RBR/KFN/7434/.A2/N67/v.7/1992

The NORTH CAROLINA REGISTER

RECEIVED
SEP 24 1992
LAW LIBRARY

IN THIS ISSUE .....

ISSUE DATE: September 15, 1992

Volume 7 • Issue 12 • Pages 1155-1253

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 issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 15OB-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

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

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

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER

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

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

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

ISSUE CONTENTS

NORTH CAROLINA REGISTER

Publication Schedule

(August 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*******	*******	*******	*******	*******	*******	*******
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
03/01/93	02/08/93	02/15/93	03/16/93	03/31/93	04/20/93	06/01/93
03/15/93	02/22/93	03/01/93	03/30/93	04/14/93	04/20/93	06/01/93
04/01/93	03/11/93	03/18/93	04/16/93	05/01/93	05/20/93	07/01/93
04/15/93	03/24/93	03/31/93	04/30/93	05/15/93	05/20/93	07/01/93
05/03/93	04/12/93	04/19/93	05/18/93	06/02/93	06/20/93	08/02/93
05/14/93	04/23/93	04/30/93	05/29/93	06/13/93	06/20/93	08/02/93
06/01/93	05/10/93	05/17/93	06/16/93	07/01/93	07/20/93	09/01/93
06/15/93	05/24/93	06/01/93	06/30/93	07/15/93	07/20/93	09/01/03
07/01/93	06/10/93	06/17/93	07/16/93	07/31/93	08/20/93	10/01/93
07/15/93	06/23/93	06/30/93	07/30/93	08/14/93	08/20/93	10/01/93
08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
10/01/93	09/10/93	09/17/93	10/16/93	10/31/93	11/20/93	01/04/94
10/15/93	09/24/93	10/01/93	10/30/93	11/14/93	11/20/93	01/04/94
11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* *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 175
HURRICANE ANDREW RELIEF

WHEREAS, states of emergency have been declared in the States of Florida and Louisiana and the Governors of Florida and Louisiana have requested that the State of North Carolina temporarily waive weight restrictions on the gross weight of trucks transporting food, supplies and equipment to the areas of disaster caused by Hurricane Andrew and weight and license requirements thereon; and

WHEREAS, on August 24, 1992, the United States Department of Transportation declared a regional emergency justifying an exemption from 49 C.F.R. 390-99 (Federal Motor Carrier Safety Regulations) for a period of thirty days in response to Hurricane Andrew; and

WHEREAS, pursuant to Chapter 166A, the North Carolina Emergency Management Act, and by the authority vested in me as Governor of the State of North Carolina by the Constitution and laws of this State, and with the concurrence of the Council of State; and

WHEREAS, for the purpose of relieving human suffering caused by Hurricane Andrew it is ORDERED:

Section 1. That for a period of time beginning immediately until September 28, 1992, the State of North Carolina under the supervision and direction of the Department of Transportation and Division of motor Vehicles will waive weight restrictions on the gross weight of vehicles transporting food, supplies and equipment to the victims of Hurricane Andrew subject to the following conditions:

(1) Vehicle weight will not exceed the maximum gross vehicle weight criteria established by the manufacturer or 90,000 lbs. gross vehicle weight, whichever is less.

(2) Tandem axle weights shall not exceed 42,000 lbs., and single axle weights shall not exceed 22,000 lbs.

(3) The vehicles will be allowed only on primary and interstate routes to be designated by the Department of Transportation.

(4) The vehicles will, upon entering the State of North Carolina stop at the first available vehicle weight station and produce identification sufficient to establish that the load contained thereon is part of the Hurricane Andrew relief effort.

Section 2. The vehicles described above will be exempt from the vehicle licensing and tax requirements of N.C.G.S. 105, Subchapter 5, Article 36B.

Section 3. As a result of the 24 August 1992 declaration of regional emergency by the United States Department of Transportation and the corresponding exemption from 49 C.F.R. 390-99, nonparticipants in North Carolina's International Registration Plan will be permitted to pass through North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 4. The North Carolina Department of Transportation shall enforce the conditions set forth in Section 1 and Section 2 in a manner in which would best accomplish the implementation of this rule without endangering the motorists on North Carolina highways.

This Order is effective immediately and shall remain in effect until September 28, 1992.

This the 28th day of August, 1992.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends amend rule cited as 10 NCAC 26D .0012.

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted on October 16, 1992 at 1:30 pm at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC.

Reason for Proposed Action: The rule clarifies that the phrase "date of payment" also addresses Medicaid claims for which payment was denied.

Comment Procedures: Written comments concerning this amendment must be submitted by October 16, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN. Daphne Lyon. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT: DURATION: AND SCOPE

.0012 TIME LIMITATION

(a) To receive payment, claims must be filed:

(1) Within 365 days of the date of service for services other than inpatient hospital, home health or nursing home services;

(2) Within 365 days of the date of discharge for inpatient hospital services and the last date of service in the month for home health and nursing home services not to exceed the limitations as specified in 42 C.F.R. 447.45;

(3) Within 180 days of the Medicare or other third party payment when the date of payment exceeds the filing limits in Paragraphs (1) or (2) of this Rule.

(b) Providers must file requests for payment adjustments or requests for reconsideration of a denied claim no later than 18 months after the date of payment or denial of a claim. ~~or adjustments will not be made.~~

(c) The limitation in this Rule may be waived by the Division of Medical Assistance when a delay in eligibility determination has made it impossible for the provider to file the claim within the 365 days provided for in (a) of this Rule.

(d) In cases where claims or adjustments were not filed within the time limitations specified in (a) and (b) of this Rule, and the provider shows failure to do so was beyond his control, he may request a reconsideration review by the Director of the Division of Medical Assistance. The Director of Medical Assistance is the final authority for reconsideration reviews. If the provider wishes to contest this decision, he may do so by filing a petition for a contested case hearing in conformance with G.S. 150B-23.

Authority G.S. 108A-25(b); 42 C.F.R. 447.45.

* * * * * * * * * * * * * * * * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule(s) cited as 10 NCAC 26D .0016.

The proposed effective date of this action is February 1, 1993.

The public hearing will be conducted at 1:30 p.m. on September 30, 1992 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 132, Raleigh, NC 27603.

Reason for Proposed Action: The 1992 General Assembly mandated that co-payment required of Medicaid recipients be established at the maximum amounts allowed by federal regulation. This action implements that requirement.

Comment Procedures: Written comments concerning this amendment must be submitted by September 30, 1992, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603, ATTN: Clarence Ervin. Oral comments may be presented at the hearing. In addition, a fiscal impact statement is available upon written request from the same address.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT: DURATION: AND SCOPE

.0016 CO-PAYMENT

(a) Co-payment Requirements. The following requirements are imposed on all Medicaid recipients for the following services:

(1) Outpatient Hospital Services. Co-payment will be charged at the rate of ~~one dollar ($1.00)~~ three dollars ($3.00) per outpatient visit.

(2) Chiropractic Services. Co-payment will be charged at the rate of ~~fifty cents ($.50)~~ one dollar ($1.00) per chiropractic visit.

(3) Podiatric Services. Co-payment will be charged at the rate of one dollar ($1.00) per podiatric visit.

(4) Optometric Services. Co-payment will be charged at the rate of ~~one dollar ($1.00)~~ two dollars ($2.00) per optometric visit.

(5) Optical Supplies and Services. Co-payment will be charged at the rate of two dollars ($2.00) per item. Co-payment for repair of eyeglasses and other optical supplies will be charged at the rate of two dollars ($2.00) per repair exceeding five dollars ($5.00).

(6) Prescribed Drugs. ~~Effective August 15, 1991, the recipient co-payment amount for prescription drugs will increase from fifty cents ($.50) per prescription to~~ Co-payment will be charged at the rate of one dollar ($1.00) per prescription, including refills.

(7) Dental Services. Co-payment will be charged at the rate of ~~two dollars ($2.00)~~ three dollars ($3.00) per visit, except when more than one visit is required. If more than one visit is required but the service is billed under one procedure code with one date of service, then only one co-payment shall be collected. Full and partial dentures are examples.

(8) Physicians. ~~Effective August 15, 1991, the recipient co-payment amount for a physician visit will increase from fifty cents ($.50) per visit to two dollars ($2.00).~~ Co-payment will be charged at the rate of three dollars ($3.00) per visit.

~~(9) Hospital Inpatient Services. No co-payment will be charged for hospital inpatient services.~~

~~(10) Rural Health Clinics. No co-payment will be charged for rural health clinic services.~~

~~(11) Clinics (Other than Rural Health). Co-payment will be charged at the rate of fifty cents ($.50) per visit.~~

~~(12) Non-Hospital Dialysis Facility Services. No co-payment will be charged for non-hospital dialysis facility services.~~

~~(13) Home Health Services. No co-payment will be charged for home health services.~~

~~(14) Hearing Aid Dispensers. No co-payment will be charged for services rendered by hearing aid dispensers.~~

~~(15) Ambulance. No co-payment will be charged for ambulance services.~~

(b) Co-payment Exemptions. No co-payment will be charged for the following services:

(1) EPSDT related services;

(2) Family Planning Services;

(3) Services in state owned mental hospitals;

(4) Services covered by both Medicare and Medicaid;

(5) Services to children under age ~~18~~ 21;

(6 Services related to pregnancy;

(7) Services provided to residents of ICF, ICF-MR, SNF, Mental Hospitals; and

(8) Hospital emergency room services.

Authority G.S. 108A-25(b); S.L. 1985, c. 479, s. 86; 42 C.F.R. 440.230(d); Tax Equity and Fiscal Responsibility Act of 1982, Subtitle B; Section 95 of Chapter 689, 1991 Session Laws.

TITLE 11 - DEPARTMENT OF INSURANCE

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt rules cited as 11 NCAC 4 .0120-.0122, .0429-.0430; amend rules cited as .0415, .0418-.0419, .0421, .0423; and repeal rules cited as 11 NCAC 4 .0424 and .0428.*

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

***Instructions** on How to Demand a Public Hearing: A request for a public hearing must be made in*

writing, addressed to Ellen K. Sprenkel, N.C. Department of Insurance, P.O. Box 26387, Raleigh, NC 27611. This request must be received within 15 days of this notice.

Reason for Proposed Action: To keep current with insurance industry practices and to afford consumers better protection in dealing with agents and insurers; and to comport with recodification of Chapter 58.

Comment Procedures: Written comments may be sent to Ellen K. Sprenkel, P.O. Box 26387, Raleigh, NC 27611. Anyone having questions should call Bill Stevens at (919) 733-2002 or Ellen K. Sprenkel at (919) 733-4529.

CHAPTER 4 - CONSUMER SERVICES DIVISION

SECTION .0100 - GENERAL PROVISIONS

.0120 POLICY OR SERVICE FEES

An agent, broker, or limited representative who deals directly with consumers and who intends to charge a policy or service fee in accordance with G.S. 58-33-85(b) shall not do so unless he complies with the following:

(1) A sign that informs consumers in large bold print that a policy or service fee of [amount] will be charged, shall be displayed in a prominent place so as to be seen and read from any part of the office lobby.

(2) The consumer's consent in writing is obtained with the date and amount shown each time a policy or service fee is charged.

(3) A dated receipt for the payment of a policy or service fee shall be issued either separately from the policy premium receipt or stated separately on the receipt issued for the policy premium.

Statutory Authority G.S. 58-2-40; 58-2-195; 58-33-85(b).

.0121 PREMIUM PAYMENT RECEIPTS

Premium payment receipts, other than those issued directly by an insurer, shall be dated and contain the printed or stamped name and address of the agency or agent, broker, or limited representative, and the name of the insurer. Receipts shall be signed by the person accepting the payment.

Statutory Authority G.S. 58-2-40; 58-2-185; 58-2-195.

.0122 POWER-OF-ATTORNEY PROHIBITED

Except for authorizations given in accordance with G.S. 58-45-35(a) or G.S. 58-46-15, no agent, broker, or limited representative shall obtain a power-of-attorney from a consumer that authorizes the agent, broker, or limited representative to sign insurance-related forms.

Statutory Authority G.S. 58-2-40; 58-2-195.

SECTION .0400 - PROPERTY AND LIABILITY

.0415 SAFE DRIVER INCENTIVE PLAN

The following are Department of Insurance policies regarding the Safe Driver ~~Insurance~~ Incentive Plan ("SDIP"):

(1) License revocation for refusal to submit to chemical tests shall not be considered conviction of a moving traffic violation.

(2) A conviction for driving the wrong way on a one-way street is not a conviction for driving on the wrong side of the road.

(3) The revocation or suspension of a driver's license solely because of the accumulation of motor vehicle points shall not be considered a conviction.

(4) When new operators are added to an automobile policy, their SDIP points may be added to the policy at the same time coverage is extended to them.

(5) ~~Points~~ SDIP points for an operator whose license has been suspended or revoked may be added only at the date the operator again becomes eligible for license with the following exception: SDIP points may be charged at the inception date of the current policy if the operator has previously been convicted of a moving traffic violation while his license was suspended or revoked or if there is reliable evidence that the operator does, in fact, operate a motor vehicle.

(6) If an operator dies or permanently leaves an insured's household during the policy period, his SDIP points shall be removed at the time of his death or departure.

Statutory Authority G.S. 58-2-40; 58-36-65; 58-36-75.

.0418 TOTAL LOSSES ON MOTOR VEHICLES

The commissioner shall consider as prima facie violative of G.S. ~~58-54.4(11)~~ 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning settlement of covered "total loss" motor vehicle claims when such failure is so frequent as to indicate a general business practice:

(1) If the insurer and the claimant are initially unable to reach an agreement as to the value of the vehicle, the insurer shall base any further settlement offer not only on published regional average values of similar vehicles, but also on the value of the vehicle in the local market. Local market value shall be determined by using either the local market price of a comparable vehicle or, if no comparable vehicle can be found, quotations from at least two qualified dealers within the local market area. Additionally, if the claimant represents that the vehicle actually owned by him was in better than average condition, the insurer shall give due consideration to the condition of the claimant's vehicle prior to the accident.

(2) Where the insurer has the right to elect to replace the vehicle and does so elect, the replacement vehicle shall be available without delay, similar to the lost vehicle, and paid for by the insurer, subject only to the deductible and to the value of any enhancements acceptable to the insured.

(3) If the insurer makes a deduction for the salvage value of a "total loss" vehicle retained by the claimant, the insurer, if so requested by the claimant, shall furnish the claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted. ~~The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage charges. Notification to the owner shall include the name, address and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address and telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing and/or storage service without the agreed permission of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such charges shall be payable jointly to the owner and the towing/storage service.~~

(4) If a written statement is requested by the claimant, a total loss payment by an insurer shall be accompanied by a written statement listing the estimates, evaluations and deductions used in calculating the payment, if any, and the source of these values.

(5) When a motor vehicle is damaged in an amount which, inclusive of original and supplemental claims, equals or exceeds 75 percent of the preaccident actual cash value, as such value is determined in accordance with this Rule, an insurance carrier, shall "total loss" the automobile by paying the insured the preaccident value, and in return, receiving possession of the legal title of the salvage of said automobile. At the election of the insured or third-party claimant, or in those circumstances where the insurance carrier will be unable to obtain an unencumbered title to the damaged vehicle then the insurance carrier shall have the right to deduct the value of the salvage of the total loss from the actual value of the vehicle and leave such salvage with the insured subject to the insurance carrier abiding by ~~Subparagraph (3) of this Regulation~~ Subparagraphs (3) and (6) of this Rule. No insurer, adjuster, appraiser, agent, or any other person shall enter into any oral or written agreement(s) by and between themselves, to limit any original or supplemental claim(s) so as to artificially keep the repair cost of a damaged vehicle below 75% of its preaccident value, if in fact such original and any supplemental claim(s) exceed or would exceed 75% of the vehicle's preaccident value.

(6) The insurer shall be responsible for all reasonable towing and storage charges until three days after the owner and storage facility are notified in writing that the insurer will no longer reimburse the owner or storage facility for storage

charges. Notification to the owner shall include the name, address, and telephone number of the facility where the vehicle is being stored. Notification to the storage facility shall include the name, address, and, if available, telephone number of the owner. No insurer shall abandon the salvage of a motor vehicle to a towing or storage service without the consent of the service involved. In instances where the towing and storage charges are paid to the owner, the check or draft for the amount of such service shall be payable jointly to the owner and the towing or storage service.

Statutory Authority G.S. 58-2-40; 58-63-15.

.0419 MOTOR VEHICLE REPAIR ESTIMATES

The commissioner shall consider as prima facie violative of G.S. ~~58-54.4(11)~~ 58-63-15(11) the failure by an insurer to adhere to the following procedures concerning repair estimates on covered motor vehicle damage claims submitted when such failure is so frequent as to indicate a general business practice:

(1) If the insurer requires the claimant to obtain more than two estimates of property damage, the cost, if any, of such additional estimates shall be borne by the insurer.

(2) No insurer shall refuse to inspect the damaged vehicle if a personal inspection is requested by the claimant. However, if the damaged vehicle is situated other than where it is normally used or cannot easily be moved, the insurer may satisfy the requirements of this Section by having a competent local appraiser inspect the damaged vehicle.

(3) When the insurer elects to have the claimant's property repaired, the insurer shall, if so requested by the claimant, furnish the claimant with a legible front and back copy of its estimate. This estimate shall contain the name and address of the insurer and, if the estimate was prepared by a repair service, the name and address of that service. If there is a dispute concerning pre-existing damage to the vehicle which the insurer does not intend to have repaired, the extent of such damage shall be clearly stated in the estimate.

(4) No insurer shall require or recommend a claimant to utilize a particular repair service.

(5) ~~No~~ If requested by a claimant, an insurer shall ~~refuse to~~ provide to the claimant ~~with~~ copies of ~~an~~ the estimate and all supplements thereto that it uses to offer a settlement.

Statutory Authority G.S. 58-2-40; 58-63-15.

.0421 HANDLING OF LOSS AND CLAIM PAYMENTS

The commissioner shall consider as prima facie violative of G.S. ~~58-39~~ 58-3-100 and ~~58-54.4(11)~~ 58-63-15(11) failure by an insurer to adhere to the following procedures concerning loss and claim payments when such failure is so frequent as to indicate a general business practice:

(1) Loss and claim payments shall be mailed or otherwise delivered ~~promptly~~ within 10 business days after the claim is settled.

(2) Unless the insured consents, no insurer shall deduct from a loss or claim payment made under one policy premiums owed by the insured on another policy.

(3) No insurer shall withhold the entire amount of a loss or claim payment because the insured owes premium or other monies in an amount less than the loss or claim payment.

(4) If a release or full payment of claim is executed by an insured or claimant, involving a repair to a motor vehicle, ~~prior to or at the time of the repair,~~ it shall not bar the right of the claimant to promptly assert a claim for property damages unknown to either the claimant or to the insurance carrier prior to the repair of the vehicle or a claim for diminished value, directly caused by the accident which could not be determined or known until after the repair or attempted repair of the motor vehicle. Claims asserted within 30 days after repair for diminished value and 30 days after discovery of unknown damage shall be considered promptly asserted.

(5) Except in the total loss situations, the insurer shall be liable to the vehicle owner and others as their legal interest may require, for the full cost of repairs less policy deductibles, depreciation/-

betterment ~~and repairs made due to prior~~ and unrepaired damage on the vehicle. In total loss situations, the insurer shall protect any lienholder's interest, as recorded with the Division of Motor Vehicles, by placing the lienholder's name on the settlement check or draft as co-payee.

Statutory Authority G.S. 58-2-40; 58-3-100; 58-63-15.

.0423 ETHICAL STANDARDS

(a) Every agent, limited representative, broker, adjuster, appraiser, or other insurer's representative shall, when in contact with the public:

(1) promptly identify himself and his occupation;

(2) carry the license issued to him by the Department of Insurance while performing his duties and display it upon request to any insured or third party claimant, any repairer at which he is investigating a claim or loss, any department representative, or any other person with whom he has contact while performing his duties;

(3) conduct himself in such a manner as to inspire confidence by fair and honorable dealings.

(b) ~~No adjuster or appraiser shall:~~ No claims management person, agent, agency employee, limited representative, broker, adjuster, appraiser, or other insurer's representative shall:

~~(1) recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and may use the service of his choice;~~

(1) ~~(2)~~ accept any gratuity or other form of remuneration from ~~a repair service~~ any provider of services for recommending that ~~repair service~~ provider to claimants;

(2) ~~(3)~~ purchase salvage from a claimant; ~~whose claim he is adjusting or appraising without first disclosing to the claimant the nature of his interest in the transaction;~~

(3) ~~(4)~~ intimidate or discourage any claimant from seeking legal advice and counsel by withdrawing and reducing a settlement offer previously tendered to the claimant or threatening to do so if the claimant seeks legal advice or counsel. No adjuster shall advise a claimant of the advisability of seeking ~~or not seeking~~ legal counsel nor ~~shall~~ recommend any legal counsel to any claimant under any circumstance.

(c) No claims management person, agent, agency employee, limited representative, broker, or other insurer's representative shall recommend the utilization of a particular motor vehicle repair service without clearly informing the claimant that he is under no obligation to use the recommended repair service and that he may use the service of his choice.

Statutory Authority G.S. 58-2-40; 58-33-10; 58-33-25; 58-33-30; 58-35-25; 58-63-15; 58-65-40.

.0424 PURPOSE

~~The purpose of this Rule is to set forth standards for prompt, fair, and equitable settlements of motor vehicle insurance claims with regard to the use of after market parts.~~

Statutory Authority G.S. 58-9.

.0428 ENFORCEMENT

~~Violations of this Section which are so frequent as to indicate a general business practice shall be deemed by the Commissioner to be an unfair trade practice under Article 3A of General Statute Chapter 58.~~

Statutory Authority G.S. 58-9.

.0429 COMMINGLING

The accounting records maintained by agents, brokers, and limited representatives shall demonstrate at all times that collected funds due to insurers and return premiums due to policyholders are available at all times.

Statutory Authority G.S. 58-2-40; 58-2-195.

.0430 CERTIFICATE OF MAILING; AUTOMOBILE INSURANCE

As used in G.S. 20-310(f), "certificate of mailing" means a certificate issued by and bearing the date stamp of the United States Postal Service.

Statutory Authority G.S. 20-310; 58-2-40.

* * * * * * * * * * * * * * * * * * *

Notice *is hereby given in accordance with G.S.*

150B-21.2 that the N.C. Department of Insurance intends to adopt rule (s) cited as 11 NCAC 11A .0601 - .0609.

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

The public hearing will be conducted at 10:00 a.m. on September 30, 1992 at 430 N. Salisbury Street, 3rd Floor Hearing Room, Dobbs Building, Raleigh, N.C. 27611.

Reason for Proposed Action: To regulate reinsurance intermediaries and to comply with the insurance department accreditation program of the National Association of Insurance Commissioners.

Comment Procedures: Written comments may be sent to Ray Martinez, Financial Compliance, P. O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-2002 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0600 - REINSURANCE INTERMEDIARIES

.0601 DEFINITIONS

As used in this Section:

(1) "Actuary" means a person who meets the standards of a qualified actuary, as specified in the National Association of Insurance Commissioners Annual Statement Instructions, as amended or clarified by rule or order of the Commissioner, for the type of insurer for which an intermediary is establishing loss reserves.

(2) "Broker" means any person, other than an officer or employee of a ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.

(3) "Commissioner" means the Commissioner of Insurance of North Carolina and includes his authorized deputies and employees.

(4) "Controlling person" means any person who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of an intermediary.

(5) "Intermediary" has the same meaning contained in G.S. 58-2-225(a) and includes a broker or a manager.

(6) "Manager" means any person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the reinsurer. The following persons are not managers, with respect to a reinsurer:

(a) An employee of a reinsurer;

(b) A U.S. manager of the United States branch of an alien reinsurer;

(c) An underwriting manager that, pursuant to contract, manages all the reinsurance operations of a reinsurer, is under common control with the reinsurer under Article 19 of General Statute Chapter 58, and whose compensation is not based on the volume of premiums written;

(d) The manager of a group, association, pool, or organization of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance regulator of the state in which the manager's principal business office is located.

(7) "Person" includes an individual, aggregation of individuals, corporation, association, or partnership.

(8) "Producer" means an insurance agent or insurance broker licensed under Article 33 of General Statute Chapter 58 or an intermediary licensed under this Section.

(9) "Qualified U.S. financial institution" means a bank that:

(a) Is organized, or in the case of a U.S. office of a foreign banking organization is licensed, under the laws of the United States or any state;

(b) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by the Securities

Valuation Office of the National Association of Insurance Commissioners to meet its standards of financial condition and standing in order to issue letters of credit.

(10) "Reinsurer" means any licensed insurer that is authorized to assume reinsurance.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0602 LICENSURE

(a) No person shall act as a broker in this State if the broker maintains and office either directly, as a member or employee of a non-corporate entity, or as an officer, director, or employee of a corporation:

(1) In this State, unless the broker is a producer in this State; or

(2) In another state, unless the broker is a producer in this State or another state having a law or rule substantially similar to this Section or unless the broker is licensed under this Section as a nonresident intermediary.

(b) No person shall act as a manager:

(1) For a reinsurer domiciled in this State, unless the manager is a producer in this State;

(2) In this State, if the manager maintains an office directly, as a member or employee of a non-corporate entity, or as an officer, director or employee of a corporation in this State, unless the manager is a producer in this State;

(3) In another state for a foreign insurer, unless the manager is a producer in this State or another state having a law or rule substantially similar to this Section, or the manager is licensed in this State as a nonresident intermediary.

(c) Every manager subject to Paragraph (b) of this Rule shall demonstrate to the Commissioner that he has evidence of financial responsibility in the form of fidelity bonds or liability insurance to cover the manager's contractual obligations. If any manager can not demonstrate this evidence, the Commissioner shall require the manager to:

(1) Maintain a separate fidelity bond in favor of each reinsurer represented in an amount that will cover those obligations and which bond is issued by an authorized insurer; or

(2) Maintain an errors and omissions liability insurance policy in an amount that will cover those obligations and which policy is issued by a licensed insurer.

(d) The Commissioner shall issue an intermediary license to any person who has complied with the requirements of this Section. A license issued to a non-corporate entity authorizes all of the members of the entity and any designated employees to act as intermediaries under the license; and those persons shall be named in the application and any supplements. A license issued to a corporation authorizes all of the officers and any designated employees and directors of the corporation to act as intermediaries on behalf of the corporation; and those persons shall be named in the application and any supplements.

(e) If an applicant for an intermediary license is a nonresident, the applicant, before receiving a license, shall designate the Commissioner as his agent for service of legal process; and shall furnish the Commissioner with the name and address of a resident of this State upon whom notices or orders of the Commissioner or process affecting the nonresident intermediary may be served. The licensee shall notify the Commissioner in writing of every change in his designated agent for service of process within five business days after the change; and the change shall not become effective until acknowledged by the Commissioner.

(f) The Commissioner shall refuse to issue an intermediary license if:

(1) the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is not trustworthy; or

(2) any controlling person of the applicant is not trustworthy to act as an intermediary; or

(3) any of the persons in Subparagraphs (1) and (2) of this Paragraph has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

Upon written request, the Commissioner shall furnish a summary of the basis for refusal to issue a license.

