct must have been detrimental to state service. Thus, it is necessary that the Petitioner's actions have affected his credibility and ability to perform his job duties effectively.

7. There was testimony that firearms instructors teach their trainees to never unholster their weapon unless it it needed for self-defense and to never point a weapon at anyone. Obviously, while this canon of conduct is a good practice in general, it specifically applies to a loaded weapon since the gun has to be loaded in order to defend oneself with it, and since there is no danger that one might accidentally shoot someone with an unloaded weapon.

8. Certainly, if the gun had been loaded or if an assault had been perpetrated, then the Petitioner's actions would have warranted immediate dismissal on the basis of unacceptable personal conduct. In this instance, however, what at first seems to be egregious conduct on behalf of the Petitioner appears less so when one is aware of all of the facts. The facts in this case indicate that:

   a) The weapon was not loaded;
   b) Neither the person at whom the Petitioner pointed the gun nor the others sitting at the table were apprehensive or threatened; and
   c) The incident occurred because the Petitioner was attempting to illustrate a work related incident for two of the trainees in the class he was currently teaching.

9. The totality of the circumstances surrounding the incident in the Corner Cafe suggest that there is nothing about the Petitioner's conduct that resulted in any detriment to the State. The Petitioner did not violate any written policy, rule, or regulation. There has been no showing that the Petitioner's conduct rendered him unable to effectively perform his job duties. A bare allegation that the Petitioner's conduct caused the Respondent embarrassment is not sufficient. It is incumbent upon the Respondent to demonstrate the nature and the extent of the embarrassment that Petitioner's conduct caused and to show some concrete detriment to the State.

10. The Petitioner's conduct is more appropriately labeled as a careless error or negligent conduct, both of which fall within the category of inadequate job performance for which an employee is entitled to receive three separate warnings prior to being dismissed.

11. The Respondent has failed to prove by the preponderance of the evidence that the Petitioner's actions on December 12, 1990 constituted unacceptable personal conduct within the meaning of section 126-35 of the North Carolina General Statutes and the regulations of the Office of State Personnel and the Respondent-Agency.

12. The Respondent gave the Petitioner an opportunity to be heard and an opportunity to invoke the discretion of the decision maker in his favor before the final decision to terminate his employment was made. The Petitioner, however, failed to take advantage of the opportunity offered him at his pre-dismissal conference because he felt, erroneously, that nothing he could say would alter the decision to terminate his employment. The Petitioner received all the protections that the due process clause was intended to give and the Respondent followed the appropriate procedures throughout the dismissal process.

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 reverse the agency's decision to dismiss the Petitioner and permit the Petitioner to resign from his position with the Respondent. The Commission should award the Petitioner appropriate back pay from December 14, 1990 until the Petitioner's subsequent employment by the Secretary of State and thereafter, the differential between his salary with the Respondent as of December 14, 1990 and that which Petitioner is earning with the Secretary of State, and reasonable attorney fees.

NOTICE

Before the Commission 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 and to the Office of Administrative Hearings.

This the 8th day of June, 1992.

Brenda B. Becton
Administrative Law Judge

STATE OF NORTH CAROLINA COUNTY OF WAKE	IN THE OFFICE OF ADMINISTRATIVE HEARINGS 91 OSP 0791

DANIEL W. SHERROD, Petitioner	)	
v.	)	RECOMMENDED DECISION
NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES, O'BERRY CENTER, Respondent	)	

The above-captioned matter was heard before Julian Mann, III, Chief Administrative Law Judge, on January 21, 1992, in Raleigh, Wake County, North Carolina. The evidentiary hearing closed on January 21, 1992. The parties' attorneys of record were given 30 days from receipt of the transcript to file proposed Findings of Fact and Conclusions of Law. The record closed upon receipt of the documents described above on April 27, 1992.