(g) Attorneys at law licensed by this State are exempt from this Rule when they are acting in their professional capacities.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0603 REQUIRED CONTRACT PROVISIONS - BROKERS

Transactions between a broker and the insurer it represents as a broker shall only be entered into

pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall include provisions to the effect that:

(1) The insurer may terminate the broker's authority at any time.

(2) The broker will render accounts to the insurer that accurately detail all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the broker; and will remit all funds due to the insurer within 30 days after receipt by the broker.

(3) All funds collected for the insurer's account will be held by the broker in a fiduciary capacity in a qualified U.S. financial institution.

(4) The broker will comply with this Rule.

(5) The broker will comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The broker will disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

(7) The broker will annually provide the insurer with an audited statement of the broker's financial condition, which statement will be prepared by an independent certified public accountant.

(8) The insurer will have access and the right to copy and audit all accounts and records maintained by the broker related to its business, in a form usable by the insurer.

(9) For at least 10 years after the expiration of each contract of reinsurance transacted by the broker, the broker will keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

(c) Reporting and settlement requirements of balances;

(d) Rate or rates used to compute the reinsurance premium;

(e) Names and addresses of assuming reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocession handled by the broker;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including premium and loss accounts; and

(k) When the broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0604 DUTIES OF INSURERS USING SERVICES OF BROKERS

(a) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed under 11 NCAC 11A .0602.

(b) An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of General Statute Chapter 58.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0605 REQUIRED CONTRACT PROVISIONS - MANAGERS

Transactions between a manager and the reinsurer it represents as a manager shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the manager, a certified copy of the approved contract shall be filed with the Commissioner for approval. The contract shall include provisions to the effect that:

(1) The reinsurer may terminate the contract for cause upon written notice to the manager. The reinsurer may immediately suspend the authority of the manager to assume or cede business during the

pendency of any dispute regarding the cause for termination.

(2) The manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the manager; and will remit all funds due under the contract to the reinsurer at least once every month.

(3) All funds collected for the reinsurer's account will be held by the manager in a fiduciary capacity in a qualified U.S. financial institution. The manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after the expiration of each contract of reinsurance transacted by the manager, the manager will keep a complete record for each transaction showing:

(a) The type of contract, limits, underwriting restrictions, classes or risks and territory;

(b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;

(c) Reporting and settlement requirements of balances;

(d) Rate used to compute the reinsurance premium;

(e) Names and addresses of reinsurers;

(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the manager;

(g) Related correspondence and memoranda;

(h) Proof of placement;

(i) Details regarding retrocessions handled by the manager, as permitted by 11 NCAC 11A .0607, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

(j) Financial records, including but not limited to, premium and loss accounts; and

(k) When the manager places a reinsurance contract on behalf of a ceding insurer:

(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access and the right to copy all accounts and records maintained by the manager related to its business in a form usable by the reinsurer.

(6) The contract cannot be assigned in whole or in part by the manager.

(7) The manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the manager may levy against the reinsurer shall be set forth.

(9) If the contract permits the manager to settle claims on behalf of the reinsurer:

(a) All claims will be reported to the reinsurer in a timely manner;

(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) Has the potential to exceed an amount set by the reinsurer and approved by the Commissioner;

(ii) Involves a coverage dispute;

(iii) May exceed the manager's claims settlement authority;

(iv) Is open for more than six months; or

(v) Is closed by payment of an amount set by the reinsurer and approved by the Commissioner.

(c) All claim files will be the joint property of the reinsurer and manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate; the manager shall have reasonable access to and the right to copy the files on a timely basis;

(d) Any settlement authority granted to the manager may be terminated for cause upon the reinsurer's written notice to the manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the manager, the interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business and not until the adequacy of reserves on remaining claims has been verified pursuant to 11 NCAC 11A .0607.

(11) The manager will annually provide the reinsurer with an audited statement of its financial condition prepared by an independent certified public accountant.

(12) The reinsurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the manager.

(13) The manager will disclose to the reinsurer any relationship it has with any insurer before ceding or assuming any business with the insurer pursuant to this contract.

(14) Within the scope of its actual or apparent authority the acts of the manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0606 PROHIBITED ACTS

A manager shall not:

(1) Cede retrocessions on behalf of the reinsurer, except that the manager may cede facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(2) Commit the reinsurer to participate in reinsurance syndicates.

(3) Appoint any producer without assuring that the producer is duly licensed to transact the type of reinsurance for which he is appointed.

(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) Jointly employ an individual who is employed by the reinsurer unless the manager is under common control with the reinsurer under Article 19 of General Statute Chapter 58.

(7) Appoint a sub-manager.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0607 DUTIES OF REINSURERS USING SERVICES OF A MANAGER

(a) A reinsurer shall not engage the services of any person to act as a manager on its behalf unless the person is licensed under 11 NCAC 11A .0602.

(b) If a manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the manager. This opinion shall be in addition to any other required loss reserve certification.

(c) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall be given to an officer of the reinsurer who is not affiliated with the manager.

(d) Within 30 days after termination of a contract with a manager, the reinsurer shall provide written notification of the termination to the Commissioner.

(e) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling person, or subproducer of its manager. This Rule does not apply to relationships governed by Article 19 of General Statute Chapter 58 or G.S. 58-3-165.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0608 EXAMINATION AUTHORITY

(a) An intermediary is subject to examination by the Commissioner. The Commissioner shall have access to all books, bank accounts, and records of an intermediary in a form usable to the Commissioner.

(b) A manager may be examined as if it were the reinsurer.

Statutory Authority G.S. 58-2-40; 58-2-225.

.0609 PENALTIES AND LIABILITIES

(a) An intermediary, insurer, or reinsurer found by the Commissioner, after hearing, to be in violation of any provision of this Section shall:

(1) For each separate violation, pay a penalty of one thousand dollars ($1,000), not to exceed a total penalty of five thousand dollars ($5,000);

(2) Be subject to revocation or suspension of its license; and

(3) If a violation was committed by the intermediary, the intermediary shall make restitution to the insurer or reinsurer or to the rehabilitator or liquidator of the insurer or reinsurer for any net losses incurred by the insurer or reinsurer that are caused by the violation.

(b) Any order of the Commissioner under Paragraph (a) of this Rule is subject to judicial review under G.S. 58-2-75.

(c) Nothing in this Rule affects the right of the Commissioner to impose any other penalties provided in General Statute Chapter 58.

(d) Nothing in this Rule limits or restricts the rights of policyholders, claimants, creditors, or other third parties; or confer any rights on those persons.

Statutory Authority G.S. 58-2-40; 58-2-225.

* * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the intends to amend rule(s) cited as 11 NCAC 12 .1002, .1004, .1006, .1008, .1009 and .1010 and adopt rule (s) cited as 11 NCAC 12 .1017 - .1021.*

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

***The** public hearing will be conducted at 10:00 a.m. on October 1, 1992 at 430 N. Salisbury Street, 3rd Floor Hearing Room, Dobbs Building, Raleigh, N.C. 27611.*

***Reason** for Proposed Action: To bring North Carolina's rules in compliance with model regulations of the National Association of Insurance Commissioners.*

***Comment** Procedures: Written comments may be sent to Teresa Shackelford, P. O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Teresa Shackelford at (919) 733-5060 or Ellen Sprenkel at (919) 733-4529.*

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .1000 - LONG-TERM CARE INSURANCE

.1002 DEFINITIONS

(a) As used in this Section, ~~the terms "applicant", "certificate", "group long term care insurance", "long term care insurance", and "policy" have the meanings set forth in G.S. 58-55-20.~~ "insurer" means an entity licensed under General Statute Chapter 58 that writes long-term care insurance.

(b) The definitions contained in G.S. 58-1-5 and in G.S. 58-55-20 are incorporated in this Section by reference.

Statutory Authority G.S. 58-2-40(1); 58-55-20; 58-55-30(a).

.1004 POLICY PRACTICES AND PROVISIONS

(a) The terms "guaranteed renewable" or "noncancellable" may not be used in any individual policy without further explanatory language in accordance with the disclosure requirements of 11 NCAC 12 .1005.

~~(b) No individual policy may contain renewal provisions less favorable to the insured than "guaranteed renewable": Provided that the Commissioner may authorize nonrenewal on a statewide basis, on terms and conditions he considers necessary to best protect the interests of the insureds, if the insurer demonstrates that:~~

~~(1) renewal will jeopardize the insurer's solvency; or~~

~~(2) the actual paid claims and expenses have substantially exceeded the premium and investment income associated with the policies; and~~

~~(3) the policies will continue to experience substantial and unexpected losses over their lifetimes; and~~

~~(4) the projected loss experience of the policies cannot be significantly improved or mitigated through reasonable~~

~~rate adjustments or other reasonable methods; and~~

~~(5) the insurer has made repeated and good faith attempts to stabilize loss experience of the policies, including timely filings for rate adjustments.~~

~~(c)~~ (b) The term "guaranteed renewable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no unilateral right to make any change in any provision of the policy while the policy is in force and can not refuse to renew: Provided that rates may be revised by the insurer on a class basis.

~~(d)~~ (c) The word "noncancellable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no right to unilaterally make any change in any provision of the policy or in the premium rate.

~~(e)~~ (d) No policy may limit or exclude coverage by type of illness, treatment, medical condition, or accident, except as follows:

(1) preexisting conditions as specified in G.S. 58-55-30;

(2) mental or nervous disorders, except for Alzheimer's Disease;

(3) alcoholism and drug addiction;

(4) illness, treatment, or medical condition arising out of:

(A) war or act of war (whether declared or undeclared);

(B) participation in a felony, riot, or insurrection;

(C) service in the armed forces or units auxiliary thereto;

(D) suicide, attempted suicide, or intentionally self-inflicted injury; or

(E) aviation activity as a nonfare-paying passenger;

(5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare, under any other governmental program (except Medicaid), or under any state or federal workers' compensation, employer's liability, or occupational disease law; services provided by a member of the insured's immediate family; and services for which no charge is normally made in the absence of insurance;

(6) exclusions and limitations for payment for services provided outside the United States; and

(7) legitimate variations in benefit levels to reflect differences in provider rates.

~~(f)~~ (e) Termination of a policy shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the policy was in force and continues without interruption after termination. Such extension of benefits beyond the period during which the policy was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits; and may be subject to any policy waiting period and all other applicable provisions of the policy.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1006 REQUIRED DISCLOSURE PROVISIONS

(a) Individual policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This Paragraph does not apply to policies that do not contain a renewability provision and under which the right to not renew is reserved solely to the policyholder.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual policy, all riders or endorsements added to an individual policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the increased benefit or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider, or endorsement.

(c) A policy that provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a policy contains any permitted limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and shall be labeled as "Preexisting Condi-

tion Limitations".

(e) Life insurance that provides an accelerated benefit for long-term care shall include a disclosure notice, which shall be displayed on the face of the rider or the policy to which the rider is attached. The notice shall be in bold faced print and shall read as follows:

BENEFITS PAID UNDER THIS RIDER MAY BE TAXABLE. IF SO, YOU OR YOUR BENFICIARY MAY INCUR A TAX OBLIGATION. AS WITH ALL TAX MATTERS, YOU SHOULD CONSULT A PROFESSIONAL TAX ADVISOR TO ASSESS THE EFFECT OF THIS BENEFIT. BENEFITS OF THIS RIDER ARE NOT PAYABLE IF THE POLICY TO WHICH IT IS ATTACHED IS NOT IN EFFECT.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1008 MINIMUM STANDARDS FOR HOME HEALTH CARE BENEFITS

(a) A policy providing benefits for home health care services may not limit or exclude benefits by:

(1) requiring that the insured or claimant would need skilled care in a skilled nursing facility if home health care services were not provided;

(2) requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home or community setting before home health care services are covered;

(3) limiting eligible services to services provided by registered nurses or licensed practical nurses;

(4) requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or by another licensed or certified home care worker acting within the scope of his or her licensure or certification.

(5) requiring that the insured or claimant have an acute condition before home health care services are covered;

(6) limiting benefits to services provided by Medicare-certified agencies or providers; or

(7) excluding coverage for adult day care services.

(b) Home health care coverage may be applied to the non-home health care benefits provided in the policy when determing maximum coverage under the terms of the policy. Home health care benefits shall be offered in an amount of not less than twenty-five dollars ($25.00) per day.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1009 REQUIREMENT TO OFFER INFLATION PROTECTION

(a) No insurer may offer a policy unless the insurer also offers to the applicant the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long--term care services covered by the policy. Insurers must offer to each applicant, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(1) Increases benefit levels annually, in a manner so that the increases are compounded annually at a minimum of 5 percent;

(2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status as long as the option for the previous period has not been declined. ~~; or~~ The amount of the additional benefit shall be no less than the difference between the existing policy benefit and the existing policy benefit compounded annually at a rate of at least five percent for the period beginning with the purchase of the existing policy benefit and extending until the year in which the offer is made.

(3) Covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(b) Where the policy is issued to a group, the required offer in Paragraph (a) of this Rule shall be made to the group policyholder; except, if the policy is issued to a group defined in G.S. 58-55-20(3) other than to a continuing care facility, the offering shall be made to each proposed certificate holder.

(c) The offer in Paragraph (a) of this Rule is not required of life insurance policies or riders containing accelerated long-term care benefits.

~~(1) life insurance policies or riders containing accelerated long term care benefits, nor~~

~~(2) expense incurred long term care insurance policies.~~

(d) Insurers shall include the following information in or with the outline of coverage:

(1) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20-year period.

(2) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75 and 85 for benefit increases. An insurer may use a reasonable hypothetical or a graphic demonstration for the purposes of this disclosure.

(3) Inflation protection benefit increases under a policy that contains such benefits shall continue throughout the period of coverage without regard to an insured's age, an insured's claim status or claim history, or the length of time an insured has been covered under the policy.

(4) An offer of inflation protection that provides for automatic benefit increases shall include an offer of a premium that the insurer expects to remain constant. This offer shall disclose in bold faced print that the premium may change in the future unless the premium is guaranteed to remain constant.

(e) Inflation protection provided in this Rule shall be included in a policy unless an insurer obtains a rejection of inflation protection, signed by the applicant, as follows:

(1) The rejection shall be considered a part of the application by addendum or supplement to the application; and

(2) The rejection notice shall state:

"I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans , and I reject inflation protection."

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1010 REQUIREMENTS FOR REPLACEMENT

(a) Individual and direct response solicited long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed policy is intended to replace any other accident and health or long-term care insurance policy presently in force. A supplementary applicant or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent, shall furnish the applicant, prior to issuance or delivery of the individual policy, a notice regarding replacement of accident and health or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

"NOTICE TO APPLICANT REGARDING
REPLACEMENT OF INDIVIDUAL
ACCIDENT AND HEALTH OR
LONG-TERM CARE INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name]. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. The insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new policy or certificate to the extent such time was spent under the original plan.
~~2.~~3. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
~~3.~~4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

_____

(Signature of Agent, Broker or Other Representative)

The above Notice to Applicant was delivered to me on:

_____

(Date)

(Applicant's Signature)"

(c) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and health or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

"NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND
HEALTH OR LONG-TERM CARE
INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with the long-term care insurance policy delivered with this notice and issued by [company name]. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods. The insurer will waive any time periods applicable to pre-existing conditions or probationary periods in the new coverage to the extent such time was spent under the original policy.
~~2.~~3. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
~~3.~~4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)"

(d) When replacement is intended, the replacing insurer shall give written notice of the proposed replacement to the existing insurer. The existing policy shall be identified by the insurer, name of the insured, and policy number or address, including zip code. This notice shall be made within five business days after the date the application is received by the insurer or the date the policy is issued, whichever date is sooner.

(e) The application shall include questions designed to elicit information as to whether or not another policy is intended to be replaced.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1017 REQUIREMENTS FOR ADVERTISING

Every person advertising long-term care insurance through any medium must file the advertising material with the insurer and receive written confirmation that the advertisement has been accepted by the Commissioner under 11 NCAC 12 .0536.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a); 58-55-30(j).

.1018 STANDARDS FOR MARKETING

(a) Every insurer providing long-term care insurance in this State directly or through its agents, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Display prominently on the cover page of every policy or outline of coverage the following cautionary notice in bold face print stating:

"NOTICE TO BUYER: THIS POLICY {OR RIDER} MAY NOT COVER ALL OF THE COSTS ASSOCIATED WITH LONG-TERM CARE INCURRED BY YOU DURING THE PERIOD OF COVERAGE. YOU ARE ADVISED TO CAREFULLY READ AND REVIEW ALL POLICY {OR RIDER} LIMITATIONS."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

(5) Every insurer marketing long-term care insurance shall establish auditable procedures for verifying compliance with marketing standards.

(6) Every insurer providing long-term care insurance in this State shall at the time of solicitation provide the address and toll-free telephone number of the North Carolina Seniors' Health Insurance Information Program (SHIIP).

(b) The following acts and practices are prohibited:

(1) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether express or implied; or through undue pressure to purchase or recommend the purchase of insurance.

(2) Cold lead advertising. Making direct or indirect use of any method of marketing that fails to clearly disclose that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an agent or insurer.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a); 58-63-15(9).

.1019 REPLACEMENT POLICIES

Whenever a policy is replaced by another policy, the succeeding insurer must cover all persons covered under the previous policy and waive any new waiting periods for pre-existing conditions to the extent similar exclusions have been satisfied under the original policy.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1020 SHOPPER'S GUIDE

Every insurer providing long-term care insurance in this State shall, before sale, deliver a shopper's guide to every applicant. The guide shall be in the format developed by the NAIC.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1021 REPORTING

Each insurer shall on a statewide basis:

(1) Maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales.

(2) Maintain records of the amount of lapses of long-term care insurance policies sold by agents as a percent of the agent's total annual sales.

(3) Report annually by June 30th the 10 percent of its agents with the greatest percentages of lapses and replacements.

(4) Report annually by June 30th the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(5) Report annually by June 30th the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as

of the end of the preceding calendar year.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a); 58-2-195(a).

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

Notice *is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to, amend rules cited as 15A NCAC 13B .0101, 0103, .1202, .1203, .1207.*

The proposed effective date of this action is January 4, 1993.

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

October 13, 1992
7:30 p.m.
Room 204 Buncombe County Courthouse
60 Court Plaza
Asheville, NC
(Main entrance locked at night; use ground floor side entrance on College Street)

October 19, 1992
1:30 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, NC

Reason for Proposed Action:

15A NCAC 13B .0101(15) *- Deletion of definition of "infectious waste" is needed for consistency since "regulated medical waste" is used in Section .1200 Medical Waste Management, to designate waste for which there are special packaging, labeling, storage, transportation and treatment requirements.*

15A NCAC 13B .0101(24) *- The rule defines the term "radioactive waste material" by referencing the statutory definition. No other rule or standard is incorporated.*

15A NCAC 13B .0103 (c) *- Use of "infectious waste" is not consistent with terminology in .1200 Medical Waste Management. Under Section .1200 "regulated medical waste" which has not been treated in accordance with the Rules is banned from landfill disposal.*

15A NCAC 13B .1202 *- The reference to Rule .1204(a)(1) is needed for clarity, to refer the reader to the appropriate requirements.*

The statement about compaction has been added for consistency with Rule .1202(b), which prohibits compaction of containers of sharps.

15A NCAC 13B .1203 (a) *- This change is proposed to allow health care facilities to utilize microwave technology for treating medical waste on-site. Major advantages of microwave processes include low cost of operation and the ability of the hospital to accomplish on-site management of the waste. Microwave technology utilizes microwaves to achieve thermal inactivation of microorganisms such as bacteria and viruses. It has been used at Forsyth Hospital for 18 months, and frequent monitoring has demonstrated consistent, reliable high-level disinfection of medical waste.*

15A NCAC 13B .1207 (1)(j) *- This change is needed so the reporting date will be the same as required for the county annual report. Otherwise, the treatment facility must report the same information twice.*

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 3 days prior to the public hearing. Oral presentation lengths may 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, INSTITU-

TIONS, 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 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

The definitions in G.S. 130A-290 and the following definitions shall apply throughout this Subchapter:

(1) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) "Blood products" means all bulk blood and blood products.

(3) "Cell" means compacted solid waste completely enveloped by a compacted cover material.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwaters.

(5) "Demolition landfill" means a sanitary landfill that is limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes as approved by the Division.

(6) "Division" means the Director of the Division of Solid Waste Management or the Director's authorized representative.

(7) "Explosive gas" means Methane (CH 4).

(8) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.

(9) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood.

(10) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(11) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(12) "Hazardous waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of hazardous waste.

(13) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this article.

(14) "Incineration" means the process of burning solid, semi-solid or gaseous combustible wastes to an inoffensive gas and a residue containing little or no combustible material.

~~(15) "Infectious waste" means a solid waste capable of producing an infectious disease. The types of waste designated as infectious are: microbiological waste, pathological waste, blood products and sharps.~~

~~(16)~~ (15)"Leachate" means any liquid, including any suspended components in liquid, that has percolated through or drained from solid waste.

~~(17)~~ (16)"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propogate a flame in air at 25°C and atmospheric pressure.

~~(18)~~ (17)"Microbiological wastes" means and includes cultures and stocks of etiologic agents. The term includes cultures of specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.

~~(19)~~ (18)"One-hundred year flood" means a flood that has a 1 percent or less chance

of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

~~(20)~~ (19)"Open burning" means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.

~~(21)~~ (20)"Open dump" means a solid waste disposal site that does not have a permit, ~~and/~~or does not comply with the rules set forth in this Subchapter.

~~(22)~~ (21)"Pathological wastes" means and includes human tissues, organs, body parts, secretions and excretions, blood and body fluids that are removed during surgery and autopsies; and the carcasses and body parts of all animals that were exposed to pathogens in research, were used in the production of biologicals or in the in vivo testing of pharmaceuticals, or that died of known or suspected infectious disease.

~~(23)~~ (22)"Person" means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

~~(24)~~ (23)"Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.

~~(25)~~ (24)"Radioactive waste material" means any waste containing radioactive material as defined in G.S. 104E-5(14)~~, which is adopted by reference in accordance with G.S. 150B-14(c)~~.

~~(26)~~ (25)"Recycling" means the process by which recovered resources are transformed into new products in such a manner that the original products lose their identity.

~~(27)~~ (26)"Refuse" means all non-putrescible waste.

~~(28)~~ (27)"Respondent" means the person against whom an administrative penalty has been assessed.

~~(29)~~ (28)"Resources recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing such solid waste for recycling.

~~(30)~~ (29)"Runoff" means the portion of precipitation that drains from an area as surface flow.

~~(31)~~ (30)"Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with Article 9 of Chapter 130A and this Subchapter.

~~(32)~~ (31)"Sediment" means solid particulate matter both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

~~(33)~~ (32)"Sharps" means and includes needles, syringes, and scalpel blades.

~~(34)~~ (33)"Siltation" means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures and which has been transported from its point of origin within the site land-disturbing activity and which has been deposited, or is in suspension in water.

~~(35)~~ (34)"Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

~~(36)~~ (35)"Solid waste" means any hazardous or nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

(a) Fowl and animal fecal waste; or

(b) Solid or dissolved material in:

(i) domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed

to discharge effluents to the surface waters;

(ii) irrigation return flows; and

(iii) wastewater discharges and the sludges incidental thereto and generated by the treatment thereof which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission; except that any sludges that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580) as amended, shall also be a solid waste for the purposes of this Article; or

(c) Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the North Carolina General Statutes; except that any such oils or other liquid hydrocarbons that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580) as amended, shall also be a solid waste for the purposes of this Article; or

(d) Any radioactive material as defined by the North Carolina Radiation Protection Act, G.S. 104E-1 through 104E-23; or

(e) Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290); except that any specific mining waste that meets the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580) as amended, shall also be a solid waste for the purposes of this Article.

~~(37)~~ (36)"Solid waste collector" means any person who collects or transports solid waste by whatever means, including but not limited to, highway, rail, and navigable waterway.

~~(38)~~ (37)"Solid waste disposal site", or "site" means any place at which solid wastes are disposed of by incineration, sanitary landfill, demolition landfill or any other acceptable method.

~~(39)~~ (38)"Solid waste generation" means the act or process of producing solid waste.

~~(40)~~ (39)"Solid waste generator" means any person who produces solid waste.

~~(41)~~ (40)"Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

~~(42)~~ (41)"Solid waste management facility" means land, personnel, and equipment used in the management of solid waste.

~~(43)~~ (42)"Spoiled food" means any food which has been removed from sale by the United States Department of Agriculture, North Carolina Department of Agriculture, Food and Drug Administration, or any other regulatory agency having jurisdiction in determining that food is unfit for consumption.

~~(44)~~ (43)"Steam sterilization" means treatment by steam at high temperatures for sufficient time to render infectious waste non-infectious.

~~(45)~~ (44)"Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

~~(46)~~ (45)"Transfer facility" means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

~~(47)~~ (46)"Treatment and processing facility" means a facility used in the treatment and processing of putrescible solid waste for final disposal or for utilization by reclaiming or recycling.

~~(48)~~ (47)"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste or so as to render such waste non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of solid waste so as to render it non-hazardous.

~~(49)~~ (48)"Unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority or agency of local government.

~~(50)~~ (49)"Vector" means a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.

~~(51)~~ (50)"Water supply watershed" means an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.

~~(52)~~ (51)"Water table" means the upper limit of the portion of the ground wholly saturated with water.

~~(53)~~ (52)"Working face" means that portion of the land disposal site where solid wastes are discharged, spread, and compacted prior to the placement of cover material.

~~(54)~~ (53)"Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.

~~(55)~~ (54)"Backyard Composting" means the on-site composting of yard waste from residential property by the owner or tenant for non-commercial use.

~~(56)~~ (55)"Compost" means decomposed, humus-like organic matter, free from pathogens, offensive odors, toxins or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner with varying nutrient values.

~~(57)~~ (56)"Composting Pad" means a surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.

~~(58)~~ (57)"Compost Facility" means a solid waste facility which utilizes a controlled biological process of degrading non-hazardous solid waste. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.

~~(59)~~ (58)"Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product resulting in volume reduction of 30 - 75 percent.

~~(60)~~ (59)"Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.

~~(61)~~ (60)"Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.

~~(62)~~ (61)"Silviculture Waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.

~~(63)~~ (62)"Soil Group 1" means soil group 1 as defined in 15A NCAC 13B .0807(a)(1)(A) of the Septage Management Rules.

~~(64)~~ (63)"Windrow" means an elongated compost pile (typically eight feet wide by ten feet high).

~~(65)~~ (64)"Yard Waste" means "Yard Trash" and "Land-clearing Debris" as defined in G.S. 130A-290, including stumps, limbs, leaves, grass, and untreated wood.

~~(66)~~ (65)"Residues from Agricultural Products and Processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations that are non-toxic, non-hazardous, and contain no domestic wastewater.

~~(67)~~ (66)"Treatment and Processing Waste" means waste that is a residual solid from a wastewater treatment or pretreatment facility.

~~(68)~~ (67)"Industrial Process Waste" means any solid, semi-solid, or liquid waste generated by a manufacturing or processing plant which is a result of the manufacturing or processing process. This definition does not include packaging materials associated with such activities.

~~(69)~~ (68)"Mulch" means a protective covering of various substances, especially organic, to which no plant food has been added and for which no plant food is claimed. Mulch is generally placed around plants to prevent erosion, compaction, evaporation of moisture, freezing of roots, and weed growth.

~~(70)~~ (69)"Soil Scientist" means an individual who is a Certified Professional Soil Scientist or Soil Specialist by American Registry of Certified Professional in Agronomy, Crops, and Soils (ARCPACS) or an individual that demonstrates equivalent experience or education.

~~(71)~~ (70)"Foreign Matter" means metals,

glass, plastics, rubber, bones, and leather, but does not include sand, grit, rocks or other similar materials.

Statutory Authority G.S. 130A-294.

.0103 GENERAL CONDITIONS

(a) All solid waste shall be stored, collected, transported, separated, processed, recycled, recovered, and disposed of in a manner consistent with the requirements of these Rules. The Division of Solid Waste Management is responsible for the enforcement of these Rules.

(b) No radioactive waste material shall be collected and transported, stored, treated, processed, disposed of or reclaimed, except as specifically authorized by a radioactive material license issued by the Division of Radiation Protection, DEHNR.

(c) Solid waste shall be disposed of at a solid waste disposal site in accordance with the Solid Waste Management Act and the Federal Act. Hazardous waste, lead acid batteries, liquid waste, including used oil, ~~infectious~~ regulated medical waste, and any other wastes that may pose a threat to the environment or the public health, as determined by the Division, are prohibited from disposal at a solid waste disposal site.

(d) The Division has developed a "Procedure and Criteria for Waste Determination" which is used to determine whether a waste is:

(1) hazardous as defined by 15A NCAC 13A, and

(2) suitable for disposal at a solid waste management facility.

Information required for evaluation includes the identity of the generator, identity of the waste and how it was generated, and laboratory results indicating the chemical constituency of the waste. Copies of "Procedure and Criteria for Waste Determination" may be obtained from and inspected at the Division, P.O. Box 27687, Raleigh, N.C. 27611-7687.

(A) Waste which is generated outside the population and geographic area which the solid waste management facility is permitted to serve under .0504(1)(g).

(B) Waste from a transfer facility other than a facility permitted under these Rules.

(C) Waste generated by a new generator inside the population and geographic area which the Solid Waste Management Facility is permitted to serve if the components of the waste cannot be readily determined otherwise.

(D) Waste generated through a change in industrial process by an existing generator, provided the components of the waste cannot be readily determined otherwise.

(E) A load of waste which a sanitary landfill operator suspects may contain materials which the facility is not permitted to receive.

(F) Requests by a generator interested in transporting waste to an identified solid waste management facility for treatment and processing, transfer or disposal.

(G) All sludges except sludge from water treatment plants.

(H) Other wastes deemed appropriate by the Division for testing before transporting to a solid waste management facility.

(e) No person shall dispose or cause the disposal of solid waste in or on waters in a manner that results in solid waste's entering waters or being deposited upon lands of the state.

(f) White Goods shall not be disposed of at a solid waste disposal site after ~~1, January, 1991~~ January 1, 1991.

(g) By July 1, 1991, all solid waste management facilities owned and operated by or on behalf of a local government, except facilities which will receive no waste after July 1, 1992, shall install scales and weigh all solid waste when it is received at the facility.

(h) By July 1, 1991, each local government operating a permitted solid waste management facility shall initiate a solid waste recycling program which shall be designed to achieve the goal of recycling at least 25 percent of the municipal solid waste stream by January 1, 1993, prior to final disposal or incineration at a solid waste disposal facility.

(i) After January 1, 1998, all active sanitary landfills (except demolition landfills) shall be equipped with liners, leachate collection systems and final cover systems.

Statutory Authority G.S. 130A-294;

SECTION .1200 - MEDICAL WASTE MANAGEMENT

.1202 GENERAL REQUIREMENTS FOR MEDICAL WASTE

(a) Medical waste is subject to all applicable

rules in 15A NCAC 13B.

(b) At the generating facility, sharps shall be placed in a container which is rigid, leak-proof when in an upright position and puncture-resistant. Contained sharps shall not be compacted prior to off-site transportation. After leaving the generating facility, the container and its contents shall be handled in a manner that avoids human contact with the sharps.

(c) Blood and body fluids in individual containers of 20 ml or less which are not stored in a secured area restricted to authorized personnel prior to off-site transportation shall be packaged in accordance with the regulated medical waste packaging requirements as described in Rule .1204(a)(1) or in a container suitable for sharps. Packages and containers of blood and body fluids shall not be compacted prior to off-site transportation.

(d) Regulated medical waste shall not be compacted.

Statutory Authority G.S. 130A-309.26.

.1203 GENERAL REQUIREMENTS FOR REGULATED MEDICAL WASTE

(a) Regulated medical waste shall be treated prior to disposal. Acceptable methods of treatment are as follows:

(1) blood and body fluids in individual containers in volumes greater than 20 ml - Incineration or sanitary sewage systems, provided the sewage treatment authority is notified;

(2) microbiological waste - Incineration, steam sterilization, microwave treatment, or chemical treatment;

(3) pathological wastes - Incineration.

(b) Other methods of treatment shall require approval by the Division.

(c) Regulated medical waste treated in accordance with Paragraph (a) of this Rule may be managed in accordance with 15A NCAC 13B .0100 - .0700.

(d) Crematoriums are not subject to the requirements of Rule .1207(3) of this Section.

(e) A person who treats Regulated medical waste at the generating facility or within an integrated medical facility is not subject to the storage and record keeping requirements of Rule .1207(1) of this Section.

(f) Generating facilities and integrated medical facilities in operation on October 1, 1990 that incinerate Regulated medical waste are not subject to the requirements of Rule .1207(3)(a-l) of this Section until January 1, 1995.

Statutory Authority G.S. 130A-309.26.

.1207 OPERATIONAL REQ/REGULATED MEDICAL WASTE TREATMENT FACILITIES

A person who treats Regulated medical waste shall meet the following requirements for each type of treatment in addition to the requirements in Rule .1203 of this Section.

(1) General requirements:

(a) Refrigeration at an ambient temperature between 35 and 45 degrees Fahrenheit shall be maintained for Regulated medical waste not treated within seven calendar days after shipment.

(b) Regulated medical waste shall be stored prior to treatment for no more than seven calendar days after receipt.

(c) Regulated medical waste shall be stored no longer than seven calendar days after treatment.

(d) Only authorized personnel shall have access to areas used to store Regulated medical waste.

(e) All areas used to store Regulated medical waste shall be kept clean. Neither carpets nor floor coverings with seams shall be used in storage areas. Vermin and insects shall be controlled.

(f) Prior to treatment, all Regulated medical waste shall be confined to the storage area.

(g) All floor drains shall discharge directly to an approved sanitary sewage system. Ventilation shall be provided and shall discharge so as not to create nuisance odors.

(h) A plan shall be prepared, maintained and updated as necessary to ensure continued proper management of Regulated medical waste at the facility.

(i) 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 treatment facility for no less than three years.

(i) name and address of generator;

(ii) date received;

(iii) amount of waste received by number of packages (piece count) from each generator;

(iv) date treated;

(v) name and address of ultimate disposal facility.

(j) Regulated medical waste treatment facilities that treat waste generated off-site shall submit to the Division an annual report, by ~~March 1~~ August 1 of each year that summarizes the information collected under Subparagraph (1)(i) of this Rule for the previous calendar year. The report shall be submitted on a form prescribed and approved by the Division.

(2) Steam sterilization requirements:

(a) Steam under pressure shall be provided to maintain a minimum temperature of 250 degrees Fahrenheit for 45 minutes at 15 pounds per square inch of gauge pressure during each cycle; or other combinations of parameters that are shown to effectively treat the waste.

(b) The steam sterilization unit shall be provided with a chart recorder which accurately records time and temperature of each cycle.

(c) The steam sterilization unit shall be provided with a gauge which indicates the pressure of each cycle.

(d) Monitoring under conditions of full loading for effectiveness of treatment shall be performed no less than once per week through the use of biological indicators or other methods approved by the Division.

(e) Regulated medical waste may be disposed of until or unless monitoring as required in Subparagraph(2)(d) of this Rule does not confirm effectiveness.

(f) A log of each test of effectiveness of treatment performed shall be maintained and shall include the type of indicator used, date, time, and result of test.

(3) Incineration requirements:

(a) Regulated medical waste shall be subjected to a burn temperature in the primary chamber of not less than 1200 degrees Fahrenheit.

(b) Automatic auxiliary burners which are capable, excluding the heat content of the wastes, of independently maintaining the secondary chamber temperature at the minimum of 1800 degrees Fahrenheit shall be provided. Interlocks or other process control devices shall be provided to prevent the introduction of waste material to the primary chamber until the secondary chamber achieves operating temperature.

(c) Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees Fahrenheit for a period of not less than one second.

(d) Continuous monitoring and recording of primary and secondary chamber temperatures shall be performed. Monitoring data shall be maintained for a period of three years.

(e) An Air Quality Permit shall be obtained from the Division of Environmental Management prior to construction and operation.

(f) A plan of procedures for obtaining representative weekly and monthly composite ash samples shall be submitted for Division approval prior to system start-up and operation. If design or operation of the system is substantially changed or modified, or if the waste composition, loading rate or loading method are substantially changed, the ash sampling plan will be subject to modification to accommodate such changes. Ash sampling procedures shall be initiated at the time the incineration system is first started for normal operation.

(g) As a minimum, a representative sample of about one kilogram (2.2 lb) shall be collected once for every eight hours of operation of a continuously fed incinerator; once for every 24 hours of operation of an intermittently operated incinerator; or once for every batch of a batch loaded incinerator. The samples shall be collected from either the discharge of the ash conveyor or from the ash collection containers prior to disposal. Samples shall be composited in a closed container weekly and shall be thoroughly mixed and reduced to a representative sample. These shall be composited into monthly samples. For the first three months of operation, each monthly sample shall be analyzed.

(h) For the remainder of the first year of operation, representative monthly samples shall be composited into a quarterly sample and analyzed at the end of each quarter.

(i) After the first year, representative

samples shall be analyzed at least twice a year.

(j) Ash samples shall be tested in accordance with provisions of 15A NCAC 13B .0103(e) and submitted to the N.C. Solid Waste Section.

(k) A log shall be kept documenting ash sampling, which shall include the date and time of each sample collected; the date, time, and identification number of each composite sample; and the results of the analyses, including laboratory identification.

(l) Records of stack testing as prescribed in the Air Quality Permit shall be maintained at the facility.

(m) Existing generating facilities shall conduct one weekly representative ash sampling and testing in accordance with Subparagraphs (3)(f), (g) and (j) of this Rule annually during the second quarter of each calendar year.

(4) Chemical treatment requirements:

(a) Cultures of throat, urine, sputum, skin and genitourinal tract which contain only the following organisms; N. gonorrhea, E. coli, staphylococcus, proteus, Candida albicans, and B. cereus or normal flora in individual plates or tubes containing 5-20 ml media shall be covered, for a minimum of one hour, with a 1:5 dilution of household bleach (5.25 percent sodium hypochlorite) in water. The solution shall remain on the treated plates which are to be stacked in a plastic bag prior to disposal. The bag is to be sealed to prevent leakage.

(b) Approval for other types of chemical treatment must be obtained from the Division. Request for approval must be substantiated by results of demonstrated effectiveness of the chemical to treat the specific microbiological agent(s) of concern for the waste disposed. Consideration must be given to such factors as temperature, time of contact, pH, concentration and the presence and state of dispersion, penetrability and reactivity of organic material at the site of application.

(c) A written plan must be maintained at the facility and units of the facility as necessary to ensure consistent procedures are used to treat the waste.

Statutory Authority G.S. 130A-309.26.

* * * * * * * * * * * * * * * * * * *

***N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to, adopt rules cited as 15A NCAC 13B .0560 - .0566, amend rules cited as 15A NCAC 13B .0101, 0103, .0201 - .0202, .0501 - .0503 and repeal rules cited as 15A NCAC 13B .0506 - .0507.*

***T**he proposed effective date of this action is January 4, 1993.*

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

October 13, 1992
7:30 p.m.
Room 204 Buncombe County Courthouse
60 Court Plaza
Asheville, NC
(Main entrance locked at night; use ground floor side entrance on College Street)

October 19, 1992
1:30 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, NC

***R**eason for Proposed Action: To clarify existing Division Rules in order to comply with existing EPA Rules and State Statutes.*

***C**omment 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 3 days prior to the public hearing. Oral presentation lengths may 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 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0100 - GENERAL PROVISIONS

.0101 DEFINITIONS

The definitions in G.S. 130A-290 and the following definitions shall apply throughout this Subchapter:

(1) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) "Blood products" means all bulk blood and blood products.

(3) "Cell" means compacted solid waste completely enveloped by a compacted cover material.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

(5) "Demolition landfill" means a sanitary landfill that is limited to receiving stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth or other solid wastes as approved by the Division.

(6) "Division" means the Director of the Division of Solid Waste Management or the Director's authorized representative.

(7) "Explosive gas" means Methane (CH 4).

(8) "Federal act" means the Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended.

(9) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, which are inundated by the 100-year flood.

(10) "Garbage" means all putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

(11) "Hazardous waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(12) "Hazardous waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of hazardous waste.

(13) "Hazardous waste landfill facility" means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this article.

(14) "Incineration" means the process of burning solid, semi-solid or gaseous combustible wastes to an inoffensive gas and a residue containing little or no combustible material.

(15) "Infectious waste" means a solid waste capable of producing an infectious disease. The types of waste designated as infectious are: microbiological waste, pathological waste, blood products and sharps.

(16) "Leachate" means any liquid, including any suspended components in liquid,

that has percolated through or drained from solid waste.

(17) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases which will propagate a flame in air at 25°C and atmospheric pressure.

(18) "Microbiological wastes" means and includes cultures and stocks of etiologic agents. The term includes cultures of specimens from medical, pathological, pharmaceutical, research, commercial, and industrial laboratories.

(19) "One-hundred year flood" means a flood that has a 1 percent or less chance of recurring in any year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(20) "Open burning" means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, incinerator, or other similar devices.

(21) "Open dump" means a solid waste disposal site that does not have a permit, ~~and/or~~ or does not comply with the rules set forth in this Subchapter.

(22) "Pathological wastes" means and includes human tissues, organs, body parts, secretions and excretions, blood and body fluids that are removed during surgery and autopsies; and the carcasses and body parts of all animals that were exposed to pathogens in research, were used in the production of biologicals or in the in vivo testing of pharmaceuticals, or that died of known or suspected infectious disease.

(23) "Person" means an individual, corporation, company, association, partnership, unit of local government, state agency, federal agency, or other legal entity.

(24) "Putrescible" means solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as kitchen wastes, offal and carcasses.

(25) "Radioactive waste material" means any waste containing radioactive material as defined in G.S. 104E-5(14)~~, which is adopted by reference in accordance with G.S. 150B-14(c)~~.

(26) "Recycling" means the process by which recovered resources are transformed into new products in such a manner that the original products lose their identity.

(27) "Refuse" means all non-putrescible waste.

(28) "Respondent" means the person against whom an administrative penalty has been assessed.

(29) "Resources recovery" means the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing such solid waste for recycling.

(30) "Runoff" means the portion of precipitation that drains from an area as surface flow.

(31) "Sanitary landfill" means a facility for disposal of solid waste on land in a sanitary manner in accordance with Article 9 of Chapter 130A and this Subchapter.

(32) "Sediment" means solid particulate matter both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

(33) "Sharps" means and includes needles, syringes, and scalpel blades.

(34) "Siltation" means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures and which has been transported from its point of origin within the site land-disturbing activity and which has been deposited, or is in suspension in water.

(35) "Sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.

(36) "Solid waste" means any hazardous or

nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

(a) Fowl and animal fecal waste; or

(b) Solid or dissolved material in:

(i) domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluents to the surface waters;

(ii) irrigation return flows; and

(iii) wastewater discharges and the sludges incidental thereto and generated by the treatment thereof which are point sources subject to permits granted under Section 402 of the Federal Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission; except that any sludges that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580) as amended, shall also be a solid waste for the purposes of this Article; or

(c) Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the North Carolina General Statutes; except that any such oils or other liquid hydrocarbons that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580) as amended, shall also be a solid waste for the purposes of this Article; or

(d) Any radioactive material as defined by the North Carolina Radiation Protection Act, G.S. 104E-1 through 104E-23; or

(e) Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290); except that any specific mining waste that meets the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (P.L. 94-580) as amended, shall also be a solid waste for the purposes of this Article.

(37) "Solid waste collector" means any person who collects or transports solid waste by whatever means, including but not limited to, highway, rail, and navigable waterway.

(38) "Solid waste disposal site", or "site" means any place at which solid wastes are disposed of by incineration, sanitary landfill, demolition landfill or any other acceptable method.

(39) "Solid waste generation" means the act or process of producing solid waste.

(40) "Solid waste generator" means any person who produces solid waste.

(41) "Solid waste management" means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.

(42) "Solid waste management facility" means land, personnel, and equipment used in the management of solid waste.

(43) "Spoiled food" means any food which has been removed from sale by the United States Department of Agriculture, North Carolina Department of Agriculture, Food and Drug Administration, or any other regulatory agency having jurisdiction in determining that food is unfit for consumption.

(44) "Steam sterilization" means treatment by steam at high temperatures for sufficient time to render infectious

waste non-infectious.

(45) "Storage" means the containment of solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal.

(46) "Transfer facility" means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

(47) "Treatment and processing facility" means a facility used in the treatment and processing of putrescible solid waste for final disposal or for utilization by reclaiming or recycling.

(48) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize such waste or so as to render such waste non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of solid waste so as to render it non-hazardous.

(49) "Unit of local government" means a county, city, consolidated city-county, sanitary district, or other local political subdivision, authority or agency of local government.

(50) "Vector" means a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.

(51) "Water supply watershed" means an area from which water drains to a point or impoundment, and the water is then used as a source for a public water supply.

(52) "Water table" means the upper limit of the portion of the ground wholly saturated with water.

(53) "Working face" means that portion of the land disposal site where solid wastes are discharged, spread, and compacted prior to the placement of cover material.

(54) "Agricultural Waste" means waste materials produced from the raising of plants and animals, including animal manures, bedding, plant stalks, hulls, and vegetable matter.

(55) "Backyard Composting" means the on-site composting of yard waste from residential property by the owner or tenant for non-commercial use.

(56) "Compost" means decomposed, humus-like organic matter, free from pathogens, offensive odors, toxins or materials harmful at the point of end use. Compost is suitable for use as a soil conditioner with varying nutrient values.

(57) "Composting Pad" means a surface, whether soil or manufactured, where the process of composting takes place, and where raw and finished materials are stored.

(58) "Compost Facility" means a solid waste facility which utilizes a controlled biological process of degrading non-hazardous solid waste. A facility may include materials processing and hauling equipment; structures to control drainage; and structures to collect and treat leachate; and storage areas for the incoming waste, the final products, and residual materials.

(59) "Composting" means the controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product resulting in volume reduction of 30 - 75 percent.

(60) "Curing" means the final state of composting, after the majority of the readily metabolized material has been decomposed, in which the compost material stabilizes and dries.

(61) "Pathogens" means organisms that are capable of producing infection or diseases, often found in waste materials.

(62) "Silviculture Waste" means waste materials produced from the care and cultivation of forest trees, including bark and woodchips.

(63) "Soil Group 1" means soil group 1 as defined in 15A NCAC 13B .0807(a)(1)(A) of the Septage Management Rules.

(64) "Windrow" means an elongated

compost pile (typically eight feet wide by ten feet high).

(65) "Yard Waste" means "Yard Trash" and "Land-clearing Debris" as defined in G.S. 130A-290, including stumps, limbs, leaves, grass, and untreated wood.

(66) "Residues from Agricultural Products and Processing" means solids, semi-solids or liquid residues from food and beverage processing and handling; silviculture; agriculture; and aquaculture operations that are non-toxic, non-hazardous, and contain no domestic wastewater.

(67) "Treatment and Processing Waste" means waste that is a residual solid from a wastewater treatment or pretreatment facility.

(68) "Industrial Process Waste" means any solid, semi-solid, or liquid waste generated by a manufacturing or processing plant which is a result of the manufacturing or processing process. This definition does not include packaging materials associated with such activities.

(69) "Mulch" means a protective covering of various substances, especially organic, to which no plant food has been added and for which no plant food is claimed. Mulch is generally placed around plants to prevent erosion, compaction, evaporation of moisture, freezing of roots, and weed growth.

(70) "Soil Scientist" means an individual who is a Certified Professional Soil Scientist or Soil Specialist by American Registry of Certified Professional in Agronomy, Crops, and Soils (ARCPACS) or an individual that demonstrates equivalent experience or education.

(71) "Foreign Matter" means metals, glass, plastics, rubber, bones, and leather, but does not include sand, grit, rocks or other similar materials.

(72) "Land clearing waste" means solid waste which is generated solely from land clearing activities such as stumps, trees, limbs, brush, grass, and other naturally occurring vegetative material.

(73) "Land clearing and inert debris landfill" means a facility for the land disposal of land clearing waste, concrete, brick, concrete block, uncontaminated soil, gravel and rock, untreated and unpainted wood, and yard trash.

(74) "Yard trash" means solid waste resulting from landscaping and yard maintenance such as brush, grass, tree limbs, and similar vegetative material.

(75) "Erosion control measure, structure, or device" means physical devices constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.

Statutory Authority G.S. 130A-294.

.0103 GENERAL CONDITIONS

(a) All solid waste shall be stored, collected, transported, separated, processed, recycled, recovered, and disposed of in a manner consistent with the requirements of these Rules. The Division of Solid Waste Management is responsible for the enforcement of these Rules.

(b) No radioactive waste material shall be collected and transported, stored, treated, processed, disposed of or reclaimed, except as specifically authorized by a radioactive material license issued by the Division of Radiation Protection, DEHNR.

(c) Solid waste shall be disposed of at a solid waste disposal site in accordance with the Solid Waste Management Act and the Federal Act. Hazardous waste, lead acid batteries, liquid waste, including used oil, infectious waste, and any other wastes that may pose a threat to the environment or the public health, as determined by the Division, are prohibited from disposal at a solid waste disposal site.

(d) The Division has developed a "Procedure and Criteria for Waste Determination" which is used to determine whether a waste is:

(1) hazardous as defined by 15A NCAC 13A, and

(2) suitable for disposal at a solid waste management facility.

Information required for evaluation includes the identity of the generator, identity of the waste and how it was generated, and laboratory results

indicating the chemical constituency of the waste. Copies of "Procedure and Criteria for Waste Determination" may be obtained from and inspected at the Division, P.O. Box 27687, Raleigh, N.C. 27611-7687.

(A) Waste which is generated outside the population and geographic area which the solid waste management facility is permitted to serve under .0504(1)(g).

(B) Waste from a transfer facility other than a facility permitted under these Rules.

(C) Waste generated by a new generator inside the population and geographic area which the Solid Waste Management Facility is permitted to serve if the components of the waste cannot be readily determined otherwise.

(D) Waste generated through a change in industrial process by an existing generator, provided the components of the waste cannot be readily determined otherwise.

(E) A load of waste which a sanitary landfill operator suspects may contain materials which the facility is not permitted to receive.

(F) Requests by a generator interested in transporting waste to an identified solid waste management facility for treatment and processing, transfer or disposal.

(G) All sludges except sludge from water treatment plants.

(H) Other wastes deemed appropriate by the Division for testing before transporting to a solid waste management facility.

(e) No person shall dispose or cause the disposal of solid waste in or on waters in a manner that results in solid waste's entering waters or being deposited upon lands of the state.

(f) White Goods shall not be disposed of at a solid waste disposal site after 1, January, 1991.

(g) By July 1, 1991, all solid waste management facilities owned and operated by or on behalf of a local government, except facilities which will receive no waste after July 1, 1992, shall install scales and weigh all solid waste when it is received at the facility.

(h) By July 1, 1991, each local government operating a permitted solid waste management facility shall initiate a solid waste recycling program which shall be designed to achieve the goal of recycling at least 25 percent of the municipal solid waste stream by January 1, 1993, prior to final disposal or incineration at a solid waste disposal facility.

(i) After January 1, 1998, all active sanitary landfills (except ~~demolition~~ land clearing and inert debris landfills) shall be equipped with liners, leachate collection systems and final cover systems.

Statutory Authority G.S. 130A-294.

SECTION .0200 - PERMITS FOR SOLID WASTE MANAGEMENT FACILITIES

.0201 PERMIT REQUIRED

(a) No person shall establish or allow to be established on his land, a solid waste management facility, or otherwise treat, store, or dispose of solid waste unless a permit for the facility has been obtained from the Division.

(b) The permit, except for land clearing and inert debris permits, shall have two parts, as follows:

(1) A permit to construct a solid waste management facility shall be issued by the Division after site and construction plans have been approved and it has been determined that the facility can be operated in accordance with the applicable rules set forth in this Subchapter and so as to provide reasonable protection to the environment and the public health. An applicant shall not clear or grade land or commence construction for a solid waste management facility until a construction permit has been issued.

(2) A permit to operate a solid waste management facility may not be issued unless it has been determined that the facility has been constructed in accordance with the construction permit, that any pre-operative conditions of the construction permit have been met, and that the construction permit has been recorded, if applicable, in accordance with Rule .0204 of this Section.

(c) Land clearing and inert debris facilities may be issued a combined permit to construct and operate the facility.

(d) Land clearing and inert debris facilities subject to Rule .0563(1) may construct and operate after notification as provided for under Rule .0563(2).

~~(c)~~ (e)Permits, including those issued prior to the effective date of this Rule, shall be reviewed every five years. Modifications, where necessary, shall be made in accordance with Rules in effect at the time of review for those areas of a permitted sanitary landfill site which have not previously received solid waste.

~~(d)~~ (f)All solid waste management facilities shall be operated in conformity with these Rules and in such a manner as to prevent the creation of a nuisance, insanitary conditions, or potential public health hazard.

Statutory Authority G.S. 130A-294.

.0202 PERMIT APPLICATION

(a) Application for permits required by Rule .0201 of this Subchapter should be forwarded to the ~~Solid Waste Branch, Division of Health Services, P.O. Box 2091, Raleigh, N.C. 27602~~ Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, Solid Waste Section, Post Office Box 27687, Raleigh, North Carolina 27611. Permit applications shall contain the following information:

(1) Site and construction plans;

(2) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located stating that the proposed facility meets all of the requirements of the local zoning ordinance, or that the site is not zoned;

(3) Detailed plans and specifications for solid waste management facilities ~~(except demolition landfills)~~ shall be prepared by a professional engineer~~,~~ except for land clearing and inert debris landfills subject to Rule .0563(1). The plans shall bear an imprint of the registration seal of the engineer~~;~~ and ~~the~~ geological ~~study~~ studies shall bear the seal of a licensed professional geologist, in accordance with N.C.G.S. Chapter 89E; and

(4) Any other information pertinent to the proposed facility.

(b) Specific information for a permit application is found in Sections .0300, .0400 and .0500 of this Subchapter.

Statutory Authority G.S. 130A-294.