APPEARANCES

For Petitioner: Andre L. Carson
Carson Legal Services
3305-B Durham Drive
Raleigh, North Carolina 27603

For Respondent: Michelle B. McPherson
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629

WITNESSES

For Petitioner:
Daniel Sherrod (Petitioner)
Shelba G. Poole
Sula N. Ridings

For Respondent:
Willie R. Patterson
Raja Chowdhry
James E. Myers
Sula N. Ridings
Anne McLamb

EXHIBITS

For Petitioner:
Petitioner's Exhibits #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22 and 24

For Respondent:
Respondent's Exhibits #2, 3, 4, 5, 6, 6A, 6B, 6C, 6D, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21 and 22

ISSUE

Whether Respondent discriminated against Petitioner on the basis of his religion in violation of G.S. 126-36.

STIPULATIONS

On the 21st day of January, 1992, the parties filed a Prehearing Order, which contained, inter alia, the following Stipulations:

"1. It is stipulated that all parties are properly before the court, and the court has jurisdiction of the parties and of the subject matter.

2. It is stipulated that all parties have been correctly designated, and there is no question as to misjoinder or nonjoinder of parties.

3. In addition to the other stipulations contained herein, the parties hereto stipulate and agree with respect to the following undisputed facts:

a. Petitioner was hired on April 23, 1990, as a lead nurse at the pay grade of 69.

b. Petitioner was dismissed on July 31, 1991, for insubordination.

c. Petitioner was a permanent State employee at the time he was dismissed.

4. It is stipulated that each of the exhibits identified by the Petitioner herein is genuine and, if relevant and material, may be received in evidence without further identification or proof.

5. It is stipulated and agreed that each of the exhibits identified by the Respondent is genuine and, if relevant and material, may be received in evidence without further identification or proof."

Based upon the Stipulations of the parties, the pleadings, and by the greater weight of the evidence admitted at the hearing, which by its nature requires determinations of credibility based on personal observation of witness demeanor, the Chief Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.

2. Petitioner is a permanent State employee and resides in Miero, North Carolina.

3. Respondent, an agency of the State of North Carolina, was Petitioner's employer.

4. Petitioner was hired by Respondent on April 23, 1990.

5. Petitioner held the position of lead nurse at O'Berry Center, Respondent's residential facility for the mentally retarded.

6. As a lead nurse, Petitioner was responsible for the total care of the clients under his care and for supervising the other nurses on his shift.

7. At all times relevant herein, Petitioner was a member of the Worldwide Church of God.

8. As a member of the Worldwide Church of God, Petitioner holds the genuine belief that he may not work on his Sabbath, which extends from sundown on Friday until sundown on Saturday and on his seven holy days, which occur at various times during the year. (Petitioner's Exhibit #1 and Respondent's Proposed Findings of Fact #5)

9. In conversations with Ms. Sula Ridings and Ms. Willie Patterson, Petitioner informed Respondent of his religious belief concerning the Sabbath as found above, prior to being hired. (Petitioner's Exhibit #18)

10. Through these agents and employees, Respondent indicated that there would be no problem in accommodating Petitioner's work schedule in response to his religious belief.*

11. Prior to commencing work with the Respondent, the Petitioner offered to work any shift, any days, and any hours other than the Sabbath and holy days.

12. Petitioner was a dependable source to use in providing coverage when there was a shortage of nurses. (Petitioner's Exhibit #14)

13. From April 23, 1990, through on or about April 11, 1991, Respondent acknowledged and accommodated Petitioner's strict observance of the Sabbath Holy Day and Petitioner never worked from sundown Friday until sundown Saturday.

14. Petitioner was informed through a Memorandum, dated April 11, 1991, that the Respondent would no longer be able to honor its commitment to accommodate Petitioner's religious beliefs concerning the Sabbath. (Respondent's Exhibit #3)

15. Petitioner was informed that he would be required to come in at 5:00 p.m. on alternating Saturdays. (Respondent's Exhibit #3)

16. This new schedule conflicted with his sundown Sabbath observance for the hours between 5:00 p.m. and sunset, on alternating Saturdays. Therefore, on or after April 11, 1991, Respondent did not provide Petitioner an opportunity to accommodate his strict observance of the Sabbath.

17. The sunset during the year varies from 5:01 p.m. in December, to 8:35 p.m. in June.

18. The Respondent's change in its accommodation practice was stated to the Petitioner to be for the reason that Respondent did not have enough staff to give each nurse every other weekend off without paying overtime, which had to be kept to a minimum because of budget restrictions. (Respondent's Exhibit #3)

19. At all times relevant hereto it was Respondent's common practice to allow nurses to work overtime on the weekend shifts.