SECTION .0500 - DISPOSAL SITES

.0501 APPROVED DISPOSAL METHODS

The disposal of solid waste shall be by the following approved methods or any combination thereof:

(1) Sanitary landfill;

(2) ~~Demolition~~ Land clearing and inert debris landfill;

(3) Incineration; or

(4) Disposal by other sanitary methods which may be developed and demonstrated to be capable of fulfilling the basic requirements of these Rules and which have been approved by the Division.

Statutory Authority G.S. 130A-294.

.0502 OPEN DUMPS

A person operating or having operated an open dump for disposal of solid waste or a person who owns land on which such an open dump is or has been operating shall immediately close the site in accordance with the following requirements:

(1) Implement effective vector control, including baiting for at least two weeks after closing, to prevent vector migration to adjacent properties;

(2) If the site is deemed suitable by the Division, compact and cover existing solid waste in place with ~~two feet~~ one foot or more of suitable compacted earth; a condition of closing the site by compacting and covering the waste in place shall be recordation of the waste disposal location by the property owner with the Register of Deeds in the county where the land lies. Copies of the recordation procedure may be obtained from and inspected at the

Division of Solid Waste Management;

(3) If the site is deemed unsuitable by the Division, remove and place solid waste in an approved disposal site or facility;

(4) Implement erosion control measures by grading and seeding; and

(5) Prevent unauthorized entry to the site by means of gates, chains, berms, fences, and other security measures approved by the Division and post signs indicating closure for a period designated by the Division not to exceed one year.

Statutory Authority G.S. 130A-294.

.0503 SITING AND DESIGN REQUIREMENTS FOR DISPOSAL SITES

Disposal sites shall comply with the following requirements in order for a permit to be issued:

(1) A site shall meet the following siting requirements:

(a) A site located in a floodplain shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(b) A site shall be located in consideration of the following:

(i) a site shall not cause or contribute to the taking of any endangered or threatened species of plants, fish or wildlife;

(ii) a site shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 C.F.R. Part 17 which is ~~adopted by reference in accordance with G.S. 150B-14c~~ hereby incorporated by reference including any subsequent amendments and editions. This information is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina 27605 where copies can be obtained at no cost;

(iii) a site shall not damage or destroy an archaeological or historical site; and

(iv) a site shall not cause an adverse impact on a state park, recreation or scenic area, or any other lands included in the state nature and historic preserve.

(c) A new site disposing of putrescible wastes shall not be located within 10,000 feet of an airport runway used by turbojet aircraft or within 5,000 feet of an airport runway used by piston-type aircraft; and

(d) A site shall have available adequate suitable soils for cover either on-site or from off-site.

(2) A site shall meet the following design requirements:

(a) The concentration of explosive gases generated by the site shall not exceed:

(i) twenty-five percent of the limit for the gases in site structures (excluding gas control or recovery system components); and

(ii) the lower explosive limit for the gases at the property boundary;

(b) A site shall not allow uncontrolled public access so as to expose the public to potential health and safety hazards at the disposal site;

(c) A site shall meet the following surface water requirements:

(i) A site shall not cause a discharge of pollutants into waters of the state that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES), under Section 402 of the Clean Water Act, as amended;

(ii) A site shall not cause a discharge of dredged material or fill material into waters of the state that is in violation of the requirements under Section 404 of the Clean Water Act, as amended; and

(iii) A site shall not cause non-point source pollution of waters of the state that violates assigned water quality standards;

(d) A site shall meet the following ground water requirements:

(i) New sanitary landfills and lateral

expansions of existing landfills must be designed with liners, leachate collection systems, and final cover systems as necessary to comply with ground water standards as established under 15A NCAC 2L. 15A NCAC 2L is ~~adopted by reference in accordance with G.S. 150B-14(c)~~ 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 Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina 27605, where copies can be obtained at no cost.

(ii) A site, except for land clearing and inert debris landfills subject to Rule .0564(8)(e), shall be designed so that the bottom elevation of solid waste will be a minimum of four feet above the seasonal high water table;

(e) A site shall not engage in open burning of solid waste;

(f) A site, except a ~~demolition~~ land clearing and inert debris landfill, shall meet the following buffer requirements:

(i) A 50-foot minimum buffer between all property lines and disposal areas;

(ii) A 500-foot minimum buffer between private dwellings and wells and disposal areas; and

(iii) A 50-foot minimum buffer between streams and rivers and disposal areas; and

(g) Requirements of the Sedimentation Pollution Control Law (15A NCAC 4) shall be met.

Statutory Authority G.S. 130A-294.

.0506 APPLICATION REQUIREMENTS FOR DEMOLITION LANDFILLS (REPEALED)

~~Five sets of plans shall be required in each application.~~

~~(1) The following shall be required for reviewing a site plan application for a proposed demolition landfill:~~

~~(a) A map or aerial photograph accurately showing the area within one fourth mile of the site and identifying the following:~~

~~(i) Entire property owned or leased by the person providing the disposal site;~~

~~(ii) Location of all homes, industrial buildings, public or private utilities, roads, wells, watercourses, and other applicable details regarding the general topography;~~

~~(iii) If site is in 100 year floodplain, provide map showing relationship (Federal Insurance Agency map, if available);~~

~~(b) An approval letter from the unit of local government having zoning authority over the area where the site is to be located stating that the site meets all of the requirements of the local zoning ordinance, or that the site is not zoned;~~

~~(c) Location of site on a county roadmap;~~

~~(d) The types of waste for disposal; and~~

~~(e) Any other information pertinent to the suitability of the proposed site;~~

~~(2) The following shall be required for reviewing a construction plan application for a proposed demolition landfill:~~

~~(a) A plot plan of the proposed site showing the property boundary, proposed landfilling limits, access controls and features such as roads, streams, etc.;~~

~~(b) Provisions for controlling erosion;~~

~~(c) Procedures for promoting vegetative growth as soon as possible on all completed areas (seeding and fertilizer specifications);~~

~~(d) A copy of the deed or other legal description of the site that would be sufficient as a description in an instrument of conveyance and property owner's name;~~

~~(e) Anticipated type of material to be disposed of at the site;~~

~~(f) Name and phone number of individual responsible for operation and maintenance of the site;~~

~~(g) Projected use of land after completion~~

of the fill; and

(h) Any other information pertinent to the proposed operational plan.

Statutory Authority G.S. 130A-294.

.0507 OPERATIONAL REQUIREMENTS FOR DEMOLITION LANDFILLS (REPEALED)

Any person who maintains or operates a demolition landfill site shall maintain and operate the site in conformance with the following practices, unless otherwise specified in the permit:

(1) Operational plans shall be approved and followed as specified for the site;

(2) A site shall only accept those solid wastes which it is permitted to receive;

(3) Solid waste shall be restricted to the smallest area feasible and compacted as densely as practical into cells;

(4) Solid waste shall be covered as specified by the Division in the permit;

(5) Within six months after final termination of disposal operations at the site or a major part thereof or upon revocation of a permit, the area shall be covered with adequate soil cover, adequately sloped to allow surface water runoff in a controlled manner without excessive on-site erosion and off-site siltation, and seeded with native grasses or other suitable vegetation. The Division may require further action to be taken in order to correct any condition which is or may become injurious to the public health;

(6) If necessary, to prevent erosion, seeded slopes shall be covered with straw or similar material;

(7) Temporary seeding shall be utilized as necessary to control erosion;

(8) Adequate erosion control measures shall be practiced to prevent silt from leaving the site;

(9) The site shall be adequately secured, by means of gates, chains, berms, fences, etc., to prevent unauthorized entry except when a trained operator is on duty. An attendant shall be on duty at the site at all times while it is open for public use to assure compliance with operational requirements and to prevent entry of hazardous waste and other unacceptable waste onto the site;

(10) Surface water shall be diverted from the operational area and not allowed to be impounded over waste;

(11) Solid waste shall not be disposed of in water;

(12) Open burning of solid waste is prohibited; and

(13) Equipment shall be provided to control accidental fires or arrangements shall be made with the local fire protection agency to immediately provide fire fighting services when needed.

Statutory Authority G.S. 130A-294.

.0511 through .0559 RESERVED FOR FUTURE CODIFICATION

.0560 LAND CLEARING AND INERT DEBRIS (LCID) LANDFILLS

Rules .0560 - .0566 of Title 15A Subchapter 13B of the North Carolina Administrative Code (T15A.13B .0560 - .0566); have been adopted covering the siting, design, and permitting of land clearing and inert debris landfills, effective January 4, 1993.

Statutory Authority G.S. 130A-294.

.0561 DELEGATION OF AUTHORITY TO LOCAL GOVERNMENTS

Local governments wishing to administer Rules .0560 through .0566 or portions thereof, shall submit a proposed ordinance and implementation program to the Division for approval. Proposed ordinances and implementation programs shall meet or exceed the requirements of the administered Rules.

Statutory Authority G.S. 130A-294.

.0562 BENEFICIAL FILL

A permit is not required for beneficial fill activity that meets all of the following conditions:

(1) The fill material consists only of inert debris strictly limited to concrete, brick, concrete block, uncontaminated soil, rock, and gravel.

(2) The fill activity involves no excavation.

(3) The purpose of the fill activity is to

improve land use potential or other approved beneficial reuses.

(4) The fill activity is not exempt from, and must comply with, all other applicable Federal, State, and Local laws, ordinances, rules, and regulations, including but not limited to zoning restrictions, flood plain restrictions, wetland restrictions, mining regulations, sedimentation and erosion control regulations. Fill activity shall not contravene groundwater standards.

Statutory Authority G.S. 130A-294.

.0563 APPLICABILITY REQUIREMENTS FOR LAND CLEARING AND INERT DEBRIS (LCID) LANDFILLS

Management of land clearing and inert debris should be in accordance with the Division hierarchy for managing solid waste. Disposal in a landfill is considered to be the least desirable method of managing land clearing and inert debris. Where landfilling is necessary, the requirements of this Rule apply.

(1) Unless required by local ordinance, an individual permit is not required for Land Clearing and Inert Debris (LCID) landfills that meet all of the following conditions:

(a) The facility is to be operated for the disposal of land clearing waste, inert debris, untreated wood, and yard trash.

(b) The total disposal area is under two acres in size.

(c) The facility and practices comply with the siting criteria under Rule .0564, and operational requirements under Rule .0566.

(d) The fill activity is not exempt from, and must comply with all other Federal, State, or Local laws, ordinances, Rules, regulations, or orders, including but not limited to zoning restrictions, flood plain restrictions, wetland restrictions, sedimentation and erosion control requirements, and mining regulations.

(2) Where an individual permit is not required, the following applies:

(a) The owner of the land where the landfill is located must notify the Division on a prescribed form, duly signed, notarized, and recorded as per Rule .0563(2)(b). The operator of the landfill, if different from the land owner, shall also sign the notification form. A copy of a plat map of the site which includes delineating and identifying the area to be used for landfilling, prepared in accordance with G.S. 47-30, and recorded as per .0563(2)(b), shall also be submitted to the Division.

(b) The owner must file the prescribed notification form and plat for recordation in the Register of Deeds' Office. The Register of Deeds shall record the plat in the map book under the name of the land owner in the county or counties in which the land is located. The Register of Deeds shall index the notification and the recorded plat map in the grantor index under the name of the owner of the land in the county or counties in which the land is located. A copy of the recorded notification and plat, affixed with the Register's seal and the date, book and page number of recording shall be sent to the Division of Solid Waste Management.

(c) When the land on which the Land Clearing and Inert Debris Landfill is sold, leased, conveyed, or transferred in any manner, the deed or other instrument of transfer shall contain in the description section in no smaller type than that used in the body of the deed or instrument a statement that the property has been used as a Land Clearing and Inert Debris Landfill and a reference by book and page to the recordation of the notification.

(3) An individual permit is required for the construction and operation of a Land Clearing and Inert Debris (LCID) landfill when:

(a) The facility is to be operated for the disposal of land clearing waste, inert debris, untreated wood, yard trash, and similar waste types as approved by the Division.

(b) The total disposal area is greater than

two acres in size.

(4) Individual permits for land clearing and inert debris landfills shall be issued for not more than five years.

(5) Landfills that are currently permitted as demolition landfills are required to comply with the following:

(a) Only waste types as described in .0563(3)(a) may be accepted for disposal, as of the effective date of this Rule.

(b) Operations must be in compliance with .0566 as of the effective date of this Rule.

(c) Existing demolition landfills must comply with the siting criteria requirements of these Rules as of January 1, 1998.

Statutory Authority G.S. 130A-294.

.0564 SITING CRITERIA FOR LAND CLEARING AND INERT DEBRIS (LCID) LANDFILLS

The following siting criteria shall apply for Land Clearing and Inert Debris (LCID) landfills:

(1) Facilities or practices, if located in a floodplain, shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste, so as to pose a hazard to human life, wildlife, or land or water resources.

(2) Facilities or practices shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife.

(3) Facilities or practices shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17 which is 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 Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina 27605 where copies can be obtained at no cost.

(4) Facilities or practices shall not damage or destroy an archaeological or historical site.

(5) Facilities or practices shall not cause an adverse impact on a state park, recreation or scenic area, or any other lands included in the state nature and historic preserve.

(6) Facilities shall not be located in any wetland as defined in the Clean Water Act, Section 404(b).

(7) It must be shown that adequate suitable soils are available for cover, either from on or off site.

(8) Land Clearing and Inert Debris landfills shall meet the following surface and ground water requirements:

(a) Facilities or practices shall not cause a discharge of pollutants into waters of the state that is in violation of the requirements of the National Pollutant Discharge Elimination System (NPDES), under Section 402 of the Clean Water Act, as amended.

(b) Facilities or practices shall not cause a discharge of dredged materials or fill material into waters of the state that is in violation of the requirements under section 404 of the Clean Water Act, as amended.

(c) Facilities or practices shall not cause non-point source pollution of waters of the state that violates assigned water quality standards.

(d) Waste in landfills with a disposal area greater than two acres shall be placed a minimum of four feet above the seasonal high water table, except where an alternative separation is approved by the Division.

(e) Waste in landfills with a disposal area less than two acres shall be placed above the seasonal high water table.

(9) The facility shall meet the following minimum buffer requirements:

(a) 50 feet from the waste boundary to all surface waters of the state as defined in G.S. 143-212.

(b) 100 feet from the disposal area to property lines, residential dwellings, commercial or public buildings, and wells.

(c) Buffer requirements may be adjusted as necessary to insure adequate

protection of public health and the environment.

(10) The facility shall meet all requirements of any applicable zoning ordinance.

Statutory Authority G.S. 130A-294.

.0565 APPLICATION REQUIREMENTS FOR LAND CLEARING AND INERT DEBRIS (LCID) LANDFILLS

Five sets of plans, maps, and reports shall be required with each application. The seal of a professional engineer is required when submitting plans for a Land Clearing and Inert Debris (LCID) landfill.

(1) The following information is required in order to review and approve the siting of a Land Clearing and Inert Debris (LCID) landfill:

(a) An approval letter from the unit of local government having zoning authority over the area where the facility is to be located stating that the site meets all of the requirements of the local zoning ordinance, or that the site is not zoned.

(b) Location on a county road map.

(c) Information showing that the bottom elevation of the waste shall be four feet above the seasonal high water table. Seasonal high water table elevations shall be obtained from on site test borings, test pits, or from other geological or water table investigations, studies, or reports from the immediate area of the proposed facility.

(d) A written report indicating that the facility shall comply with all the requirements set forth under Rule .0564.

(e) A copy of the deed or other legal description of the site that would be sufficient as a description in an instrument of conveyance, showing property owner's name.

(f) Any other information pertinent to the suitability of the proposed facility.

(2) The following shall be provided on a map or aerial photograph with a scale of at least one inch equals four hundred feet showing the area within one-fourth mile of the site:

(a) Entire property or portion thereof owned or leased by the person providing the disposal site.

(b) Location of all homes, buildings, public or private utilities, roads, wells, watercourses, water or other impoundments, and any other applicable features or details.

(c) 100-year flood plain boundaries, if any.

(d) Wetland boundaries, if any.

(e) Historical or archaeological sites, if any.

(f) Park, scenic, or recreation area boundaries, if any.

(3) Development and design plans and details, at a scale of at least one inch equals one hundred feet with one inch equals forty feet preferred, and specifications containing the following information shall be submitted with the application for a proposed Land Clearing and Inert Debris (LCID) landfill:

(a) Property or site boundary, fully dimensioned with bearings and distances, tied to North Carolina grid coordinates where reasonably feasible.

(b) Easements and right-of-ways.

(c) Existing pertinent on site and adjacent structures such as houses, buildings, wells, roads and bridges, water and sewer utilities, septic fields, and storm drainage features.

(d) Proposed and existing roads, points of ingress and egress along with access control such as gates, fences, or berms.

(e) Buffer and set back lines along with the buffered boundary or feature.

(f) Springs, streams, creeks, rivers, ponds, and other waters and impoundments.

(g) Wetlands, if any.

(h) Boundary of the proposed waste area.

(i) Existing topography with contours at a minimum of five foot intervals. Where necessary, a smaller interval shall be utilized to clarify existing topographic conditions.

(j) Proposed excavation, grading, and

final contours at a minimum of five foot intervals. Where necessary, a smaller interval shall be utilized to clarify proposed grading. Excavation, grading, and fill material side slopes shall not exceed three to one (3:1).

(k) Where on site borrow for operational and final cover is proposed, indicate the borrow excavation and grading plan with contours at a minimum of five foot intervals. Where necessary, a smaller interval shall be utilized to clarify proposed grading.

(l) Proposed surface water control features and devices such as slope drains, storm water pipes, inlets, culverts, and channels.

(m) Information showing that the project meets the requirements of 15A NCAC 4, Sedimentation Control Rules.

(n) Location of test borings or test pits, if used to determine the seasonal high water table elevation, shall be shown on the plans.

(o) A minimum of two cross-sections, one each along each major axis, per operational area showing:

(i) Original elevations.

(ii) Proposed excavation.

(iii) Proposed final elevations.

(4) An operational plan addressing the requirements under Rule .0566 and containing the following information shall be submitted with the application for a proposed Land Clearing and Inert Debris (LCID) landfill:

(a) Name, address, and phone number of individual responsible for operation and maintenance of the facility.

(b) Projected use of the land after completion.

(c) Description of systematic usage of disposal area, operation, orderly development and closure of the landfill.

(d) Type, source, and quantity of waste to be accepted.

(e) An emergency contingency plan, including fire fighting procedures.

Statutory Authority G.S. 130A-294.

.0566 OPERATIONAL REQUIREMENTS FOR LAND CLEARING AND INERT DEBRIS (LCID) LANDFILLS

Land Clearing and Inert Debris (LCID) landfills shall meet the following operational requirements:

(1) Operational plans shall be approved and followed as specified for the facility.

(2) The facility shall only accept those solid wastes which it is permitted to receive.

(3) Solid waste shall be restricted to the smallest area feasible and compacted as densely as practical into cells.

(4) Adequate soil cover shall be applied monthly, or when the active area reaches one acre in size, whichever occurs first.

(5) 120 calendar days after completion of any phase of disposal operations, or upon revocation of a permit, the disposal area shall be covered with a minimum of one foot of suitable soil cover sloped to allow surface water runoff in a controlled manner. The Division may require further action in order to correct any condition which is or may become injurious to the public health, or a nuisance to the community.

(6) Adequate erosion control measures, structures, or devices shall be utilized to prevent silt from leaving the site and to prevent excessive on site erosion.

(7) Provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days upon completion of any phase of landfill development.

(8) The facility shall be adequately secured by means of gates, chains, berms, fences, etc. to prevent unauthorized access except when a trained operator is on duty. An attendant shall be on duty at all times while the landfill is open for public use to assure compliance with operational requirements and to prevent acceptance of unauthorized wastes.

(9) Access roads shall be of all-weather construction and properly maintained.

(10) Surface water shall be diverted from the working face and shall not be impounded over waste.

(11) Solid waste shall not be disposed of in water.

(12) Open burning of solid waste is prohibited.

(13) The concentration of explosive gases generated by the facility shall not exceed:

(a) Twenty-five percent of the lower explosive limit for the gases in facility structures.

(b) The lower explosive limit for the gases at the property boundary.

(14) Leachate shall be properly managed on site through the use of current best management practices.

(15) Should the Division deem it necessary, ground water or surface water monitoring, or both, may be required as provided for under Rules .0601 and .0602 of this Subchapter.

(16) A sign shall be posted at the facility entrance showing the contact name and number in case of an emergency and the permit number. The permit number requirement is not applicable for facilities not requiring an individual permit.

Statutory Authority G.S. 130A-294.

* * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the Governor's Waste Management Board intends to adopt rules cited as 15A NCAC 14C .0001-.0009.*

***The** proposed effective date of this action is January 4, 1993.*

***The** public hearing will be conducted at 1:00 p.m. on October 15, 1992 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salibury Street, Raleigh, NC 27611.*

***Reason** for Proposed Action: To convert the Governor's Waste Management Board's Community Assistance Grant (CAG) guidance to formal rules of procedure for awarding CAG's.*

***Comment** Procedures: Interested persons may contact Dr. Linda W. Little at (919) 733-9020 for more information regarding these rules. Written comments will be received for 30 days after publication of this notice. The request must be submitted to: Linda Little, GWMB, P.O. Box 27687, Raleigh, NC 27611-7687. Mailed written comments must be received no later than 5:00 p.m. on October 15, 1992.*

CHAPTER 14 - GOVERNOR'S WASTE MANAGEMENT BOARD

SUBCHAPTER 14C - RULES OF PROCEDURE FOR AWARDING COMMUNITY ASSISTANCE GRANTS

.0001 SCOPE

This Section sets forth the rules of practice for the award of community assistance grants by the Governor's Waste Management Board.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0002 DEFINITIONS

As used in these Rules:

(1) "Board" shall mean the Governor's Waste Management Board.

(2) "Facility" shall mean a low-level radioactive waste facility as defined in G.S. 104E-5(9b) or a hazardous waste facility as permitted under G.S. 130A-290(a)(9).

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0003 WHO MAY APPLY

Requests for community assistance grants may be made to the Board by North Carolina local governments, other public institutions and agencies, or private corporations established pursuant to Chapter 55A of the North Carolina General Statutes. Individuals are not eligible for grants.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0004 PROJECTS ELIGIBLE FOR GRANT FUNDS

(a) To be eligible for grant funds, projects must be consistent with the Board's functions of:

(1) Promoting public education and public

involvement in the decision-making process for the siting and permitting of proposed waste management facilities; and

(2) Assisting localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site.

(b) Priority will be given to projects which promote information exchange among a developer, the state, and local citizens concerning a proposed waste management facility or to study the local impacts related to proposed waste management facilities.

(c) Subject to availability of funds, grants may be awarded for projects which provide information on waste management issues to the citizens of North Carolina to encourage participation in waste management decision-making in non-sited communities.

(d) Project funds shall not be used for litigation expenses.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0005 CONDITIONS FOR GRANTS

(a) Local governments seeking grants in communities where facilities are sited or are proposed to be sited shall establish a Citizen Involvement Committee on Waste Management to provide a vehicle for public involvement in advising local government on how the money should be spent and in concurrent program development. The local government shall make its best efforts to assure that the committee appointed is balanced, representing all identified interests in the community fairly. In evaluating a proposal for a grant, the Board will review the composition of the Citizen Involvement Committee on Waste Management to ensure appropriate efforts have been made to achieve balanced representation.

(b) A 20 percent cash or in-kind contribution must be made by the grantee.

(c) The Board will not reimburse expenses incurred on a project prior to the date of the Board's approval of a contract. Upon signing a contract with the Board, the grantee will be reimbursed quarterly for expenses after submission of invoices and receipts for expenditures.

(d) At minimum, an interim report on the funded activities must be provided to the Board with the final expenditure reimbursement request or at the end of the contract, whichever comes first. The Board may require additional reports on funded activities. The contract shall set forth the dates on which all such reports are due. A final report must be submitted within 60 days of the completed project. Grantees shall comply with G.S. 147-58 regarding audits.

(e) Any consultants employed with any grant funds shall be approved by the Board for objectivity and proficiency in the selected area for which they are consulted.

(f) All billings must be submitted within six weeks after the termination date of the contract or by June 10 of the fiscal year in which the contract terminates, whichever is earlier. Billings not submitted by June 10 will not be paid.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0006 GRANT PROPOSAL FORMAT AND CONTENT

(a) General Requirements--Grant proposals shall be brief and concise, using the form available from the Board's office. One original copy, suitable for reproduction, shall be submitted to the Board. To facilitate uniform review, proposals shall include the following:

(1) A letter of transmittal, identifying the responsible party, summarizing the project, and signed by the authorized local government, corporate, or agency official;

(2) A statement of need stating the specific nature of the waste management problem being addressed and why improvements are needed;

(3) A description of the proposed project, listing the project's goals and objectives and describing the proposed project, stating the proposed steps or tasks, providing a concise statement of the expected results and potential benefits of the project, and describing the mechanism to determine the effectiveness and success of the project;

(4) Sufficient information to demonstrate the ability of the applicant to perform the project in a timely manner;

(5) A statement of project costs, including a detailed line item budget outlining how the money will be spent and accounting for the required cash or in-kind 20 percent in matching funds. (A budget form may be obtained from the Board's office.); and

(6) A timeline or chart describing the

sequence of tasks and dates for completion.

(b) Specific requirements for grants to communities where facilities are sited or are proposed.--Grant proposals in communities where facilities are sited or are proposed shall satisfy the general requirements set forth in Paragraph (a) of this Rule, shall address local issues and concerns, and shall demonstrate a need for the proposed project. If applicable, the proposal must include sufficient information to demonstrate the efforts made to achieve balanced representation in compliance with Rule .0005(a) of this Section. Projects must be specific, citing detailed areas of investigation and expected results. Projects shall address one or more of the following objectives:

(1) To independently review the permit or license for a proposed waste management facility or studies relating to the various elements considered in the permit or license application;

(2) To study the potential local or regional environmental or socioeconomic impacts associated with a proposed waste management facility;

(3) To study and clarify the complex legal issues involving regulation and operation of a proposed waste management facility;

(4) To determine the local costs and benefits of a proposed facility;

(5) To promote public education, information, and participation in the permitting or licensing process; and

(6) To develop negotiation strategies among facility developers, state agencies, and the public.

(c) Requirements for grants to communities for waste management education - Grant proposals for communities for general education about hazardous or low-level radioactive waste management shall address local issues and concerns and demonstrate a need for the proposed project.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0007 RECEIPT AND REVIEW OF PROPOSALS

(a) Grant proposals from communities in which a waste management facility is sited or is proposed to be sited may be submitted at any time.

(b) Proposals from communities for general education grants about hazardous or low-level radioactive waste must be received by November 1 of each year. Proposals shall be reviewed by the Board and subsequently denied, approved, or approved with conditions. Prior to approval of any grant request, the Board will seek review by other state agencies which it deems appropriate.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0008 CRITERIA FOR FUNDING

Grant proposals shall be evaluated using the following criteria:

(1) Consistency of project's stated goals and objectives with the intent of the Board's community assistance grants program;

(2) Project's appropriateness in relation to the Board's mandated responsibilities;

(3) Project's applicability to other groups or areas of the state;

(4) Project's mechanism to determine the effectiveness and success of the project;

(5) Project's timeline;

(6) Project's ability to make a unique contribution on an issue;

(7) Appropriateness of the funding request in relation to the project; and

(8) Ability of the applicant to perform the project in a satisfactory manner.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

.0009 TERMINATION OR REVOCATION

Failure to abide by the rules or terms of the contract may result in termination of the contract and any further obligations of the Board.

Statutory Authority G.S. 143B-285.13(5); 143B-285.13(14); 143B-285.13(15).

* * * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR-Commission for Health Services intends to amend rule cited as 15A NCAC 16A .0401, repeal rules cited as 15A NCAC 16A .0402 - .0412 and adopted rules cited as 15A NCAC 16A .0413 - .0427.*

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted at the time,dates,and locations shown below:

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

October 13, 1992
7:30 p.m.
Room 204 Buncombe County Courthouse
60 Court Plaza
Asheville, NC
(Main entrance locked at night; use ground floor side entrance on College Street)

October 19, 1992
1:30 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, NC

Reason for Proposed Action: To amend and adopt cancer control program rules for implementation of the Comprehensive Breast and Cervical Cancer Control Project, a multi-year cancer screening, follow-up and surveillance initiative funded under a cooperative agreement with the Centers for Disease Control.

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 3 days prior to the public hearing. Oral presentation lengths may 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).

Editor's Note: These rules have been filed as temporary rules to be effective on September 18, 1992 for a period of 180 days or until the permanent rule is effective, whichever is sooner.

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .0400 - CANCER PROGRAM

.0401 DEFINITIONS FOR BREAST AND CERVICAL CANCER SERVICES

(a) The Comprehensive Breast and Cervical Cancer Control Program provides:

(1) breast cancer screening and follow-up services; or

(2) cervical cancer screening and follow-up services;

(b)~~(a)~~ The cancer program provides financial assistance for the medical care of indigent patients requiring inpatient or outpatient:

(1) diagnostic services for cancer; or

(2) treatment services for cancer.

(c) The following definitions shall apply throughout this Section:

(1) "breast cancer screening services" means a clinical breast examination; a mammogram in accordance with the American Cancer Society Guidelines for the Cancer-related Check-up: Recommendations; instruction in breast self-examination; and documentation of screening test results in the patient's medical record and notification to the patient of the screening test results. The American Society Guidelines for the Cancer-related Check-up: Recommendations is 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 Adult Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from the Division of Adult Health, Department of Environment, Health, and Natural Resources, PO Box 27687, Raleigh, North Carolina 27611-7687 at a cost set by that office.

(2) "cervical cancer screening services" means a pelvic examination; a Pap test in accordance with the American Society Guidelines for the cancer-related check-up: Recommendations and documentation of the screening test results in the patient's medical record and notification to the patient of the screening test results.

(3) "follow-up for breast cancer screening services" means a repeat mammogram and, when medically appropriate, a diagnostic mammogram.

(4) "follow-up for cervical cancer screening services" means a repeat Pap smear and, when medically appropriate, colposcopy directed biopsy.

(d)~~(b)~~ The cancer program and The Comprehensive Breast and Cervical Cancer Control Program are ~~is~~ administered by the ~~Health Care Section,~~ Division of Adult Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, NC 27611-7687.

Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.

.0402 DIAGNOSTIC SERVICES

~~(a) Financial assistance shall be provided for primary diagnostic services, up to two visits on an outpatient basis or up to one day on an inpatient basis per year for each patient, subject to determination of patient eligibility and availability of funds. The actual number of outpatient visits or inpatient days authorized for reimbursement shall be determined by the physician consultant to the program, based on the medical condition of the patient, the procedure to be performed, and a reasonable recovery from the procedure.~~

~~(1) Applications for inpatient diagnostic services will be considered only when accompanied by a written statement from the attending physician listing:~~

~~(A) the medical reason inpatient services are required, and~~

~~(B) the medical reason such services cannot be performed on an outpatient basis.~~

~~(2) The statement in (a)(1) of this Rule may be in the form of workup protocol, clinical notes, medical history, or other medical document in lieu of a separately prepared statement; however, any such documentation must give adequate information to justify an inpatient admission, and must bear the name of the attending physician.~~

~~(3) The statement in (a)(1) of this Rule shall be reviewed by the physician consultant to the cancer program who shall assess the medical need for inpatient diagnostic services.~~

~~(4) If the physician consultant to the cancer program does not recommend inpatient services for a patient, the cancer program shall only authorize reimbursement for outpatient diagnostic services, and only to the extent recommended by the physician consultant.~~

~~(b) Bills for authorized diagnostic services will be paid, but the cancer program shall not pay for any services rendered that are not authorized.~~

~~(c) The following diagnostic procedures and accompanying biopsy, when appropriate, will be covered by the cancer program on an outpatient basis in a physician's office, emergency, or outpatient department whenever possible. These procedures shall be performed only by a physician and reimbursement only to those physicians listed on a roster with the cancer control program. Requests for inclusion on the roster shall be sent to the cancer control program at the principal address of the Division and shall include an indication of the availability of equipment necessary to complete the procedure. The letter must be signed by the physician, or by each physician requesting rostering in a group practice. Rosterable procedures include:~~

~~(1) bronchoscopy,~~

~~(2) colonoscopy,~~

~~(3) colposcopy,~~

~~(4) cryosurgery of the cervix,~~

~~(5) cystoscopy,~~

~~(6) esophagogastroscopy,~~

~~(7) rectosigmoidoscopy.~~

~~(d) Any diagnostic procedure that is medically indicated and not otherwise available at a local health department is sponsorable without a rostering requirement, except for those diagnostic~~

procedures specifically stated in (c) of this Rule.

(e) Sputum cytology, urine cytology and biopsy examination must be done by a pathologist.

Statutory Authority G.S. 130A-220.

.0403 TREATMENT SERVICES

(a) Financial assistance is provided for treatment services, up to 8 days of inpatient service or up to 16 outpatient visits per year for each patient, subject to determination of patient eligibility and availability of funds. The actual number of inpatient days or outpatient visits authorized for reimbursement shall be determined by the physician consultant to the program, based on the medical condition of the patient, the procedure to be performed, and a reasonable recovery from the procedure.

(b) Bills for authorized treatment services will be paid, but the cancer program shall not pay for any services rendered that are not authorized.

Statutory Authority G.S. 130A-205.

.0404 COVERED SERVICES

(a) An eligible patient may be sponsored for the treatment of cancer by surgery, radiation therapy, chemotherapy, or immunotherapy.

(b) Physical therapy following surgery, where medically indicated, is an approved treatment service on an inpatient and outpatient basis. Hospitals and physicians are encouraged to utilize home health agencies for this service whenever possible. Advance application should be made by local home health agencies for sponsorship of this service.

(c) Service Restrictions:

(1) The Cancer program will not sponsor palliative treatment of any kind.

(2) The Cancer program will not pay for blood, but may cover the cost of blood administration.

(3) Dental surgery is not sponsored, but nondental oral surgery performed for the diagnosis or treatment of cancer is sponsorable.

(4) The Cancer program shall not sponsor late discharge fees, transportation, telephone calls, or other miscellaneous charges while the patient is receiving services.

(5) Cosmetic surgery is not sponsored unless performed in conjunction with the removal of cancerous tissue.

(6) Ancillary diagnostic studies shall be authorized only when they are directly related to the confirmation of a diagnosis of cancer, as determined by the physician consultant to the program.

(7) The program shall not authorize reimbursement for routine follow-up office visits after completion of a definitive course of diagnostic studies or treatment. However, the program may consider a request for the definitive diagnosis or treatment of a recurrent disease.

(8) Colposcopy must be performed on all sponsorable patients to determine appropriate therapy for cervical intraepithelial neoplasia. Local cervical therapy must be used when colposcopic findings confirm this as appropriate. Diagnostic or therapeutic conizations of the cervix will be approved only after colposcopic findings indicate this is absolutely necessary, and only on an outpatient basis unless extreme circumstances are documented. Conization of the cervix will be sponsored if one or more of the following conditions are met and documented:

(A) Unsatisfactory colposcopy due to the lesion extending into the endocervical canal;

(B) Positive endocervical curretage; or

(C) Cytologic or histologic suspicion for invasive cancer.

Hysterectomy will not be sponsored as a primary therapy for cervical intraepithelial neoplasia.

(d) Chemotherapy may be authorized for testicular carcinoma, Hodgkin's disease, histiocytic lymphoma, choriocarcinoma in women, Wilm's Tumor, and breast cancer. Other conditions will be evaluated on an individual basis. All requests for chemotherapy shall be accompanied by a protocol describing the treatment being requested.

(e) Overnight accommodations in a residential care facility (motel, home, boarding house, ambulatory care facility, etc.) and meals for patients receiving cancer diagnostic or treatment services on an outpatient basis shall be sponsored by the cancer program under the following conditions:

(1) The patient's residence must be at least 50 miles from the medical facility providing the outpatient services.

(2) The residential care facility must be approved for participation by the cancer

program.

(3) The patient must meet all medical eligibility requirements as stated in Rule .0406, and all financial eligibility requirements as stated in 15A NCAC 24A.

(4) Reimbursement for actual expenses shall not exceed the maximum allowable subsistence (lodging and meals) for state employees in the course of their official duties, based on those rates of reimbursement in effect at the time of the authorization of residential care by the cancer program.

(5) The cancer program shall not reimburse for any incidental expenses incurred as a result of the use of a residential care facility, including transportation, telephone, etc.

(6) Cancer program authorization of residential care shall be limited to the maximum number of days of coverage as provided by Rules .0402(a) or .0403(a) of this Subchapter, except that the cancer program shall sponsor continuous (weekend) coverage of residential care during the period in which outpatient services are being rendered, provided that when residential care begins or ends on a Saturday or Sunday, reimbursement for those weekend days shall not be sponsored.

(7) Applications for authorization requesting residential care shall state the number of days such residential care which will be required, as well as the dates of service during which outpatient diagnostic or treatment services shall be rendered.

Statutory Authority G.S. 130A-205.

.0405 FINANCIAL ELIGIBILITY

Financial eligibility for the cancer program shall be determined in accordance with rules found in 10 NCAC 4C.

Statutory Authority G.S. 130A-205.

.0406 MEDICAL ELIGIBILITY

(a) To be medically eligible for diagnostic authorization, a patient must have a condition strongly suspicious of cancer which requires outpatient or inpatient services to confirm the preliminary primary diagnosis. The program shall authorize only those services deemed medically necessary to confirm a preliminary primary diagnosis as determined by the physician consultant to the program.

(b) Cervical intraepithelial neoplasia, defined as any condition suggestive of preinvasive cervical cancer (mild dysplasia, moderate dysplasia, severe dysplasia, or carcinoma in situ), is suspicious of cancer or its precursors and may be sponsored by the cancer program on the basis of cytologic or histologic evidence of cervical intraepithelial neoplasia.

(c) Before treatment services can be authorized by the cancer program, all cases must be proven cancerous (positive pathology report).

(d) Before the cancer program can authorize treatment services, the attending physician must certify that there is a reasonable chance the cancer can be cured or arrested.

(e) All requests for treatment shall be reviewed by the physician consultant to the program. Such requests shall be authorized only after a determination by the physician consultant that there is a reasonable chance of cure or arrest of the disease and that the services to be provided are medically necessary and reasonable. In making this determination, the physician consultant may confer with the patient's attending physician, members of the Cancer Committee of the North Carolina Medical Society, and other physicians trained in the treatment of cancer.

Statutory Authority G.S. 130A-205.

.0407 PROVIDERS PARTICIPATING IN THE CANCER PROGRAM

(a) To be eligible for participation in the cancer program, a hospital must have facilities to treat cancer with surgery, radiation, and radium. Hospitals with only two treatment modes but with an established referral system for the third mode are also eligible. Interim approval for participation may be granted by the head of the cancer program, with final approval pending review by the cancer committee of the North Carolina Medical Society. Services may also be provided in a physician's office or other outpatient facility.

(b) A patient may receive services in the hospital or physician's office of his choice provided that hospitals services are rendered in a hospital that has been approved in accordance with Paragraph (a) of this Rule. A list of such hospitals may be obtained from the head of the cancer

program at the principal address of the Division of Adult Health.

(c) When a request for authorization is approved, a copy of the authorization will be returned to the provider of record (hospital or physician whose name appears on the request for authorization). The provider of record shall forward copies of the authorization to all other providers of those services listed in the request for authorization.

(d) The provider of record shall inform all other known providers of services listed in the request for authorization of any action taken by the cancer program or the office of purchase of care services including the authorization or denial of the request, issuance of case and authorization numbers, billing instructions, or any other communication from or action taken by the Division of Adult Health concerning cancer program reimbursement.

(e) All claims for authorized services rendered shall be processed in accordance with rules found in 15A NCAC 24A.

(f) Assistant surgeon's fees will be paid on those authorized cases in which the procedures cannot be performed without surgical assistance. The bill for the assistant surgeon's fee should be submitted jointly with the surgeon's bill.

(g) Claims for payment should be sent to the office of purchase of care services at the principal address of the Department.

Statutory Authority G.S. 130A-205.

.0408 PATIENT APPLICATION PROCESS

(a) Application forms approved by the Division may be requested by the provider from the cancer program at the principal address of the Division.

(b) The authorization and financial certification forms are to be completed in accordance with the rules found in 15A NCAC 24A and the directions printed on the forms.

(c) The authorization request form must be received with all pertinent information completed. All request forms that are received that are incorrect or incomplete will be returned unauthorized to the provider of record for correction or completion. All requests for authorization must contain the following information:

(1) Requests for diagnosis must contain all patient biographical information; where services are to be given and date of first service; preliminary primary diagnosis; services to be rendered; medical justification if inpatient services are being requested; and attending physician name, office address, telephone number and signature.

(2) Requests for treatment services must contain all patient biographical information; where services are to be given and date of first service; pathological diagnosis and stage of disease; five year survival rate of disease and declaration that the disease has a reasonable chance of cure; services to be rendered; and attending physician name, office address, telephone number, and signature.

(d) Separate applications for authorization are necessary for diagnosis or treatment.

(e) In cases in which it is difficult to determine whether the services to be rendered are diagnostic or treatment, such as the removal of an entire tumor for biopsy, an application for diagnostic services should be submitted first.

(f) When treatment is being requested, a copy of a positive pathology report stating the cytologic or histologic presence of cancer, and dated no more than 30 days prior to initiation of the requested services, must accompany the request for authorization. The program has the right to request additional medical documents that are deemed necessary for a proper determination of medical eligibility prior to authorization. The patient signature on the financial eligibility form shall serve as a valid patient release for such medical information to be submitted to the program.

(g) The original completed forms, and copies of any medical documents, should be forwarded to the cancer program. In accordance with the rules found in 15A NCAC 24A, the cancer program will inform the provider of record whether the application is authorized. Providers are encouraged to retain copies of all materials sent to the cancer program pending authorization or denial.

(h) For emergency authorization, call (919) 733-7081. Emergency admissions are rarely approved and only for extreme causes. Interim approval can be granted over the telephone provided the patient meets all eligibility requirements. However, the written application must be reviewed before final authorization can be granted. Information required during a telephone request for emergency authorization will include, at least, the following information:

(1) patient biographical information.

(2) where services are to be provided,

(3) nature of emergency,
(4) services being requested,
(5) name and telephone number of caller,
(6) name and telephone number of admitting physician.

All telephone requests for emergency authorization shall be reviewed by and receive concurrence from the physician consultant to the cancer program after a telephone conference with the admitting physician. If a request for an emergency authorization is not approved, the cancer program will consider authorization on a routine basis. If the information that is communicated in the telephone request is not substantiated in the written authorization request, the emergency authorization shall immediately be cancelled.

(i) The cancer program is not responsible for any case which has not been requested and authorized, nor for any approved services that are not specifically requested and authorized.

(j) The program will not authorize services that are submitted on authorization forms that are not currently in use; all requests submitted on outdated or invalid forms will be returned unauthorized to the provider of record, accompanied by a supply of current forms for resubmission of the request and submission of future requests.

Statutory Authority G.S. 130A-205.

.0409 REPORTING OF CANCER

Every physician shall report cancers as required by G.S. 130A-209, in the manner prescribed by 15A NCAC 26.

Statutory Authority G.S. 130A-209.

.0410 CANCER REGISTRY

Rules governing the administration of the central cancer registry are found in 15A NCAC 26.

Statutory Authority G.S. 130A-205.

.0411 CONFIDENTIALITY

(a) The clinical records of individual patients submitted to the cancer control reimbursement program shall be confidential and shall not be public records open to inspection. Only personnel authorized by the head of the cancer control program and other individuals authorized by the head of the cancer control program or his designee pursuant to Paragraph (e) of this Rule shall have access to the records.

(b) The information contained in the clinical records of individual patients may be transferred to computer compatible means of data entry. Only personnel authorized by the head of the cancer control program to use computers, terminals, programs, data files, and other computer hardware or software, involved in maintaining patient information shall have access to them.

(c) Clinical information in possession of the cancer control reimbursement program may be disclosed in the following circumstances when authorized by the head of the cancer control program or his designee:

(1) A patient shall have access to review or obtain copies of his records;
(2) A person who submits a valid authorization for release shall have access to review or obtain copies of the information described in the authorization for release;
(3) Information may be disclosed in response to a valid court order.

(d) The cancer control program may release statistical information and data based on client information so long as no information identifying individual patients is released.

(e) The head of the cancer control program shall make known to all individuals with access to patient information submitted to the cancer control program the privileged and confidential nature of such information.

Statutory Authority G.S. 130A-205.

.0412 REIMBURSEMENT RATES

(a) The cancer control reimbursement program shall reimburse providers of authorized services to eligible patients as follows:

(1) Inpatient hospitalization services shall be reimbursed at the medicaid rate in effect at the time the claim is received by the Division. When the medicaid per diem rate changes to the "excess days" per diem rate as provided in the medicaid reimbursement plan in effect at the time the claim is received by the Division, the cancer program shall reimburse at the "excess days" rate.
(2) Professional services, outpatient services, and all other services not covered by Subparagraph (a)(1) of this Rule shall be reimbursed at the medicaid rate in effect at the time the claim is received by the Division.
(3) Services for which the medicaid program does not have a reimbursement rate shall be reimbursed according to a

~~schedule of payments developed by the Division. Copies of this schedule may be inspected at or obtained from the Office of Medical Care Services.~~

~~(b) If a provider has accepted partial or total payment from the cancer program for particular services, the Division's reimbursement rate for those services shall be considered payment in full for those authorized services.~~

Statutory Authority G.S. 130A-205.

.0413 DIAGNOSTIC SERVICES

(a) Financial assistance shall be provided for primary diagnostic services, up to two visits on an outpatient basis or up to one day on an inpatient basis per year for each patient, subject to determination of patient eligibility and availability of funds. The actual number of outpatient visits or inpatient days authorized for reimbursement shall be determined by the physician consultant to the program, based on the medical condition of the patient, the procedure to be performed, and a reasonable recovery from the procedure.

(1) Applications for inpatient diagnostic services will be considered only when accompanied by a written statement from the attending physician listing:

(A) the medical reason inpatient services are required, and

(B) the medical reason such services cannot be performed on an outpatient basis.

(2) The statement in Subparagraph (a)(1) of this Rule may be in the form of workup protocol, clinical notes, medical history, or other medical document in lieu of a separately prepared statement; however, any such documentation must give adequate information to justify an inpatient admission, and must bear the name of the attending physician.

(3) The statement in Subparagraph (a)(1) of this Rule shall be reviewed by the physician consultant to the cancer program who shall assess the medical need for inpatient diagnostic services.

(4) If the physician consultant to the cancer program does not recommend inpatient services for a patient, the cancer program shall only authorize reimbursement for outpatient diagnostic services, and only to the extent recommended by the physician consultant.

(b) Bills for authorized diagnostic services will be paid, but the cancer program shall not pay for any services rendered that are not authorized.

(c) The following diagnostic procedures and accompanying biopsy, when appropriate, will be covered by the cancer program on an outpatient basis in a physician's office, emergency, or outpatient department whenever possible. These procedures shall be performed only by a physician and reimbursement only to those physicians listed on a roster with the cancer control program. Requests for inclusion on the roster shall be sent to the cancer control program at the principal address of the Division and shall include an indication of the availability of equipment necessary to complete the procedure. The letter must be signed by the physician, or by each physician requesting rostering in a group practice. Rosterable procedures include:

(1) bronchoscopy,
(2) colonoscopy,
(3) colposcopy,
(4) cryosurgery of the cervix,
(5) cystoscopy,
(6) esophagogastroscopy,
(7) rectosigmoidoscopy.

(d) Any diagnostic procedure that is medically indicated and not otherwise available at a local health department is sponsorable without a rostering requirement, except for those diagnostic procedures specifically stated in Paragraph (c) of this Rule.

(e) Sputum cytology, urine cytology and biopsy examination must be done by a pathologist.

Statutory Authority G.S. 130A-220.

.0414 TREATMENT SERVICES

(a) Financial assistance is provided for treatment services, up to 8 days of inpatient service or up to 16 outpatient visits per year for each patient, subject to determination of patient eligibility and availability of funds. The actual number of inpatient days or outpatient visits authorized for reimbursement shall be determined by the physician consultant to the program, based on the medical condition of the patient, the procedure to be performed, and a reasonable recovery from the procedure.

(b) Bills for authorized treatment services will be paid, but the cancer program shall not pay for any services rendered that are not authorized.

Statutory Authority G.S. 130A-205.

.0415 COVERED SERVICES

(a) An eligible patient may be covered for the following screening and follow-up services:

(1) breast cancer screening services;

(2) cervical cancer screening services;

(3) follow-up for breast cancer screening services; and

(4) follow-up for cervical cancer screening services.

(b) An eligible patient may be sponsored for the treatment of cancer by surgery, radiation therapy, chemotherapy, or immunotherapy.

(c) Physical therapy following surgery, where medically indicated, is an approved treatment service on an inpatient and outpatient basis. Hospitals and physicians are encouraged to utilize home health agencies for this service whenever possible. Advance application should be made by local home health agencies for sponsorship of this service.

(d) Service Restrictions:

(1) The Cancer program will not sponsor palliative treatment of any kind.

(2) The Cancer program will not pay for blood, but may cover the cost of blood administration.

(3) Dental surgery is not sponsored, but nondental oral surgery performed for the diagnosis or treatment of cancer is sponsorable.

(4) The Cancer program shall not sponsor late discharge fees, transportation, telephone calls, or other miscellaneous charges while the patient is receiving services.

(5) Cosmetic surgery is not sponsored unless performed in conjunction with the removal of cancerous tissue.

(6) Ancillary diagnostic studies shall be authorized only when they are directly related to the confirmation of a diagnosis of cancer, as determined by the physician consultant to the program.

(7) The program shall not authorize reimbursement for routine follow-up office visits after completion of a definitive course of diagnostic studies or treatment. However, the program may consider a request for the definitive diagnosis or treatment of a recurrent disease.

(8) Colposcopy must be performed on all sponsorable patients to determine appropriate therapy for cervical intraepithelial neoplasia. Local cervical therapy must be used when colposcopic findings confirm this as appropriate. Diagnostic or therapeutic conizations of the cervix will be approved only after colposcopic findings indicate this is absolutely necessary, and only on an outpatient basis unless extreme circumstances are documented. Conization of the cervix will be sponsored if one or more of the following conditions are met and documented:

(A) Unsatisfactory colposcopy due to the lesion extending into the endocervical canal;

(B) Positive endocervical curretage; or

(C) Cytologic or histologic suspicion for invasive cancer. Hysterectomy will not be sponsored as a primary therapy for cervical intraepithelial neoplasia.

(e) Chemotherapy may be authorized for testicular carcinoma, Hodgkin's disease, histiocytic lymphoma, choriocarcinoma in women, Wilm's Tumor, and breast cancer. Other conditions will be evaluated on an individual basis. All requests for chemotherapy shall be accompanied by a protocol describing the treatment being requested.

(f) Overnight accommodations in a residential care facility (motel, home, boarding house, ambulatory care facility, etc.) and meals for patients receiving cancer diagnostic or treatment services on an outpatient basis shall be sponsored by the cancer program under the following conditions:

(1) The patient's residence must be at least 50 miles from the medical facility providing the outpatient services.

(2) The residential care facility must be approved for participation by the cancer program.

(3) The patient must meet all medical eligibility requirements as stated in Rule .0417, and all financial eligibility requirements as stated in 15A NCAC 24A.

(4) Reimbursement for actual expenses shall not exceed the maximum allowable subsistence (lodging and meals) for state employees in the course of their official duties, based on those rates of reimbursement in effect at the time of the authorization of residential care by the cancer program.

(5) The cancer program shall not reimburse for any incidental expenses incurred as

a result of the use of a residential care facility, including transportation, telephone, etc.

(6) Cancer program authorization of residential care shall be limited to the maximum number of days of coverage as provided by Rules .0413(a) or .0414(a) of this Subchapter, except that the cancer program shall sponsor continuous (weekend) coverage of residential care during the period in which outpatient services are being rendered, provided that when residential care begins or ends on a Saturday or Sunday, reimbursement for those weekend days shall not be sponsored.

(7) Applications for authorization requesting residential care shall state the number of days such residential care which will be required, as well as the dates of service during which outpatient diagnostic or treatment services shall be rendered.

Statutory Authority G.S. 130A -205; Sec. 310 & 317 Public Health Services Act, as amended.

.0416 FINANCIAL ELIGIBILITY

(a) Patients who are at or below 200 percent of the Federal Poverty Guidelines in effect on July 1 of each fiscal year are financially eligible to receive services specified at Rule .0415(a). The Federal Poverty Guidelines are incorporated by reference including subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Comprehensive Breast and Cervical Cancer Program, Division of Adult Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies of the Federal Poverty Guidelines may be obtained at no cost from the Comprehensive Breast and Cervical Cancer Control Program, Division of Adult Health, PO Box 27687, Raleigh, North Carolina 27611-7687.

(b) Financial eligibility for the Comprehensive Breast and Cervical Cancer Control Program shall be determined by participating providers by a signed declaration of gross income and family size by the patient or a person responsible for the patient.

(c) Once a patient is determined to be financially eligible for the Comprehensive Breast and Cervical Cancer Control Program, that eligibility shall continue for the duration of the breast and cervical cancer screening and follow-up services, up to a maximum of one year.

(d) The participating provider shall document each financial eligibility determination for breast and cervical cancer screening and follow-up services on a form provided by the Comprehensive Breast and Cervical Cancer Control Program.

(e) The participating provider is authorized to require substantiating documentation when making financial eligibility determination.

(f) Financial eligibility for the cancer program shall be determined in accordance with rules found in 15A NCAC 24A.

Statutory Authority G.S. 130A-205; Sec. 301 & 317, Public Health Services Act, as amended.

.0417 MEDICAL ELIGIBILITY

(a) Women who are age 40 or older are eligible to receive breast cancer screening and follow-up services.

(b) Women who are age 18 or older, who are or have been sexually active are eligible to receive cervical cancer screening and follow-up services.

(c) To be medically eligible for diagnostic authorization, a patient must have a condition strongly suspicious of cancer which requires outpatient or inpatient services to confirm the preliminary primary diagnosis. The program shall authorize only those services deemed medically necessary to confirm a preliminary primary diagnosis as determined by the physician consultant to the program.