20. The nurses' work schedule was made with as many days and shifts covered as possible given the number of available nurses. Nurses signed up to work the uncovered shifts on their days off.

21. On or about April 11, 1991, Respondent informed the Petitioner that Petitioner, on his own initiative, could trade schedules with any other R.N. or L.P.N. so long as it did not create additional overtime.

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*The North Carolina Office of State Personnel, Personnel Manual, Section 12, Page 37 states:

> "An employer has the obligation to make reasonable accommodation to the religious needs of his employees, where such accommodations do not force undue hardship on the employer. The employer must prove that such religious accommodations cause undue hardship to his business."

22. During the months of June and July, 1991, prior to Petitioner's dismissal, registered nurse (R.N.), Ms. Shelba Poole, offered to enter into a permanent arrangement with the Petitioner whereby Ms. Poole would work every Friday and Saturday, and the Petitioner would work every Sunday and Monday. (Respondent's Exhibit #11)

23. Ms. Poole worked the same shift as the Petitioner, and this proposed arrangement would have provided the nurse coverage that the Respondent was seeking.

24. Ms. Poole was employed as a lead nurse at Respondent O'Berry Center, with the same title and responsibilities as the Petitioner.

25. Ms. Poole had 27 years of professional experience as a registered nurse, all with State institutions in North Carolina.

26. Ms. Poole was a nurse supervisor for 15 years prior to her employment at the O'Berry Center.

27. Ms. Poole has an unblemished record of service with the State of North Carolina.

28. During the month of June, 1991, Ms. Poole learned of the conflict that the Petitioner was having with Respondent concerning his scheduled work and his religious observance of the Sabbath.

29. Once Ms. Poole established to her satisfaction that the Petitioner was a good nurse, she went to the Petitioner's supervisor, Ms. Willie Patterson, and offered to work for the Petitioner every Sabbath. (Respondent's Proposed Finding #46)

30. Ms. Patterson rejected the proposal, as did her supervisor, Ms. Sula Ridings, for the stated reason that the Petitioner would not guarantee to cover for Ms. Poole when she took leave if it conflicted with Petitioner's Sabbath observance. (Respondent's Exhibit #11)

31. Ms. Poole averaged a week of vacation two times a year, and used her other vacation days a day or two at a time.

32. Vacation leave was scheduled and planned in advance.

33. Overtime restrictions and payment were not stated to Petitioner on or about July 15, 1991, as reason to reject the arrangement between the Petitioner and Ms. Poole's proposed accommodation. (Respondent's Exhibit #11)

34. After the Petitioner was terminated, Ms. Poole left the employ of Respondent (O'Berry Center) because she felt that the institution had not honored its agreement with the Petitioner.

35. During the month of May, 1991, Ms. Terri Deaver, R.N., offered to rearrange schedules with the Petitioner on one occasion, to allow him to observe the Sabbath, which was an offer of an accommodation as stated to be available to Petitioner. (Respondent's Exhibit #3)

36. Ms. Deaver stayed over for the Petitioner from 5:00 p.m. until sundown at 8:30 p.m. when the Petitioner arrived.

37. After the exchange, the supervisor, Ms. Patterson, refused to compensate Ms. Deaver for the time worked because they had not consulted her prior to the exchange.

38. As a result, the Petitioner paid Ms. Deaver $65.00 from his funds to compensate her for the time she had worked.

39. After the incident, Ms. Deaver did not exchange time with the Petitioner again.

40. Both supervisors, Ms. Ridings and Ms. Patterson, did not view that it was their responsibility to seek other methods or other personnel scheduling to accommodate Petitioner in his Sabbath observance.

41. Respondent recorded no other disciplinary actions against the Petitioner's work performance. Petitioner was considered a very competent nurse.

42. The only disciplinary actions that were issued against the Petitioner were taken because he reported for work late due to his Sabbath observance, although Petitioner had informed his supervisor in advance that he would be reporting later for work on each of the evenings that he was scheduled to report before sundown.

43. The following schedule illustrates the times that the Petitioner was scheduled to report to work, the time that the Petitioner reported to work, and the disciplinary action that followed:

Date	Scheduled	Reported In	Disciplinary Action
May 25, 1991	5:00 p.m.	8:30 p.m.	Counseling memo
June 1, 1991	5:00 p.m.	8:30 p.m.	Written Warning
June 8, 1991	5:00 p.m.	8:30 p.m.	Conference
June 22, 1991	5:00 p.m.	8:30 p.m.	Final Written Warning
July 6, 1991	5:00 p.m.	8:30 p.m.	Dismissal

44. These disciplinary actions (for the most part) were taken during the time that Ms. Poole offered to enter into a permanent arrangement with the Petitioner to allow the Petitioner to accommodate his Sabbath observance with de minimis or no overtime compensation.

45. By letter of July 16, 1991, Petitioner was dismissed for alleged insubordination. (Respondent's Exhibit #12)

46. By letter of August 5, 1991, Petitioner was offered the remedy of voluntary resignation accompanied by the removal of all disciplinary actions from Petitioner's disciplinary file. (Respondent's Exhibit #13)

47. Subsequent to Petitioner's termination, Mr. Chowdhry discussed with Petitioner his continued employment with Respondent with strict Sabbath observance for an additional six months while Petitioner pursued other employment. No mention was made to Petitioner concerning overtime restrictions.

Based upon the foregoing Stipulations and Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Petitioner is a permanent State employee as defined in G.S. 126-39.

2. The Office of Administrative Hearings has jurisdiction over the parties and subject matter pursuant to Chapters 126 and 150B of the North Carolina General Statutes and to issue a recommended decision to the State Personnel Commission which shall make the final decision.

3. Petitioner's allegations of dismissal for causes related to his observance of religious beliefs give rise to a potential violation of the religious discrimination prohibitions in G.S. 126-36 and G.S. 126-37(a).

4. In order for Petitioner to establish a prima facie case of religious discrimination under G.S. 126-36, the Petitioner must prove:

(1) that Petitioner held a bona fide religious belief or engaged in a bona fide religious practice;

(2) that the Respondent-employer had notice of the Petitioner's beliefs; and

(3) that the Petitioner was discharged for refusing to comply with an employment requirement because it was contrary to his beliefs.

5. Petitioner held a bona fide religious belief or practice that working on his Sabbath violated a religious tenet of his church, as expressed in the doctrine of the Worldwide Church of God.

6. Prior to his employment with Respondent, Respondent was aware of his belief. (Petitioner's Exhibit #18)

7. Petitioner was discharged for insubordination because Petitioner failed to report to work during his Sabbath observance.

8. Petitioner has carried his burden of proof that he has genuine belief that compliance with the requirement that he work on his Sabbath is contrary to his religious belief and practice which prohibits him from working on his Sabbath, that he told his employer about his belief prior to being employed, and that he was discharged for refusing to comply with that requirement. (Respondent's proposed Conclusion of Law #5)

9. Once Petitioner establishes his prima facie case, the burden shifts to the Respondent to show that it could not reasonably accommodate the Petitioner's belief without undue hardship.

10. Respondent was required to take affirmative steps to explore and implement alternatives that would accommodate Petitioner's religious practices. In fact, Respondent, for a period of almost one year, admirably performed this accommodation.

11. The Respondent failed to take affirmative steps on behalf of the Petitioner because its supervisors, Ms. Ridings and Ms. Patterson, did not feel that is was their duty to seek out other people to swap days with the Petitioner, but that this responsibility rested solely with the Petitioner after April of 1991.

12. Respondent informed the Petitioner that Petitioner could trade schedules with another nurse so long as it did not create additional overtime. (Respondent's Exhibit #3) These were the terms offered to Petitioner without further efforts of accommodation by Respondent.

13. A reasonable accommodation was available to Respondent when Ms. Poole offered to enter into a permanent arrangement with the Petitioner whereby Ms. Poole would work every Friday and Saturday, and the Petitioner would work every Sunday and Monday. (Respondent's Exhibit #11)

14. Ms. Poole worked the same shift as the Petitioner, and this proposed arrangement would have provided the nurse coverage that the Respondent was seeking.

15. Ms. Poole was employed as a lead nurse at Respondent O'Berry Center, with the same title and responsibilities as the Petitioner.