(d) Cervical intraepithelial neoplasia, defined as any condition suggestive of preinvasive cervical cancer (mild dysplasia, moderate dysplasia, severe dysplasia, or carcinoma in situ), is suspicious of cancer or its precursors and may be sponsored by the cancer program on the basis of cytologic or histologic evidence of cervical intraepithelial neoplasia.

(e) Before treatment services can be authorized by the cancer program, all cases must be proven cancerous (positive pathology report).

(f) Before the cancer program can authorize treatment services, the attending physician must certify that there is a reasonable chance the cancer can be cured or arrested.

(g) All requests for treatment shall be reviewed by the physician consultant to the program. Such requests shall be authorized only after a determination by the physician consultant that there is a reasonable chance of cure or arrest of the disease and that the services to be provided are medically necessary and reasonable. In making

this determination, the physician consultant may confer with the patient's attending physician, members of the Cancer Committee of the North Carolina Medical Society, and other physicians trained in the treatment of cancer.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

.0418 PROVIDERS PARTICIPATING IN THE CANCER PROGRAM

(a) The Comprehensive Breast and Cervical Cancer Control Program may contract with local health departments, public and non-profit private entities, institutions, and agencies in order to carry out the purpose of the program.

(b) To be eligible for participation in the diagnosis and treatment components of the cancer program, a hospital must have facilities to treat cancer with surgery, radiation, and radium. Hospitals with only two treatment modes but with an established referral system for the third mode are also eligible. Interim approval for participation may be granted by the head of the cancer program, with final approval pending review by the cancer committee of the North Carolina Medical Society. Services may also be provided in a physician's office or other outpatient facility.

(c) A patient may receive services in the hospital or physician's office of his choice provided that hospitals services are rendered in a hospital that has been approved in accordance with Paragraph (b) of this Rule. A list of such hospitals may be obtained from the head of the cancer program at the principal address of the Division of Adult Health.

(d) When a request for authorization is approved, a copy of the authorization will be returned to the provider of record (hospital or physician whose name appears on the request for authorization). The provider of record shall forward copies of the authorization to all other providers of those services listed in the request for authorization.

(e) The provider of record shall inform all other known providers of services listed in the request for authorization of any action taken by the cancer program or the office of purchase of care services including the authorization or denial of the request, issuance of case and authorization numbers, billing instructions, or any other communication from or action taken by the Division of Adult Health concerning cancer program reimbursement.

(f) All claims for authorized services rendered shall be processed in accordance with rules found in 15A NCAC 24A.

(g) Assistant surgeon's fees will be paid on those authorized cases in which the procedures cannot be performed without surgical assistance. The bill for the assistant surgeon's fee should be submitted jointly with the surgeon's bill.

(h) Claims for payment should be sent to the office of purchase of care services at the principal address of the Department.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

.0419 PATIENT APPLICATION PROCESS

(a) Patients may apply for breast and cervical cancer screening and follow-up services at any local health department or at the office of a provider participating in the Comprehensive Breast and Cervical Cancer Control Program under an arrangement with a participating local health department. Copies of the list of participating local health departments may be inspected or obtained at no cost from the Comprehensive Breast and Cervical Cancer Control Program at the principal address of the Division.

(b) Application forms approved by the Division may be requested by the provider from the cancer program at the principal address of the Division.

(c) The authorization and financial certification forms are to be completed in accordance with the rules found in 15A NCAC 24A and the directions printed on the forms.

(d) The authorization request form must be received with all pertinent information completed. All request forms that are received that are incorrect or incomplete will be returned unauthorized to the provider of record for correction or completion. All requests for authorization must contain the following information:

(1) Requests for diagnosis must contain all patient biographical information; where services are to be given and date of first service; preliminary primary diagnosis; services to be rendered; medical justification if inpatient services are being requested; and attending physician name, office address, telephone number and signature.

(2) Requests for treatment services must contain all patient biographical information; where services are to be given and date of first service; pathological diagnosis and stage of

disease; five-year survival rate of disease and declaration that the disease has a reasonable chance of cure; services to be rendered; and attending physician name, office address, telephone number, and signature.

(e) Separate applications for authorization are necessary for diagnosis or treatment.

(f) In cases in which it is difficult to determine whether the services to be rendered are diagnostic or treatment, such as the removal of an entire tumor for biopsy, an application for diagnostic services should be submitted first.

(g) When treatment is being requested, a copy of a positive pathology report stating the cytologic or histologic presence of cancer, and dated no more than 30 days prior to initiation of the requested services, must accompany the request for authorization. The program has the right to request additional medical documents that are deemed necessary for a proper determination of medical eligibility prior to authorization. The patient signature on the financial eligibility form shall serve as a valid patient release for such medical information to be submitted to the program.

(h) The original completed forms, and copies of any medical documents, should be forwarded to the cancer program. In accordance with the rules found in 15A NCAC 24A, the cancer program will inform the provider of record whether the application is authorized. Providers are encouraged to retain copies of all materials sent to the cancer program pending authorization or denial.

(i) For emergency authorization, call (919) 733-7081. Emergency admissions are rarely approved and only for extreme causes. Interim approval can be granted over the telephone provided the patient meets all eligibility requirements. However, the written application must be reviewed before final authorization can be granted. Information required during a telephone request for emergency authorization will include, at least, the following information:

(1) patient biographical information,
(2) where services are to be provided,
(3) nature of emergency,
(4) services being requested,
(5) name and telephone number of caller,
(6) name and telephone number of admitting physician.

All telephone requests for emergency authorization shall be reviewed by and receive concurrence from the physician consultant to the cancer program after a telephone conference with the admitting physician. If a request for an emergency authorization is not approved, the cancer program will consider authorization on a routine basis. If the information that is communicated in the telephone request is not substantiated in the written authorization request, the emergency authorization shall immediately be cancelled.

(j) The cancer program is not responsible for any case which has not been requested and authorized, nor for any approved services that are not specifically requested and authorized.

(k) The program will not authorize services that are submitted on authorization forms that are not currently in use; all requests submitted on outdated or invalid forms will be returned unauthorized to the provider of record, accompanied by a supply of current forms for resubmission of the request and submission of future requests.

Statutory Authority G.S. 130A-205.

.0420 REPORTING OF CANCER

Every physician shall report cancers as required by G.S. 130A-209, in the manner prescribed by 15A NCAC 26.

Statutory Authority G.S. 130A-209.

.0421 CANCER REGISTRY

Rules governing the administration of the central cancer registry are found in 15A NCAC 26.

Statutory Authority G.S. 130A-205.

.0422 CONFIDENTIALITY

(a) The clinical records of individual patients submitted to the cancer control reimbursement program shall be confidential and shall not be public records open to inspection. Only personnel authorized by the head of the cancer control program and other individuals authorized by the head of the cancer control program or his designee pursuant to (c) of this Rule shall have access to the records.

(b) The information contained in the clinical records of individual patients may be transferred to computer-compatible means of data entry. Only personnel authorized by the head of the cancer control program to use computers, terminals, programs, data files, and other computer hardware or software, involved in maintaining patient information shall have access to them.

(c) Clinical information in possession of the

cancer control reimbursement program may be disclosed in the following circumstances when authorized by the head of the cancer control program or his designee:

(1) A patient shall have access to review or obtain copies of his records;

(2) A person who submits a valid authorization for release shall have access to review or obtain copies of the information described in the authorization for release;

(3) Information may be disclosed in response to a valid court order.

(d) The cancer control program may release statistical information and data based on client information so long as no information identifying individual patients is released.

(e) The head of the cancer control program shall make known to all individuals with access to patient information submitted to the cancer control program the privileged and confidential nature of such information.

Statutory Authority G.S. 130A-205.

.0423 BILLING FOR BREAST AND CERVICAL CANCER SERVICES

If a patient's gross family income is at or below 200 percent of the Federal Poverty Guidelines, the participating provider may bill the Comprehensive Breast and Cervical Cancer Control Program.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

.0424 BREAST AND CERVICAL CANCER CONTROL PROGRAM REIMBURSEMENT RATES

(a) Local health departments that contract for breast and cervical cancer screening and follow-up services funds shall be reimbursed for services provided to eligible patients in an amount based on the Comprehensive Breast and Cervical Cancer Control Program Reimbursement rate in effect at the time service is rendered, as specified in Rule .0427 of this Section.

(b) Claims for reimbursement from Comprehensive Breast and Cervical Cancer Control Program must be documented and reported on a quarterly basis on a form provided by the program. If after charging the program, the agency receives payment from the patient or other third party that would result in the local health department receiving more than the Comprehensive Breast and Cervical Cancer Control Program Reimbursement Rate, the local health department shall reimburse the program the difference between the total amount reimbursed from all sources and the Comprehensive Breast and Cervical Cancer Control Program.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

.0425 REIMBURSEMENT FUNDS: THIRD PARTY PAYORS

Comprehensive Breast and Cervical Cancer Control Program Reimbursement funds shall be used to pay for services not reimbursed by a third party payor. A participating provider must take reasonable measures to determine and subsequently collect the full legal liability of third party payors to pay for services reimbursed by the program before requesting payment from the Comprehensive Breast and Cervical Cancer Control Program.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

.0426 QUALITY ASSURANCE FOR BREAST AND CERVICAL CANCER SERVICES

(a) Facilities performing screening mammograms as a part of breast cancer screening and follow-up services under this Rule shall be certified in accordance with rules codified in 10 NCAC 3W .0200 - Mammography Certification and be accredited before January 1, 1993 by the American College of Radiology for the performance of mammography screening. Copies of 10 NCAC 3W.0200 may be inspected at or obtained at no cost from the Comprehensive Breast and Cervical Cancer Control Program.

(b) Laboratories evaluating Pap smears as a part of cervical cancer screening and follow-up services under this section shall be certified in accordance with rules codified in 10 NCAC 3W .0100 - Pap Smear Certification. Copies of 10 NCAC 3W .0100 may be obtained at no cost from the Comprehensive Breast and Cervical Cancer Control Program.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

.0427 REIMBURSEMENT RATES

(a) The cancer control reimbursement program shall reimburse providers of authorized services to eligible patients as follows:

(1) Breast and cervical cancer screening

and follow-up services shall be reimbursed at the lower of the provider rates or the Medicaid rates in effect at the time the services are provided.

(2) Inpatient hospitalization services shall be reimbursed at the medicaid rate in effect at the time the claim is received by the Division. When the medicaid per diem rate changes to the "excess days" per diem rate as provided in the medicaid reimbursement plan in effect at the time the claim is received by the Division, the cancer program shall reimburse at the "excess days" rate.

(3) Professional services, outpatient services, and all other services not covered by Subparagraph (a)(2) of this Rule shall be reimbursed at the medicaid rate in effect at the time the claim is received by the Division.

(4) Services for which the medicaid program does not have a reimbursement rate shall be reimbursed according to a schedule of payments developed by the Division. Copies of this schedule may be inspected at or obtained from the Office of Medical Care Services.

(b) If a provider has accepted partial or total payment from the cancer program for particular services, the Division's reimbursement rate for those services shall be considered payment in full for those authorized services.

Statutory Authority G.S. 130A-205; Sec. 310 & 317, Public Health Services Act, as amended.

* * * * * * * * * * * * * * * * * * *

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 .0502 - .0503.*

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted on the following dates, times and locations:

October 13, 1992
7:30 p.m.
Room 204, Buncombe Co. Courthouse
60 Court Plaza
Asheville, N.C.
(Main entrance locked at night; use ground floor side entrance on College Street)

October 19, 1992
1:30 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, N.C.

***Reason** for Proposed Action:*

15A NCAC 19A .0502 - .0503 - Under immunization of preschoolers creates the potential for outbreaks of measles, mumps, pertussis, and other vaccine preventable diseases, along with attendant severity and morbidity. Non-medicaid eligible children seen in community, migrant, and rural health centers and those seen in private physician's offices and whose family income exceeds the federal poverty level by 185% frequently do not get age-appropriate vaccinations because of the inconvenience of visiting multiple providers. The centers and physicians' office need to be able to take advantage of all opportunities to immunize small children by having access to state-supplied vaccine. To some extent this will decrease the staffing burden of local health departments. $950,000 was appropriated for this purpose by the 1992 General Assembly.

***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 may 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).

***Editor's Note:** These Rules have been filed as temporary amendments effective on August 26, 1992 for a period of 180 days or until the permanent rule is effective, whichever is sooner.*

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0500 - PURCHASE AND DISTRIBUTION OF VACCINE

.0502 VACCINE FOR PROVIDERS OTHER THAN LOCAL HEALTH DEPARTMENTS

(a) The Department of Environment, Health, and Natural Resources provides vaccines required by law free of charge to ~~physicians and other health care providers to administer to medically indigent patients. These vaccines are provided to physicians and other health care providers by local health departments acting as agents of the state.~~ the following providers for administration to individuals who need vaccines to meet the requirement of G.S. 130A-152, 130-155.1 and 15A NCAC 19A .0401:

(1) Community, migrant, and rural health centers;

(2) Colleges and universities for students; and

(3) Physicians and other health care providers to administer to patients whose gross family income is less than or equal to 185 percent of the federal poverty level.

(b) Required vaccines shall be distributed by local health departments operating as agents of the State to providers listed in Subparagraphs (a)(2) and (3) of this Rule.

~~(b)~~ (c) ~~Private physicians and health care~~ pProviders authorized in Paragraph (a) of this Rule shall be eligible to receive free vaccines from the Department only if they sign an agreement with ~~a local health department serving their practice area~~ the Department. This agreement will be prepared by the Immunization Branch and will require the ~~physicians and health care~~ providers to administer such vaccines only to eligible patients, to charge only a reasonable administration fee, to submit monthly vaccine reports on a form prepared by the Immunization Branch by the fifth day of each month, to report adverse vaccine reactions through the ~~Federal Monitoring~~ Vaccine Adverse Event Reporting System (VAERS) ~~for Adverse Events Following Immunization (MSAEFI)~~, to obtain a signed ~~Important Information Statement~~ Parent Patient Notification (PPN) for each dose of vaccine administered and to retain the signed portion for a period of 10 years following the end of the calendar year in which the form was signed, or for 10 years following the recipient's age of majority, whichever is longer, and upon request, furnish copies of the signed portion to the ~~above~~ local health department or the Department ~~Centers for Disease Control, Department of Health and Human Services~~, to keep a record of the vaccine manufacturer, lot number, and date of administration for each dose of vaccine administered, to allow periodic inspection of their vaccine supplies and records by the Immunization Branch, and to comply with the rules of this Section.

~~(c) Patients are considered medically indigent and therefore eligible if their gross family income is less than the federal poverty level.~~

(d) A ~~physician or health care~~ provider who fails to submit timely and accurate reports, as required in paragraph (~~b~~c), twice in any 12 month period shall have their eligibility to receive state vaccine suspended for a period of one year. A ~~physician or health care~~ provider who fails to comply with any of the other requirements of this Rule may have their eligibility suspended by the Department for a period determined by the Department and may be subject to an action brought pursuant to G.S. 130A-27. All suspensions of eligibility shall be in accordance with G.S. 130A-23.

Authority G.S. 130A-152; 130A-155.1; S.L. 1986, c. 1008, s. 2; S.L. 1987, c. 215, s. 7.

.0503DISTRIBUTION OF VACCINE TO COLLEGES AND UNIVERSITIES

~~(a) The Department of Environment, Health, and Natural Resources may provide vaccines required by law to North Carolina universities and colleges to administer to eligible college students~~

~~who need vaccines to meet the requirements of G.S. 130A-155.1 and 15A NCAC 19A .0401. These vaccines may be provided to universities and colleges by local health departments acting as agents of the state.~~

~~(b) A college or university shall be eligible to receive vaccines from the Department only if it signs an agreement with the local health department serving the county in which it is located. This agreement shall be prepared by the Immunization Branch and shall require the college or university to administer such vaccines only to eligible students; to charge only the amount the provider paid for the vaccine and a reasonable administration fee, if any; by the fifth day of each month submit monthly vaccine reports on a form prepared by the Immunization Branch; to report adverse vaccine reactions through the Federal Monitoring System for Adverse Events Following Immunization (MSAEFI); to obtain a signed Important Information Statement for each dose of vaccine administered and to retain the signed portion for a period of ten years following the end of the calendar year in which the form was signed, or for ten years following the recipient's age of majority, whichever is longer, and upon request, furnish copies of the signed portion to any of the following agencies: the Department, the above local health department, or the Centers for Disease Control, Department of Health and Human Services; to keep a record of the vaccine manufacturer, lot number, and date of administration for each dose of vaccine administered; to allow periodic inspection of its vaccine supplies and records by the Immunization Branch; and to comply with the rules of this Section.~~

~~(c) Students shall be eligible to receive state provided vaccines only if the dose is necessary to bring the student into compliance with G.S. 130A-155.1 and 15A NCAC 19A .0401.~~

~~(d) A college or university that fails to submit timely and accurate reports, as required in Paragraph (b) of this Rule, twice in any 12 month period shall have its eligibility to receive state provided vaccine suspended for a period of one year. All suspensions of eligibility shall be in accordance with G.S. 130A-23.~~

Statutory Authority G.S. 130A-155.1; 130A-433.

* * * * * * * * * * * * * * * * * * * *

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 .0401, .0404; 19B .0503.*

The proposed effective date of this action is January 4, 1993.

The public hearing will be conducted on the following dates, times and locations:

October 13, 1992
7:30 p.m.
Room 204, Buncombe Co. Courthouse
60 Court Plaza
Asheville, N.C.
(Main entrance locked at night; use ground floor side entrance on College Street)

October 19, 1992
1:30 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, N.C.

Reason for Proposed Action:

15A NCAC 19A .0401 & .0404 - These additions are to make the hemophilus influenzae vaccine rules current regarding contraindications and with new stipulations for updating immunizations when vaccines are not started according to the recommended schedule.

15A NCAC 19B .0503 - To distinguish the use of the alcoholic breath simulator with alcohol screening test devices and evidentiary instruments. This amendment will allow the simulator to be changed once a month rather than twice. It will also allow screening test devices to be verified every 30 days rather than every seven.

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 may 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 .0400 - IMMUNIZATION

.0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

(1) diphtheria, tetanus, and whooping cough -- five doses: three doses by age one year and two booster doses, one in the second year of life and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time;

(2) oral poliomyelitis vaccine -- three doses of trivalent type by age two years and a booster dose of trivalent type on or after the fourth birthday and before enrolling in school (K-1) for the first time; two doses of enhanced-potency inactivated poliomyelitis vaccine may be substituted for two doses of oral poliomyelitis vaccine;

(3) measles (rubeola) vaccine -- one dose of live, attenuated vaccine by age two years;

(4) rubella vaccine -- one dose of live attenuated vaccine by age two years;

(5) mumps vaccine -- one dose of live attenuated vaccine by age two years;

(6) Hemophilus influenzae, b, conjugate vaccine -- three doses of HbOC or two doses of PRP-OMP by age one year and a booster dose of any type by the second birthday.

(b) Notwithstanding the requirements of Paragraph (a) of this Rule:

(1) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen.

(2) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine.

(3) An individual who has been diagnosed by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine.

(4) An individual attending school who has attained his or her 18th birthday shall not be required to receive oral polio vaccine.

(5) An individual born prior to 1957 shall not be required to receive measles vaccine. An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine . An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine.

(6) Except as provided in Subparagraph (b)(8) of this Rule, the requirements for mumps vaccine, and for booster doses of diphtheria, tetanus, and whooping cough vaccine and oral poliomyelitis vaccine, shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.

(7) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose.

Individuals who receive the third dose of oral poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose.

(8) Individuals attending a college or university shall be required to have three doses of diphtheria/tetanus toxoid of which one must have been within the last ten years.

(9) Individuals born before October 1, 1991 shall not be required to be vaccinated against Hemophilus influenzae, b. Individuals who receive the first dose of Hemophilus influenzae, b, vaccine between the ages of 12-14 months shall be required to have only two doses of HbOC or PRP-OMP. Individuals who receive the first dose of Hemophilus influenzae, b, vaccine on or after 15 months of age shall be required to have only one dose of any of the hemophilus influenzae conjugate vaccines, including PRP-D.

Statutory Authority G.S. 130A-152(c); 130A-155.1.

.0404 MEDICAL EXEMPTIONS FROM IMMUNIZATION

(a) Certification of a medical exemption by a physician pursuant to G.S. 130A-156 shall be in writing and shall state the basis of the exemption, the specific vaccine or vaccines the individual should not receive, and the length of time the exemption will apply for the individual.

(b) The following are medical contraindications for which medical exemptions may be certified by a physician for immunizations required by G.S. 130A-152:

(1) Pertussis vaccine:
  (A) Permanent contraindications:
    (i) occurring within 48 hours after receipt of pertussis vaccine:
      (I) fever greater than 40.5 C (104.9 F);
      (II) hypotonic-hyporesponsive episode;
      (III) unusual high-pitched crying lasting three hours or more;
    (ii) seizure within 72 hours after receipt of pertussis vaccine;
    (iii) encephalopathy within seven days after receipt of pertussis vaccine;
    (iv) immediate allergic reaction to pertussis vaccine manifested by hives or anaphylaxis; or
    (v) documented history of culture confirmed pertussis disease.
  (B) Temporary contraindications:
    (i) undiagnosed, unstable, or evolving neurological conditions, including seizures; or
    (ii) acute febrile illness.

(2) Diphtheria or tetanus toxoids:
  (A) Permanent contraindications: immediate allergic reaction to diphtheria or tetanus toxoids manifested by hives or anaphylaxis.
  (B) Temporary contraindications: acute febrile illness.

(3) Measles or mumps vaccine:
  (A) Permanent contraindications:
    (i) significantly immunocompromising conditions other than HIV infection;
    (ii) allergic reaction to eggs or neomycin manifested by anaphylaxis.
  (B) Temporary contraindications:
    (i) acute febrile illness;
    (ii) pregnancy.

(4) Rubella vaccine:
  (A) Permanent contraindications:
    (i) significantly immunocompromising conditions other than HIV infection;
    (ii) allergic reaction to neomycin manifested by anaphylaxis.
  (B) Temporary contraindications:
    (i) acute febrile illness;
    (ii) pregnancy.

(5) Live polio vaccine:
  (A) Permanent contraindications:
    (i) significantly immunocompromising conditions;
    (ii) significantly immunocompromising condition in a household contact.
  (B) Temporary contraindications:
    (i) acute febrile illness;
    (ii) pregnancy.

(6) Hemophilus influenzae vaccine:
  (A) Permanent contraindication: immediate allergic reaction manifested by anaphylaxis.
  (B) Temporary contraindications:
    (i) acute febrile illness;
    (ii) pregnancy.

Statutory Authority G.S. 130A-152(c); 130A-156.

SUBCHAPTER 19B - INJURY CONTROL

SECTION .0500 - ALCOHOL SCREENING TEST DEVICES

.0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION

(a) The following breath alcohol screening test devices are approved as to type and make:

(1) ALCO-SENSOR (with two-digit display), made by Intoximeters, Inc.

(2) ALCO-SENSOR III (with three-digit display), made by Intoximeters, Inc.

(3) BREATH-ALCOHOL TESTER MODEL BT-3, made by RepCo., Ltd.

(4) ALCOTEC BREATH-TESTER, made by RepCo., Ltd.

(b) Calibration of alcohol screening test devices shall be verified at least once during each ~~seven~~ 30 day period of use by employment of a control sample from an alcoholic breath simulator, or ~~a~~ an ~~NALCO~~ ethanol/gas standard. The device shall be deemed properly calibrated when the result of 0.09 or 0.10 is obtained.

(1) Alcoholic breath simulators used exclusively for calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

(2) Requirements of Paragraph (b) and (b)(1) of this Rule shall be recorded on an alcoholic breath simulator log designed by the Injury Control Section and maintained by the user agency.

Statutory Authority G.S. 20-16.3.

* * * * * * * * * * * * * * * * * * *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 21F .0801 - .0804.*

***The** proposed effective date of this action is January 4, 1993.*

***The** public hearing will be conducted on at the times, dates and locations shown below:*

October 13, 1992
7:30 p.m.
Room 204 Buncombe County Courthouse
60 Court Plaza
Asheville, NC
(Main entrance locked at night; use ground floor side entrance on College Street)

October 19, 1992
1:30 p.m.
Ground Floor Hearing Room
Archdale Building
512 N. Salisbury Street
Raleigh, NC

***Reason** for Proposed Action: The Children's Special Health Services program wishes to extend coverage to children with special needs who are adopted independently or privately and on whose behalf requests have been made to waive financial eligibility. This proposed amendment will add children adopted independently.*

***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 3 days prior to the public hearing. Oral presentation lengths may 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 Commissions 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 21 - HEALTH:PERSONAL HEALTH

SUBCHAPTER 21F - CHILDREN'S SPECIAL HEALTH SERVICES: CHILDREN AND YOUTH SECTION

SECTION .0800 - ADOPTION

.0801 GENERAL PROVISION

(a) If the requirements of this Section are met, a child ~~with a supported medical condition~~ who has been legally adopted and has no natural parent with legal responsibility for the child, shall, after the final order of adoption, be considered a family of one under 15A NCAC 24A .0204(c) for purposes of determining financial eligibility for program support.

~~(b) Program support shall be provided only for those program supported conditions that are confirmed by a rostered physician to be existing at the time of adoption, and will continue to be provided contingent upon the availability of program funds.~~

(b)~~(c)~~ Authorization and payment for ~~cost~~ services shall be ~~granted~~ made pursuant to Section .0500 of this Subchapter and 15A NCAC 24A .0302 and .0303.

(c) After the adoption is completed, the agency handling the adoption shall inform the program of the following:

(1) the child's new name and address; and

(2) the adoptive parents' name and address.

If the child was placed independently, the adoptive parents shall provide this information to the program.

~~(d) The agency handling the adoption shall inform the program of the new name, adoptive parents and the child's address after the adoption is completed.~~

Statutory Authority G.S. 130A-124.

.0802 REQUIREMENTS FOR THE ADOPTIVE CHILD

To be eligible for program support, the child must meet the following requirements:

(1) The child must ~~be in the custody of a county department of social services or an adoption agency licensed in the State of North Carolina;~~

~~(2)~~ ~~The child must~~ have a program supported medical condition as provided in 15A NCAC 21F ~~Rule~~ .0303 ~~of this Subchapter.~~ which is documented by a physician rostered by the program to be existing at the time of adoption; and

(2) The child must meet the residency requirements of 15A NCAC 24A .0201(b)(1).

Statutory Authority G.S. 130A-124.

.0803 REQUIREMENTS FOR THE ADOPTING FAMILY (REPEALED)

~~To be eligible for program support, the child's adoptive family must meet the following requirements:~~

~~(1) The family must submit evidence that medical insurance coverage for the handicapping condition is either available or not available;~~

~~(2) When insurance is available the adopting family must obtain and maintain insurance coverage;~~

~~(3) The residency requirements of 15A NCAC 24A .0201 must be satisfied after the adoption.~~

Statutory Authority G.S. 130A-124.

.0804 APPLICATION FOR COVERAGE AFTER ADOPTION

(a) Application for ~~program support after~~ post-adoption coverage shall be made on a form provided by the Department by the ~~local~~ agency having legal responsibility, in the case of a state or private agency placement, or by the adoptive parents, in the case of an independent placement. The application must be received by Children's Special Health Services prior to the final order of adoption. ~~only after:~~

~~(1) The agency has presented the child to the prospective adoptive family;~~

~~(2) The agency has discussed with the prospective adoptive family the financing and social problems of the child's handicap or medical condition;~~

~~(3) The agency and the family have agreed to the placement.~~

~~(b) Applications shall be made by the agency having legal responsibility for the child and shall be submitted to the North Carolina adoption resource exchange, division of social services, Department of Human Resources, for forwarding to Children's Special Health Services.~~

~~(c) Program review and approval, or disapproval, shall be made prior to the final court order for adoption in accordance with Rule .0801 of this Section.~~

(b) Applications for state-agency-placed children shall be submitted to the North Carolina Adoption Resource Exchange, Division of Social Services, Department of Human Resources, for forwarding to Children's Special Health Services. Applications from private adoption agencies and for children adopted independently shall be submitted directly to the medical director of Children's Special Health Services.

Statutory Authority G.S. 130A-124.

TITLE 24 - INDEPENDENT AGENCIES

Notice *is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Housing Finance Agency intends to amend rule(s) cited as 24 NCAC 1K .0603 - .0605.*

The proposed effective date of this action is January 1, 1993.

The public hearing will be conducted at 10:00 a.m. on September 30, 1992 at the North Carolina Housing Finance Agency, 3300 Drake Circle, Suite 200, Raleigh, NC 27607.

Reason for Proposed Action: To modify Catalyst Loan program to make it more flexible.

Comment Procedures: Written comments may be submitted to the APA Coordinator by October 15, 1992. Oral comments may be presented at hearing on September 30, 1992.

CHAPTER 1 - N.C. HOUSING FINANCE AGENCY

SUBCHAPTER 1K - MULTIFAMILY UNSUBSIDIZED RENTAL PROGRAM

SECTION .0600 - CATALYST PROGRAM FOR NOT-FOR-PROFIT ORGANIZATIONS

.0603 TYPES OF ASSISTANCE

Program funds will be provided as grants or deferred payment loans, amortizing or nonamortizing, with extended loan terms. Loans will be secured by a promissory note and loan agreement, and where practical, by the low-income housing project. Interest, if any, will accrue annually at a rate established by the agency, depending on the needs of each individual project. Program funds will be used for one or more of the following:

(1) Predevelopment costs;
(2) Construction cost overruns;
(3) Initial rent-up expenses;
(4) Rent subsidies;
(5) Finance expenses; and
(6) Other expenses that ensure project or program feasibility.

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

.0604 REQUIREMENTS

(a) Program eligibility will be restricted to not-for-profit organizations which are the principal sponsors of a low-income, rental housing project or a program to facilitate the development of low-income housing projects.

(b) Program funds will be restricted to projects containing, or programs for, low-income housing units that are either newly constructed or acquired and substantially rehabilitated. Low-income units are those that are both income qualified, occupied by individuals whose income is ~~50 or~~ below 60 percent of the area median income, and affordable, with rents and utility allowance not exceeding 30 percent of the eligible low-income household's gross income.

(c) Projects must respond to local market demand. ~~and must show financial participation by a unit of local government.~~

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

.0605 PROCEDURES

(a) Program funds will be advertised statewide. ~~unless the agency determines that because of inadequate response, these targeting restrictions shall be waived.~~ Projects and programs will be funded on a first-come, first-served basis until such time as the agency determines there are insufficient funds available or that the program should be discontinued.

~~(1) Each county will be limited to one funded project by September 30, 1988.~~
~~(2) Each metropolitan statistical area will be limited to three funded projects by September 30, 1988.~~
~~(3) Projects will be funded on a first come, first served basis until 50 percent of initial set aside is committed; subsequently, projects will be pooled at~~

~~regular intervals and ranked according to project feasibility, local need and the ability of the agency to achieve an equitable geographic distribution.~~

(b) The program will require the completion and submission of ~~these documents~~ an application prescribed by the agency.

~~(1) An application prescribed by the agency;~~

~~(2) A letter of intent from a unit of government to provide supplementary financing; and~~

~~(3) A letter of interest from investors or intermediaries concerning investment in the tax credits.~~

~~These requirements will be described in greater detail in the application materials developed by the agency.~~

Statutory Authority G.S. 122A-5; 122A-5.1; 122A-5.4.

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

Gasoline and Oil Inspection Board

2 NCAC 42 .0102 - Definitions	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
2 NCAC 42 .0801 - Purpose and Applicability	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*

Structural Pest Control Division

2 NCAC 34 .0406 - Spill Control	*RRC Objection*	*07/16/92*
Agency Responded	*No Action*	*08/20/92*
2 NCAC 34 .0603 - Waivers	*RRC Objection*	*07/16/92*
Agency Responded	*No Action*	*08/20/92*
2 NCAC 34 .0902 - Financial Responsibility	*RRC Objection*	*07/16/92*
Agency Responded	*No Action*	*08/20/92*

ECONOMIC AND COMMUNITY DEVELOPMENT

ABC Commission

4 NCAC 2R .0702 - Disciplinary Action of Employee	*RRC Objection*	*05/21/92*
Rule Returned to Agency		*06/18/92*
4 NCAC 2R .1205 - Closing of Store	*RRC Objection*	*05/21/92*
Agency Repealed Rule	*Obj. Removed*	*06/18/92*
4 NCAC 2S .0503 - Pre-Orders	*RRC Objection*	*05/21/92*
Rule Returned to Agency		*06/18/92*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas	*RRC Objection*	*05/21/92*
Rule Returned to Agency		*06/18/92*

Departmental Rules

15A NCAC 1J .0204 - Loans from Emergency Revolving Loan Accounts	*RRC Objection*	*06/18/92*
15A NCAC 1J .0302 - General Provisions	*RRC Objection*	*06/18/92*
15A NCAC 1J .0701 - Public Necessity: Health: Safety and Welfare	*RRC Objection*	*06/18/92*

Environmental Health

15A NCAC 18A .3101 - Definitions	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Environmental Management

15A NCAC 2D .0538 - Control of Ethylene Oxide Emissions	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
15A NCAC 2D .1104 - Toxic Air Pollutant Guidelines	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
15A NCAC 2G .0601 - The Aquatic Weed Control Act	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
15A NCAC 2O .0302 - Self Insurance	*RRC Objection*	*06/18/92*

Health: Epidemiology

15A NCAC 19H .0402 - Documentary Evidence: Facts to be Established	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
15A NCAC 19H .0601 - Birth Certificates	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Soil and Water Conservation

15A NCAC 6E .0007 - Cost Share Agreement	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Wildlife Resources and Water Safety

15A NCAC 10E .0004 - Use of Areas Regulated	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*

HUMAN RESOURCES

Aging

10 NCAC 22R .0301 - Definitions	*RRC Objection*	*07/16/92*
Agency Revised Rule	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*

Day Care Rules

10 NCAC 46D .0305 - Administration of Program	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*
10 NCAC 46D .0306 - Records	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Medical Assistance

10 NCAC 50A .0305 - Appeal Decision	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*

Mental Health: General

10 NCAC 14C .1010 - Other Contracts	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
10 NCAC 14C .1115 - Funding Group Homes for Mentally Retarded Adults	*RRC Objection*	*08/20/92*
10 NCAC 14M .0704 - Program Director	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

INSURANCE

Departmental Rules

11 NCAC 1 .0106 - Organization of the Department	*RRC Objection*	*06/18/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

Multiple Employer Welfare Arrangements

11 NCAC 18 .0019 - Description of Forms	*RRC Objection*	*06/18/92*

Seniors' Health Insurance Information Program

11 NCAC 17 .0005 - SHIIP Inquiries to Insurers and Agents	*RRC Objection*	*06/18/92*

LICENSING BOARDS AND COMMISSIONS

Dietetics/Nutrition

21 NCAC 17 .0014 - Code of Ethics for Professional Practice/Conduct	*RRC Objection*	*05/21/92*
Agency Revised Rule	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

General Contractors

21 NCAC 12 .0503 - Renewal of License	*RRC Objection*	*08/20/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*

REVENUE

Individual Income, Inheritance and Gift Tax Division

17 NCAC 3B .0401 - Penalties	*RRC Objection*	*08/20/92*
17 NCAC 3B .0402 - Interest	*RRC Objection*	*08/20/92*

Individual Income Tax Division

17 NCAC 6B .0107 - Extensions	*RRC Objection*	*08/20/92*
17 NCAC 6B .0115 - Additions to Federal Taxable Income	*RRC Objection*	*08/20/92*
17 NCAC 6B .0116 - Deductions from Federal Taxable Income	*RRC Objection*	*08/20/92*
17 NCAC 6B .0117 - Transitional Adjustments	*RRC Objection*	*08/20/92*
17 NCAC 6B .3406 - Refunds	*RRC Objection*	*08/20/92*

STATE PERSONNEL

Office of State Personnel

25 NCAC 1E .1301 - Purpose	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1E .1302 - Policy	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1E .1303 - Administration	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1E .1304 - Qualifying to Participate in Voluntary Shared Leave Prgm	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1E .1305 - Donor Guidelines	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*

25 NCAC 1E .1306 - Leave Accounting Procedures	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1H .0603 - Special Recruiting Programs	*RRC Objection*	*05/21/92*
Agency Repealed Rule	*Obj. Removed*	*06/18/92*
25 NCAC 1I .1702 - Employment of Relatives	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .1903 - Applicant Information and Application	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .2401 - System Portion I: Recruitment, Selection, & Advancement	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .2402 - System Portion II: Classification/Compensation	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .2403 - System Portion III: Training	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .2404 - System Portion IV: Employee Relations	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .2405 - System Portion V: Equal Emp Oppty/Affirmative Action	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1I .2406 - System Portion VI: Political Activity	*RRC Objection*	*07/16/92*
Agency Revised Rule	*Obj. Removed*	*08/20/92*
25 NCAC 1J .1005 - Eligibility for Services	*RRC Objection*	*05/21/92*
Agency Revised Rule	*Obj. Removed*	*06/18/92*

TRANSPORTATION

Division of Highways

19A NCAC 2B .0165 - Asbestos Contracts with Private Firms	*RRC Objection*	*08/20/92*

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.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

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 Committee
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	Office 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
Anne R. Gwaltney, Milton H. Askew, Jr. and Anna L. Askew v. EHR and Pamlico County Health Department	89 DHR 0699	Reilly	07/17/92
Eleanor R. Edgerton-Taylor v. Cumberland County Department of Social Services	89 OSP 1141	Morrison	08/18/92
Annette Carlton v. Cleveland County Department of Social Services	90 OSP 0024	Chess	08/14/92
Janice Parker Haughton v. Halifax County Mental Health, Mental Retardation, Substance Abuse Program	90 OSP 0221	West	08/18/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
CSX Transportation, Inc. v. Department of Environment, Health, & Natural Resources	90 EHR 0628	Reilly	07/17/92
Bruce Keeter v. Beaufort County Health Department	90 EHR 0666	Morgan	07/28/92
Christine Hill v. Crime Victims Compensation Commission	90 CPS 0876	Morgan	08/24/92
JHY Concord, Inc. v. Department of Labor	90 DOL 1421	Morgan	07/28/92
Lick Fork Hills, Inc., Marion Bagwell, President v. Department of Environment, Health, & Natural Resources	91 EHR 0023	Morgan	07/28/92
Albert J. Johnson v. N.C. Victims Compensation Commission	91 CPS 0038	Morgan	07/28/92
William B. Holden v. Department of Environment, Health, & Natural Resources	91 EHR 0176	Morgan	08/18/92
Brenda P. Price v. North Carolina Central University	91 OSP 0219	Morrison	08/21/92
Century Care of Laurinburg, Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0257	West	06/30/92
Richard L. Gainey v. Department of Justice	91 OSP 0341	Becton	08/10/92
Wade Charles Brown, Jr. v. N.C. Crime Victims Compensation Commission	91 CPS 0345	Chess	07/08/92
Jackie Bruce Edwards v. DHR, Western Carolina Center	91 OSP 0354	West	08/20/92
Robert C. Howell v. Department of Correction	91 OSP 0407	Morgan	08/26/92
Charles E. Roe v. Department of Environment, Health, & Natural Resources	91 OSP 0520	Nesnow	07/23/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Jerry J. Parker v. Department of Correction	91 OSP 0546	Morgan	08/26/92
Lisa M. Reichstein v. Office of Student Financial Aid, East Carolina University	91 OSP 0662	Nesnow	06/24/92
DHR, Division of Facility Svcs, Child Day Care Section v. Mary Goodwin, Jean Dodd, D/B/A Capital City Day Care Center	91 DHR 0720	Morgan	07/30/92
Kenneth Helms v. Department of Human Resources	91 OSP 0729	Chess	07/15/92
Alcoholic Beverage Control Commission v. Daniels Investments, Inc., t/a Leather & Lace - East 4205 Monroe Road, Charlotte, N.C. 28205	91 ABC 0799	Mann	07/14/92
Zelma Babson v. Brunswick County Health Department	91 OSP 0804	Gray	08/14/92
ACT-UP Triangle (AIDS Coalition to Unleash Power Triangle, Steven Harris, and John Doe v. Commission for Health Services of the State of N.C., Ron Levine, as Assistant Secretary of Health and State Health Director for EHR of the State of N.C., William Cobey, as Secretary of EHR of the State of N.C., Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the N.C. EHR, Wayne Bobbitt, Jr., as Chief of the HIV/STD Control Branch of the N.C.EHR	91 EHR 0818	Becton	07/08/92
Jane C. O'Malley, Melvin L. Cartwright v. EHR and District Health Department Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	07/02/92
Thomas E. Vass v. James E. Long, Department of Insurance	91 INS 0876	Morrison	08/14/92
Grotgen Nursing Home, Inc., Britthaven, Inc. v. Certificate of Need Section, Div of Facility Svcs, DHR	91 DHR 0964 91 DHR 0966	Nesnow	07/06/92
Ramona S. Smith, R.N. v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 DST 0984	Chess	06/18/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Charles H. Yates, Power of Attorney for Ruth Yates v. N.C. Teachers'/St Emps' Comp Major Medical Plan	91 INS 1008	Reilly	08/21/92
Walter McGlone v. DHR, Division of Social Services, CSE	91 CSE 1030	Morrison	07/13/92
William Oscar Smith v. DHR, Division of Social Services, CSE	91 CSE 1042	Gray	07/24/92
William Watson v. DHR, Division of Social Services, CSE	91 CSE 1047	Becton	07/08/92
Robert D. Daniels Jr. v. DHR, Division of Social Services, CSE	91 CSE 1048	Morrison	08/27/92
Marie McNeill-Pridgen v. Department of Environment, Health, & Natural Resources	91 EHR 1059	Nesnow	07/17/92
Catawba Memorial Hospital v. DHR, Div of Facility Svcs, Certificate of Need Section and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. and Thoms Rehabilitation Hospital Health Services Corp. and Frye Regional Medical Ctr, Inc. and Amireit (Frye), Inc. v. DHR, Div of Facility Svcs, Certificate of Need Section and Thoms Rehabilitation Hospital Health Services Corp. and Catawba Memorial Hospital	91 DHR 1061 91 DHR 1087	Reilly	07/13/92
Edward R. Peele v. Sheriffs' Education & Training Stds. Commission	91 DOJ 1092	Morrison	08/18/92
William Torres v. Dept of Justice, Lacy H. Thornburg, Attorney General	91 DOJ 1098	Morrison	08/07/92
Wade A. Burgess v. DHR, Division of Social Services, CSE	91 CSE 1114	Gray	07/01/92
Harry L. King v. Department of Transportation	91 OSP 1162	Morgan	07/13/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Gilbert Lockhart v. DHR, Division of Social Services, CSE	91 CSE 1178	Morrison	07/30/92
Isaac H. Galloway v. DHR, Division of Social Services, CSE	91 CSE 1190	Reilly	06/30/92
Russell A. Barclift v. DHR, Division of Social Services, CSE	91 CSE 1207 92 CSE 0275	Reilly	06/30/92
Herman Edward Main II v. DHR, Division of Social Services, CSE	91 CSE 1225	Nesnow	07/07/92
Albert Louis Stoner III v. DHR, Division of Social Services, CSE	91 CSE 1244	Gray	07/01/92
James E. Greene v. DHR, Division of Social Services, CSE	91 CSE 1245	Nesnow	07/14/92
Joseph W. Harris v. DHR, Division of Social Services, CSE	91 CSE 1247	Morgan	07/28/92
Rodney Powell v. DHR, Division of Social Services, CSE	91 CSE 1257	Morgan	07/29/92
Miles G. Griffin Jr. v. DHR, Division of Social Services, CSE	91 CSE 1270	Gray	08/27/92
Floyd L. Rountree v. DHR, Division of Social Services, CSE	91 CSE 1275	Morgan	07/22/92
Ruth Smith Hensley Shondales v. ABC Commission	91 ABC 1280	Chess	08/05/92
City-Wide Asphalt Paving, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1360	Chess	07/01/92
Alcoholic Beverage Control Commission v. Tre Three, Inc., T/A Crackers, Airport Rd., Rockingham, NC 28379	91 ABC 1372	Chess	07/07/92
Alcoholic Beverage Control Commission v. Rode Enterprises, Inc., T/A Jordan Dam Mini Mart	91 ABC 1388	Gray	07/30/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Donald R. Allison v. DHR, Caswell Center	91 OSP 1427	Reilly	06/30/92
Rudolph Tripp v. Department of Correction	92 OSP 0024	Gray	08/27/92
Lavern Fesperman v. Mecklenburg County	92 OSP 0030	Chess	07/17/92
Carrolton of Williamston, Inc. v. DHR, Division of Facility Services, Licensure Section	92 DHR 0071	Becton	08/19/92
Fred Jennings Moody Jr. v. Sheriffs' Education & Training Stds. Commission	92 DOJ 0084	Chess	07/17/92
Ronnie Lamont Donaldson v. Sheriffs' Education & Training Standards Commission	92 DOJ 0092	Reilly	07/27/92
Marvin Helton, Jean Helton v. DHR, Division of Facility Services	92 DHR 0102	Chess	08/14/92
Leo Scott Wilson v. Department of Environment, Health, & Natural Resources	92 EHR 0112	Reilly	08/26/92
Peggy N. Barber v. The University of North Carolina at Chapel Hill	92 OSP 0120	Reilly	07/13/92
Alcoholic Beverage Control Commission v. John Wade Lewis, t/a Tasty Grill	92 ABC 0145	Nesnow	07/15/92
Licensing Board for General Contractors v. Wright's Construction, Inc. (Lic. No. 23065)	92 LBC 0172	Gray	07/31/92
Richard L. Banks v. Pasquotank-Perquimans-Camden-Chowan District Health Department (PPCC) & Department of Environment, Health, & Natural Resources	92 EHR 0175	West	08/25/92
Ray Bryant v. Department of Labor, OSHA	92 DOL 0187	Nesnow	08/07/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Herbert Hines Jr., H & H v. Alcoholic Beverage Control Commission	92 ABC 0189	Becton	07/22/92
Frances B. Billingsley v. Bd. of Trustees/Teachers & St Employees Retirement Sys	92 DST 0205	Morgan	08/18/92
Lawrence Neal Murrill T/A Knox, 507 1st St SW, Hickory, NC 28602 v. Alcoholic Beverage Control Commission	92 ABC 0220	Chess	08/03/92
Town of Denton v. Department of Environment, Health, & Natural Resources	92 EHR 0241	Reilly	07/30/92
Alcoholic Beverage Control Commission v. Byrum's of Park Road, Inc., T/A Byrum's Restaurant	92 ABC 0252	Gray	07/30/92
Alcoholic Beverage Control Commission v. Leo's Delicatessen #2, Inc., T/A Leo's #2	92 ABC 0255	Gray	07/30/92
North Topsail Water & Sewer, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0266	Morrison	08/12/92
Jonathan L. Fann v. U.N.C. Physical Plant, Herb Paul, Louis Herndon, Dean Justice, Bruce Jones	92 OSP 0363	Becton	08/19/92
Douglas A. Bordeaux v. Department of Correction	92 OSP 0378	Chess	07/10/92
Clifton R. Johnson v. O'Berry Center, Department of Human Resources	92 OSP 0381	West	07/08/92
Southeastern Machine & Tool Company, Inc. v. Department of Environment, Health, & Natural Resources	92 EHR 0386	Becton	07/20/92
Louvenia Clark v. Edgecombe County Department of Social Services	92 OSP 0402	Reilly	08/21/92
Raleigh F. LaRoche v. Child & Family Services of Wake County	92 OSP 0409	Becton	08/24/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Paul Reeves, Youth University Child Care v. Child Day Care Section, Division of Facility Svcs	92 DHR 0424	West	08/21/92
Mr. & Mrs. James C. Stanton v. Charlotte-Mecklenburg School System	92 EDC 0430	Nesnow	08/04/92
Northview Mobile Home Park v. Department of Environment, Health, & Natural Resources	92 EHR 0507	Reilly	07/13/92
Yolanda Lynn Bethea v. DHR, Division of Social Services, CSE	92 DCS 0513	Becton	08/14/92
Alice Hunt Davis v. Department of Human Resources	92 OSP 0526	West	07/16/92
Jimmy F. Bailey Sr. v. Department of State Treasurer, Retirement Systems Div	92 DST 0536	Morgan	08/18/92
Bramar, Inc., t/a Spike's v. Alcoholic Beverage Control Commission	92 ABC 0554	Mann	08/13/92
Ralph J. Ogburn v. Private Protective Services Board	92 DOJ 0571	Nesnow	08/07/92
Gilbert Todd Sr. v. Public Water Supply Section	92 EHR 0586	Morrison	08/06/92
Candance Y. Johnson v. Division of Motor Vehicles	92 DOT 0589	Becton	08/24/92
John W. Surles v. N.C. Crime Victims Compensation Commission	92 CPS 0595	Reilly	07/13/92
Pamela Jean Gass v. DHR, Division of Social Services, CSE	92 DCS 0623	Morrison	08/14/92
J.W. Reed v. Department of Correction	92 OSP 0638	Morrison	08/11/92
Carson Davis v. Department of Correction	92 OSP 0650	Reilly	08/10/92

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Stauffer Information Systems v. Department of Community Colleges and the N.C. Department of Administration and The University of Southern California	92 DOA 0666	West	07/08/92
Nancy J. Tice v. Administrative Off of the Courts, Guardian Ad Litem Svcs	92 OSP 0674	Morrison	08/11/92
L. Stan Bailey v. Chancellor Moran and UNC-Greensboro	92 OSP 0679	West	07/10/92
Arnold McCloud T/A Club Castle v. Alcoholic Beverage Control Commission	92 ABC 0681	Morrison	07/25/92
Joyce Faircloth, T/A Showcase Lounge v. Alcoholic Beverage Control Commission	92 ABC 0713	Morrison	07/25/92
Larry Bruce High v. Alarms Systems Licensing Board	92 DOJ 0755 92 DOJ 0785	Nesnow	08/25/92

STATE OF NORTH CAROLINA

COUNTY OF ALEXANDER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 0407

ROBERT C. HOWELL
Petitioner,

v.

N.C. DEPARTMENT OF CORRECTION
Respondent.

FINAL DECISION

The Petitioner was dismissed from his employment with the Respondent, and was notified in a letter dated April 2, 1991 that the head of the North Carolina Department of Correction had upheld this dismissal. The Petitioner was informed in this letter that in the event that he wished to appeal the decision of the head of the Department, he "must file a petition for a contested case hearing pursuant to G.S. 150B-23 with the Office of Administrative Hearings, P. O. Drawer 27447, 424 North Blount Street, Raleigh, NC 27611-7447 within thirty (30) calendar days of receipt of this letter."

The record in this contested case indicates that the Petitioner's attorney of record received the letter of the Respondent's final agency action on April 5, 1991 by certified mail. On May 8, 1991, the Petitioner's attorney filed a petition for a contested case on behalf of the Petitioner. On October 10, 1991 the Respondent filed its Motion to dismiss on the basis that the Office of Administrative Hearings lacks subject matter jurisdiction here because the Petitioner's petition was filed after the required deadline. The Petitioner filed the Petitioner's Response to Respondent's Motion to Dismiss, coupled with a supporting affidavit of his attorney, on October 18, 1991. In the response, the Petitioner contends that his petition was filed in a timely manner because it was filed within thirty days of the date that the Petitioner himself received notice of the decision of the Respondent's head or, in the alternative, because the addition of three days to the 30-day appeal period due to service of the decision notice by mail extended the Petitioner's deadline date by which to file his petition.

CONCLUSIONS OF LAW

North Carolina General Statutes Section 126-35 establishes that if a permanent State employee is not satisfied with the final decision of the head of a department, he may appeal to the State Personnel Commission by filing such appeal not later than 30 days after receipt of notice of the department head's decision. Similarly, N.C.G.S. §126-38 states that any employee appealing any decision or action shall file a petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal. The right to appeal to an administrative agency is granted by statute, and compliance with the statutory provisions is necessary to sustain the appeal. Lewis v. North Carolina Department of Human Resources, 92 N.C. App. 737, 375 S.E.2d 712 (1989). Where a petitioner bears the responsibility of filing his petition with the Office of Administrative Hearings on or before the requisite date but fails to comply with the mandatory requirement for timely filing of his petition for a contested case hearing, the decision of an administrative law judge to

dismiss the petition is proper. Gummels v. North Carolina Department of Human Resources, 98 N.C. App. 675, 392 S.E.2d 113 (1990).

In the present case, the Petitioner's attorney of record received notice of the decision of the Respondent's head official on April 5, 1991. This constituted the decision which triggered the Petitioner's right of appeal mentioned in N.C.G.S. §126-38 and began the 30-day time period within which the Petitioner could timely file the petition initiating his appeal with the Office of Administrative Hearings. The 30-day period expired on May 6, 1991. However, the Petitioner did not file his petition until May 8, 1991--two days after the expiration of the appeal period. The Petitioner's appeal is therefore clearly untimely under N.C.G.S. §§126-35 and 126-38. Based upon the principles of Lewis v. North Carolina Department of Human Resources, supra and Gummels v. North Carolina Department of Human Resources, supra, the Petitioner's failure to comply with the Mandatory requirement for timely filing of his petition for a contested case hearing in order to exercise his statutory right of appeal warrants the dismissal of his petition.

Both of the Petitioner's premises that his petition was filed in a timely manner are groundless. Firstly, the Petitioner argues that he filed his petition within the 30-day statutory period "after receipt of notice" of the decision at issue because he himself did not receive notice of the department head's decision until May 1, 1991 when the Petitioner's attorney of record informed the Petitioner in writing about her April 5, 1991 receipt of the notice. The May 8, 1991 filing date of the petition is within thirty days of the May 1, 1991 date which the Petitioner contends is his actual "receipt of notice" date as contemplated by N.C.G.S. §§126-35 and 126-38. It is further contended that the Petitioner's attorney was unaware that the Petitioner had not been directly notified by the Respondent of the department's final agency action and that the Respondent erred in sending the notice of the department head's decision merely to the Petitioner's attorney and not to the Petitioner himself.