16. Ms. Poole has 27 years of professional experience as a registered nurse, all with State institutions in North Carolina.

17. Ms. Poole was a nurse supervisor for years prior to going to O'Berry Center.

18. Ms. Poole has an unblemished record of service with the State of North Carolina.

19. Ms. Poole supported the need for accommodation, and offered to work for the Petitioner every Sabbath.

20. The proposed accommodation would not have generated any additional overtime at the Respondent agency. If it had generated overtime the cost to Respondent was de minimis.

21. The proposed accommodation would have covered every weekend between the two of them, would not have violated any overtime restrictions or the policy of granting each nurse every other weekend off. (Respondent's Exhibit #11, Respondent's Exhibit #3)

22. The Respondent never tried to effect the reasonable accommodation available to it. (Respondent's Exhibit #11)

23. The Respondent did not go forward with its burden of production that undue hardship would result from accommodating the Petitioner with the arrangement proposed by Ms. Poole. Petitioner proved by the greater weight of the evidence that this accommodation was not an undue hardship for Respondent.

24. The only defense offered as to an undue hardship did not relate to the cost of this arrangement but that Petitioner himself would not later violate his religious belief by working on the Sabbath IF AND WHEN Ms. Poole took leave (planned or otherwise) at some future and indefinite point when this future leave happened to fall on a Saturday. This arrangement was not a hardship (undue or otherwise) for the Respondent as all employees who take leave must be covered. The accommodation scheme was not burdensome; not a hardship and certainly not an undue hardship.

25. A second reasonable accommodation was available to Respondent when Ms. Deaver, R.N., offered to rearrange schedules with the Petitioner on one occasion, to allow him to observe the Sabbath.

26. After the exchange, the supervisor, Ms. Patterson, refused to compensate Ms. Deaver for the time worked because they had not consulted with her about the exchange.

27. As a result, the Petitioner paid Ms. Deaver $65.00 to compensate her for the time she had worked.

28. The failure of the Respondent to allow this accommodation had a chilling effect on any further accommodation attempts by Ms. Deaver.

29. This second accommodation with Ms. Deaver was also without undue hardship to Respondent. Any inconvenience was within the scope of Respondent's affirmative duty to accommodate Petitioner's religious beliefs.

30. Petitioner has, in all respects, carried his burden of proof of religious discrimination under G.S. 126-36 and is entitled to all relief that flows therefrom.

Based upon the foregoing Stipulations, Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

That the Respondent's decision to dismiss the Petitioner, Daniel W. Sherrod, on July 31, 1991, for insubordination be reversed on the basis of religious discrimination. It is recommended that the Petitioner be reinstated to the position he held prior to his termination; that he receive back pay from the date of his dismissal to the date of his reinstatement; that he receive reasonable attorney's fees and costs; and that he receive all benefits to which he would have been entitled but for his involuntary separation on July 31, 1991.

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 Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required 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. G.S. 150B-36(a).

The agency is required by G.S. 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 and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 9th day of June, 1992.

Julian Mann, III
Chief Administrative Law Judge

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT
1	Administration
2	Agriculture
3	Auditor
4	Economic and Community Development
5	Correction
6	Council of State
7	Cultural Resources
8	Elections
9	Governor
10	Human Resources
11	Insurance
12	Justice
13	Labor
14A	Crime Control and Public Safety
15A	Environment, Health, and Natural Resources
16	Public Education
17	Revenue
18	Secretary of State
19A	Transportation
20	Treasurer
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges
24	Independent Agencies
25	State Personnel
26	Administrative Hearings

LICENSING BOARDS	CHAPTER
Architecture	2
Auctioneers	4
Barber Examiners	6
Certified Public Accountant Examiners	8
Chiropractic Examiners	10
General Contractors	12
Cosmetic Art Examiners	14
Dental Examiners	16
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Note: Title 21 contains the chapters of the various occupational licensing boards.

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AO - Administrative Order
AG - Attorney General's Opinions
C - Correction
FR - Final Rule
GS - General Statute
JO - Judicial Orders or Decision
M - Miscellaneous
NP - Notice of Petitions
PR - Proposed Rule
TR - Temporary Rule

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