There is a presumption in favor of an attorney's authority to act for the client he professes to represent. This presumption arises not only with regard to technical or procedural aspects of a case; it extends as well to the arena of the client's substantive rights. Greenhill v. Crabtree, 45 N.C. App. 49, 262 S.E.2d 315 (1980), aff'd 301 N.C. 520, 271 S.E.2d 908 (1980). In the instant case, the presumption that the Petitioner's attorney of record procedurally acted on behalf of the Petitioner with regard to her receipt of the notice of the department head's decision is intact and unrebutted. It becomes the burden of the client to rebut this presumption and to prove lack of authority to the satisfaction of the court. Greenhill v. Crabtree, supra. In determining the Petitioner's failure to sufficiently rebut the presumption that his attorney of record acted on his behalf in her receipt of the notice of the decision by the Respondent's head, it is noteworthy that (1) the record discloses that the Petitioner's attorney has represented him throughout his employee grievance appeal process and (2) a copy of the notice of decision received by the Petitioner's attorney on April 15, 1991 clearly was not sent to the Petitioner himself as noted by the omission of an appropriate notation at the bottom of the notice. This conclusion is consistent with the North Carolina Court of Appeals decision in Bennett v. Bennett, 71 N.C. App. 424, 322 S.E.2d 439 (1984), in which the appellate court held that service of a notice on a party's attorney is sufficient where there is nothing in the record to show that the attorney has been relieved from representation before the notice is served on him.

The Petitioner's alternative assertion that his petition was filed in a timely manner because three days were required to be added to his 30-day appeal period under N.C.G.S. §1A-1, Rule 6(e), due to the service of the department head's notice of decision by mail, is likewise unpersuasive. The addition of three days pursuant to this statutory provision would extend the Petitioner's appeal period to May 9, 1991, thus rendering as timely his May 8, 1991 filing of the petition. However, the undersigned administrative law judge is obliged to heed the plain meaning of the statutory provisions in N.C.G.S. §§126-35 and 126-38 which uniformly establish that the petition of appeal shall be filed no later than 30 days after receipt of notice of the decision. The Petitioner's suggested construction of these statutes, influenced by the Petitioner's desired application of N.C.G.S. §1A-1, Rule 6(e), would afford him a total of 33 days after receipt of notice of the decision at issue to file a petition for a contested case. Such an interpretation contravenes the clear language of N.C.G.S.

§§126-35 and 126-38 and is therefore impermissible.

FINAL DECISION

This contested case is DISMISSED for lack of jurisdiction under N.C.G.S. §150B-36(c).

NOTICE

In order to appeal a final decision, the person seeking review must file a petition with the Superior Court of Wake County or with the superior court of the county where the person resides. The petition for judicial review must be filed within thirty days after the person is served with a copy of the final decision. N.C.G.S. §150B-46 describes the contents of the petition and requires service of the petition on all parties.

This the 26th day of August, 1992.

Michael Rivers Morgan
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 INS 1008

CHARLES H. YATES,
Power of Attorney for Ruth Yates,
Petitioner,

v.

N.C. TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN,
Respondent.

RECOMMENDED DECISION

This contested case was heard on July 23, 1992 in Fayetteville, North Carolina upon appeal from Respondent's denial of private duty nursing benefits requested by the Petitioner for the period of December 1, 1990 through August 14, 1991.

Petitioner was represented at the hearing by Mr. Luke Largess of the firm of Ferguson, Stein, Watt, Wallas, Adkins and Gresham, P.A. Respondent was represented by Ms. Evelyn Terry, Associate Attorney General.

WITNESSES

The following testified for Petitioner:

Dr. Tinsley Rucker - Petitioner's physician.

Charles Yates - Petitioner's Son and Power of Attorney.

Patricia Williams - Director of Nursing, Village Green Care Center, Petitioner's present residence.

The following testified for Respondent:

Dr. Alan McBride - Chief Medical Consultant, Blue Cross & Blue Shield

Harold Wright - Deputy Administrator, N.C. Teachers' and State Employees' Comprehensive Major Medical Plan

OFFICIAL NOTICE

Official Notice is taken of:

G.S. § 135-40.6(8)(b)
G.S. § 135-40.6(8)(c)
North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan Policy on Private Duty Nursing, Number AH0715:00 (December 1989)

FINDINGS OF FACT

1. Petitioner is a retired North Carolina public school teacher with 33 years of service who is eligible for, and has received benefits under, the Respondent's health insurance plan.

2. In October 1989, Petitioner was hospitalized and treated for a stroke. At that time, among other conditions, she could not communicate verbally nor feed herself. She had to be fed through a nasogastric feeding tube.

3. Upon her discharge from the hospital on October 18, 1989 and until January 18, 1990, the Respondent provided Petitioner with benefits covering private duty nursing, 24 hours per day, seven days per week on the basis of her medical condition.

4. From January 19, 1990 until November 30, 1990, the Respondent provided private duty nursing benefits for Petitioner for 16 hours per day, seven days per week. Petitioner's family paid privately for a nursing assistant the remaining eight hours per day.

5. On December 1, 1990, Respondent reduced Petitioner's private duty nursing benefit to eight hours per day, seven days per week.

6. On December 1, 1990, Petitioner's condition had not changed significantly since October 1989, except that she was now fed through a stomach gastric tube instead of the nasogastric tube. Based on the testimony at the hearing, Petitioner's condition since her hospitalization was one of steady, gradual decline.

7. Petitioner appealed the reduction in benefits to eight hours per day through Respondent's appeal procedure. From December 1, 1990 through August 14, 1991, pending the appeal of the reduction in benefits, Petitioner's family paid privately for nursing care for the 16 hours per day not covered by Respondent. The parties stipulated that Petitioner submitted regular requests for 16 hour per day skilled nursing benefits during the appeal period.

8. On February 26, 1991, Respondent denied Petitioner's first-level appeal of the reduction in her benefits.

9. In making that determination, Respondent relied upon the recommendation of its Medical Consultant, Dr. Alan McBride, M.D. Dr. McBride based his recommendation on a review of the Petitioner's nursing notes for the period of December 1, 1990 through February 1, 1991. Dr. McBride never personally examined the Petitioner.

10. From his review of those nursing notes, Dr. McBride believed that Petitioner did not need skilled nursing care, except for a monthly visit. He determined that a home health aide and the family could provide Petitioner with adequate care. Dr. McBride noted that the family should have been trained by that time to do Petitioner's feedings through the stomach gastric tube.

11. On March 15, 1991, Respondent further reduced Petitioner's benefits to four hours of a home health aide, seven days per week, and a monthly skilled nursing visit. Petitioner continued to request 16 hour per day coverage.

12. Petitioner filed a second-level appeal on March 29, 1991.

13. The second-level review panel denied Petitioner's appeal on April 29, 1991.

14. Petitioner filed for a third-level appeal to the Board of Directors of the Respondent agency. The Board considered and denied the appeal at its meeting of July 30, 1991.

15. On August 14, 1991, upon learning of the decision of the Board and unable to continue to pay privately for home nursing care, Petitioner's family moved her into a skilled nursing facility at the Village Green Care Center in Fayetteville.

16. Petitioner was admitted to Village Green Care Center as a skilled care patient.

17. Dr. Tinsley Rucker was Petitioner's primary care physician. Based on Dr. Rucker's testimony, Petitioner had the following medical complications during the period that is on appeal: Petitioner

a. suffered from profound dementia;
b. could not swallow and had no gag reflex, an unusual medical condition that presented a high risk of nasopharyngeal aspiration and pneumonia;
c. had a history of chronic bacterial infections, particularly urinary tract infections that presented a risk of whole body infection (sepsis) if not detected early;
d. had problems with contracture of her extremities;
e. had problems with conjunctivitis and skin lesions, including decubiti ulcers;
f. was not able to express herself or otherwise communicate.

18. Because she could not communicate in any manner about any discomfort associated with any of her several disorders, including urinary tract infections or aspiration into the lungs, Petitioner needed daily skilled examination that a home health aide could not provide. Any undetected bacterial infection presented a very high risk of whole body infection or sepsis, while undetected nasopharyngeal aspiration presented a high risk of pneumonia; either condition was very dangerous for Petitioner.

19. Based on her medical condition during the relevant period, the Petitioner needed some amount of skilled nursing care every day. From the evidence presented at the hearing, the Administrative Law Judge finds that eight hours of nursing care per day was a reasonable and necessary amount of care, given Petitioner's medical condition.

CONCLUSIONS OF LAW

1. The controlling legal principle in this case is the Respondent's medical policy on private duty nursing which interprets the provisions of G.S. 135-40.6(8) and other statutory guidelines that apply to someone in Petitioner's circumstance.

2. Section 7.a of that medical policy on private duty nursing states, in pertinent part, that the:

> "need for, and the length of, service usually depends upon the condition of the patient and the level of care required rather than the nature of the disease, illness or condition."

Under this language, the condition need not be specifically listed in the medical policy for an individual to qualify for private duty nursing benefits.

3. Based on the testimony of all the witnesses, this Court concludes as a matter of law that Petitioner's medical condition required continuing skilled nursing care and qualified for benefits therefore under Section 7.a of Respondent's policy on private duty nursing.

4. Based on the evidence presented at the hearing, Petitioner also presented the medical conditions specifically listed under Section 7.c.v. of Respondent's policy as an example of a condition requiring skilled care -- nasopharyngeal aspiration.

5. Respondent's Medical Consultant, Dr. McBride, made a reasonable recommendation to Petitioner's health care needs based on the information he had reviewed. However, he did not have as complete an understanding of her medical condition as did her physician, Dr. Rucker.

6. Upon Dr. Rucker's convincing testimony, this Administrative Law Judge concludes as a matter of law that Petitioner had met the requirements of eligibility presented under Section 7.a. and 7.c.v. of Respondent's policy on private duty nursing. Petitioner needed more skilled care than that provided by a home health aide during the period on appeal.

RECOMMENDED DECISION

WHEREFORE, based upon the preceding findings of fact and conclusions of law, it is the recommended decision of this Administrative Law Judge that Petitioner was eligible for and should now receive private duty nursing benefits for 8 hours per day, seven days per week, for the period on appeal, December 1, 1990 through August 14, 1991.

This 21st day of August, 1992.

Robert R. Reilly
Admininstrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 EHR 0112

LEO SCOTT WILSON,
Petitioner

v.

DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES,
Respondent

RECOMMENDED DECISION

This matter came on for hearing before the undersigned administrative law judge on July 6, 1992, in Burlington.

Mr. C. Craig White represented the Petitioner. Ms. Elizabeth Rouse Mosley represented the Respondent. The Petitioner presented two witnesses and introduced eleven exhibits. The Respondent presented two witnesses and introduced seven exhibits. Proposed Findings of Fact were filed on August 6 and 20, 1992.

ISSUE

Did the Respondent properly assess a civil penalty of five thousand dollars ($5,000.00) against the Petitioner for violation of the Mining Act of 1971 as alleged in the October 18, 1991 assessment?

FINDINGS OF FACT

1. The Petitioner owns two (2) parcels of land, one ofwhich consists of approximately an eight (8) acre tract on the northeast side of old Glencoe Road and another of which consists of a thirty-three (33) acre tract on the southwest side of old Glencoe Road. This real estate is subject to the zoning laws of the City of Burlington, Alamance County, North Carolina. It is zoned R-9 which allows the land to be used for agricultural purposes but not for mining purposes.

2. Prior to January 17, 1989, the Petitioner contemplated cultivating a Christmas tree farm on both of the tracts of land adjoining old Glencoe Road. The Petitioner contacted the City of Burlington zoning officials and determined that the tracts of land could be used for the purpose of planting and cultivating Christmas trees.

3. On January 17, 1989, a Burlington zoning official, Mark D. Reich, contacted the Petitioner by letter dated January 17, 1989. The letter stated that both the City of Burlington soil erosion and sedimentation control ordinance and the North Carolina Sedimentation Pollution Control Act of 1973 would allow the clearing of the tracts of land for the purpose of planting and cultivating Christmas trees.

4. Thereafter, the Petitioner constructed a pond on the northeast tract for the purpose of providing a source of water for the cultivation of the Christmas trees. He planted between three and four thousand Christmas trees on the tracts of land.

5. The Petitioner had contacted Lon Wiseman, a Christmas tree farmer, prior to the beginning of Petitioner's Christmas tree farming to obtain advice. Mr. Wiseman inspected the Petitioner's property. He observed approximately twenty-five hundred (2,500) Christmas trees on the tracts of land. Mr. Wiseman stated that the Petitioner was engaged in Christmas tree farming and that he was doing so

in an acceptable manner.

6. On or about February 1, 1990, the Petitioner was informed by the City of Burlington zoning officials that the tract where earth had been moved for the purpose of creating the pond might fall under the provisions of the Mining Act of 1971. More than one acre of land had been disturbed. The Petitioner responded that more than one acre of land had been moved for the purpose of constructing a pond as a source of water for the cultivation of his Christmas trees. The Petitioner, upon being informed that he might be in violation of the Mining Act of 1971, immediately ceased any further earth removal or disturbance in accordance with the direction of the City of Burlington zoning officials.

7. On or about September 10, 1990, the Petitioner was informed that the Respondent was assuming jurisdiction of the Petitioner's alleged violations under the Mining Act of 1971.

8. Some of the topsoil, which had been excavated, had been removed from the Petitioner's land by a contractor. No remuneration was received by the Petitioner.

9. The Respondent conducted numerous inspections of the Petitioner's property and requested that the Petitioner submit a reclamation plan for the property pursuant to the Mining Act of 1971. The Petitioner attempted to follow some of the Respondent's suggestions. He sowed some wheat and grass on the property.

10. The Petitioner allowed the Respondent to come upon his property for purposes of inspection.

11. The Petitioner received a civil penalty assessment for violations of the Mining Act of 1971 by letter dated October 25, 1991, from the Respondent. The letter assessed a civil penalty in the amount of five thousand dollars ($5,000.00) for allegedly operating a mine without a valid permit on or before August 28, 1990. The letter stated in part: "In determining the amount of these penalties, I have considered the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with the Mining Act as required..."

12. Douglas Miller testified for the Respondent that he prepared a form called "Guidelines for Assessing Civil Penalties for Violations of the Mining Act for Mining Without a Permit" on January 17, 1991 and forwarded it to his superior for review. Paragraph C of the document substantiates that the Petitioner never had any prior Mining Act violations. Paragraph D states that the Petitioner did not have knowledge of the Mining Act before he commenced the alleged mining. Paragraph E states that all alleged mining ceased immediately after the receipt of the notice of violation. Paragraph B, number 7, indicates that the degree of on-site damage was "slight". Douglas Miller testified that the actions of the Petitioner were not willful.

13. Douglas Miller testified that the amount of the civil penalty assessment was not set by him and that he could not testify as to how the maximum penalty had been set in this case. There was no evidence as to how the maximum penalty had been set.

CONCLUSIONS OF LAW

1. The Mining Act of 1971, GS 74-49(7), states as follows: "(Mining) shall not include excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining". The Petitioner's construction by excavation and grading of a pond as a water source for his Christmas trees was conducted solely in aid of on-site farming and, therefore, was not subject to the Mining Act of 1971.

2. The Petitioner did not violate the Mining Act of 1971.

3. Alternatively, the decision to impose the maximum fine of five thousand dollars ($5,000.00) on the

Petitioner was arbitrary and capricious in that the guidelines used by the Respondent in assessing the penalty assessment and the evidence presented in this contested case do not support the maximum penalty. Furthermore, no evidence was provided by the Respondent at the hearing of this matter as to how the maximum penalty assessment was determined. See Recommended Decision in Town of Denton v. Department, dated July 30, 1992. A copy is attached.

RECOMMENDED DECISION

It is recommended that the civil penalty assessment of five thousand dollars ($5,000.00) against the Petitioner be rescinded.

ORDER

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

NOTICE

The final decision in this contested case shall be made by the Department of Environment, Health and Natural Resources. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

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.

This the 26th day of August, 1992.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF WAKE	92 OSP 0024

RUDOLPH TRIPP Petitioner,	)	
v.	)	RECOMMENDED DECISION
NORTH CAROLINA DEPARTMENT OF CORRECTION, Respondent.	)	

This matter was heard before Beecher R. Gray, administrative law judge, on April 14-15, 1992 in Raleigh, North Carolina. At the conclusion of the evidence, the parties requested and received leave to file proposed findings of fact and written arguments thirty days after receipt of transcripts. Both parties filed timely proposals and arguments, which have been considered.

APPEARANCES

Petitioner: Rudolph Tripp, appearing pro se

Respondent: Sylvia Thibaut, Esq.

ISSUE

Whether Respondent had just cause for the termination of Petitioner Rudolph Tripp on October 31, 1991.

FINDINGS OF FACT

1. The parties received notices of hearing by certified mail more than fifteen (15) days prior to the hearing.

2. Petitioner began employment with the North Carolina Department of Correction in September of 1977. At the time of his dismissal on October 31, 1991, Petitioner held the position of Correctional Training Coordinator I in Respondent's Office of Staff Development and Training (OSDT).

3. Petitioner completed a doctorate in education at North Carolina State University in February, 1991, graduating in May, 1991.

4. On October 26, 1990, Petitioner was given an oral warning for using the State owned computer in his office to write a personal letter to the Federal Internal Revenue Service.

5. Petitioner operated computers both at OSDT and at home. Petitioner has Wordperfect 5.1 word processing in his home. At the time of Petitioner's termination, OSDT used a word processing program identified as SAMNA, in which Petitioner was trained and literate. Petitioner also was literate in the use of ASCII for file formatting. ASCII can be used to translate documents from SAMNA so that they may be copied on another computer.

6. The OSDT develops and administers promotional examinations for different correctional officer ranks including sergeant, lieutenant, and captain. OSDT undertakes certain security measures to ensure the integrity of the examinations. Only a handful of OSDT staff, including Elizabeth Haines, former acting Director of OSDT and current Curriculum Manager, her secretary, Barbara Edgerton, Teri

White, and Hannah Wilkins had direct access to the promotional examinations and answers during 1991. The examinations were normally kept in locked file cabinets or drawers except when actively being prepared.

7. Petitioner has served as monitor for previous promotional exams given by OSDT to candidates for promotion within or into the sergeant and officer ranks of the Department of Correction. Petitioner was aware of the need for security of the examinations and the need to protect the integrity of the promotional process.

8. At the time of the 1991 captain's promotional examination, the prepared examinations were kept in one or more of seven locked file cabinets and two locked file vaults which were located beside the desks of Barbara Edgerton and Elizabeth Haines. Only Elizabeth Haines, Barbara Edgerton, Teri White, and Hannah Wilkins had keys to the seven locked file cabinets and only Elizabeth Haines and Barbara Edgerton had keys to the two locked file vaults located beside their respective desks.

9. The file cabinet and file vault keys for Elizabeth Haines, Teri White, and Hannah Wilkins were kept on the person or in their purses. Barbara Edgerton left her key loose in her unlocked desk drawer for a while and later kept it in a paperclip box inside the desk drawer.

10. All members of the staff of OSDT, including Petitioner, had keys to the outside doors of the OSDT building.

11. While a promotional examination is being prepared, its components are kept in a documentation notebook, including the questions, the source material for the questions, the answers to the questions, and the diskette containing the actual examination. The documentation notebook also is kept under lock, except when actually being used in preparation of the exam.

12. Barbara Edgerton did the actual typing of the 1991 Captain's promotional exam on Tuesday, Wednesday, and possibly Thursday morning, August 27, 28, and 29, 1991. The examination was placed onto a computer diskette using the OSDT SAMNA word processing system.

13. Teri White was employed by OSDT during the period of time that Barbara Edgerton was typing the 1991 Captain's Promotional Exam. Her office was adjacent to that of Barbara Edgerton's. On the days that Barbara Edgerton was typing the Captain's Exam, Teri White observed Petitioner in and out of Barbara Edgerton's office three or four times each day.

14. Petitioner had in-service education responsibilities in OSDT, but no curriculum development responsibilities, and therefore had no work related reason, other than mail pickup, to be in Barbara Edgerton's office. During this period of time, Elizabeth Haines asked Petitioner's supervisor, Dan Lilly, to ask Petitioner not to spend so much time in Barbara Edgerton's office so that she could get her work done. Teri White did not observe Petitioner in Barbara Edgerton's office as frequently before and after the 1991 Captain's Exam preparation as she did during the Exam preparation.

15. While typing the 1991 Captain's Exam, Barbara Edgerton experienced a computer problem and asked Petitioner to help her solve the problem, which he did. While helping Barbara Edgerton with her computer, Petitioner was directly exposed to the 1991 Captain's Exam.

16. Thirty-six (36) applicants took the 1991 Captain's Exam. Two of the 36 applicants made perfect scores on the exam -- the first perfect scores ever recorded by the correctional staff in the administration of over 5,000 promotional examinations.

17. The two perfect scores were achieved by Ella Cobb and Perry Faulk, both of whom had previously taken and failed the Captain's Promotional Exam. Ella Cobb had taken the Exam once before and had scored in the 50s out of a possible 100. Perry Faulk had taken the Exam twice and had scored in the 50s out of a possible 100 each time.

18. Curriculum Manager Elizabeth Haines became suspicious when she realized that the individuals scoring 100s on the 1991 Captain's Exam had scored in the 50s on previous attempts. Upon investigation, she determined that the answer key contained an error in one answer. She determined that the 34 applicants not scoring 100 on the Exam had in fact answered the subject question correctly on the merits while Ella Cobb and Perry Faulk, although answering that question correctly according to the answer key, had missed the question on the merits. The question incorrectly answered on the answer key was an elementary question which applicants would be expected to answer correctly.

19. An investigating committee consisting of none-OSDT employees was convened to determine whether and how the Exam was compromised. The committee interviewed all 36 Exam applicants as well as many of the OSDT staff.

20. When Perry Faulk was interviewed, he denied cheating on the Exam. The committee asked him to submit to a polygraph examination to which he agreed. Prior to reporting for the polygraph examination, Perry Faulk consulted with an attorney at law. Upon appearing for the polygraph examination, Perry Faulk notified the polygraph examiner that he might have information useful to the investigation committee.

21. Perry Faulk did not take the polygraph examination as scheduled, but rather met with the committee and, through his attorney, negotiated an agreement with the committee whereby he would reveal the name of the person who had given him the 1991 Captain's Exam in exchange for assurance that he would receive a final written warning but not be terminated from employment with Respondent.

22. Perry Faulk informed the investigation committee that he had approached Chaplain Shelton Murphy at the Harnett Correctional Institute where Perry Faulk worked and discussed with him the prospect of retaking the Captain's Exam in order to try to move up the career ladder. Perry Faulk and Chaplain Murphy discussed Petitioner as a possible source of aid for Faulk in preparing for the upcoming 1991 Captain's Exam.

23. Perry Faulk informed the committee that he had contacted Petitioner by telephone and a meeting at Petitioner's house had been arranged. Perry Faulk informed the committee that he had gone to Petitioner's house at the agreed time and observed Petitioner type commands into his home computer which caused it to generate a printed copy of the 1991 Captain's Exam. Perry Faulk informed the committee that Petitioner had given him both the Exam and the answers and had requested that Faulk return the Exam when finished with it.

24. Perry Faulk informed the committee that he had made audio tapes of the contents of the Exam and had used those tapes to study the Exam while he drove to and from work in his car. He informed the committee that the audio tapes were destroyed when he no longer had use for them.

25. Ella Cobb denied having cheated on the 1991 Captain's Exam during her first interview before the investigation committee. Another applicant, Leroy Perry, informed the committee that he had received help in the form of answers written on a sheet of paper by Ella Cobb and passed to him during the course of the Exam. When the committee confronted Ella Cobb with this declaration, she admitted that she had assisted Leroy Perry during the Exam by providing him with answers.

26. When questioned initially by the committee, Ella Cobb was asked to name all individuals she was acquainted with who worked at OSDT. She did not list Petitioner's name. Ella Cobb later admitted that she knew Petitioner by virtue of the fact that he was her hairdresser and had done her hair and that she had called him during the investigation. During Ella Cobb's interview before the committee, she was asked four questions from the 1991 Captain's Exam, only two of which she answered correctly.

27. After interviewing Petitioner and others, the committee concluded that Petitioner had compromised the 1991 Captain' Promotional Exam and that he should be dismissed for unacceptable personal

conduct. Elizabeth Haines conducted a pre-suspension conference with Petitioner on October 31, 1991 and discussed with Petitioner his suspension for compromising the 1991 Captain's Promotional Exam. Elizabeth Haines conducted a pre-dismissal conference with Petitioner on December 9, 1991. Petitioner was dismissed by letter dated December 12, 1991, effective October 31, 1991, for unacceptable personal conduct arising from his role in compromising the 1991 Captain's Exam.

28. Daniel Lilly, Petitioner's supervisor at OSDT, encountered Petitioner at a restaurant during Petitioner's suspension. Daniel Lilly asked Petitioner to tell him whether he had or had not compromised the 1991 Captain's Exam. Petitioner neither admitted nor denied having compromised the Exam, stating only that "they cannot prove it."

29. Petitioner provided a copy of the 1991 Captain's Promotional Exam to Perry Faulk prior to the date of administration of the Exam.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.

2. Respondent has carried the burden of proof it is required to carry in order to demonstrate just cause for the suspension and dismissal of Petitioner from its employment on the basis of unacceptable personal conduct arising from Petitioner's compromising the 1991 Captain's Promotional Exam by providing a copy of it to Perry Faulk prior to the date of administration of the Exam. Respondent's decision to suspend and ultimately dismiss Petitioner on the basis of unacceptable personal conduct is supported by substantial evidence and should be affirmed.

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that Respondent's suspension and ultimate dismissal of Petitioner on the grounds of unacceptable personal conduct arising from his compromising of the 1991 Captain's Exam by providing a copy of it to Perry Faulk prior to the administration of the Exam 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 27th day of August, 1992.

Beecher R. Gray
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 & 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 & 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
Dietetics/Nutrition	17
Electrical Contractors	18
Electrolysis	19
Foresters	20
Geologists	21
Hearing Aid Dealers and Fitters	22
Landscape Architects	26
Landscape Contractors	28
Marital and Family Therapy	31
Medical Examiners	32
Midwifery Joint Committee	33
Mortuary Science	34
Nursing	36
Nursing Home Administrators	37
Occupational Therapists	38
Opticians	40
Optometry	42
Osteopathic Examination & Reg. (Repealed)	44
Pharmacy	46
Physical Therapy Examiners	48
Plumbing, Heating & Fire Sprinkler Contractors	50
Podiatry Examiners	52
Practicing Counselors	53
Practicing Psychologists	54
Professional Engineers & Land Surveyors	56
Real Estate Commission	58
Refrigeration Examiners	60
Sanitarian Examiners	62
Social Work	63
Speech & Language Pathologists & Audiologists	64
Veterinary Medical Board	66

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

CUMULATIVE INDEX

(April 1992 - March 1993)

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

PLAC
STAM
HERE

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

☐ Please enter my subscription for the *North Carolina Register* to start with the_____issue. ($105.00)/year subscription) (N.C. Subscribers please add sales tax.)

☐ Renew *North Carolina Register*

☐ Check Enclosed ☐ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS_____

CITY _____ STATE _____ ZIP _____

PHONE_____

(Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS:

1. Present Address

NAME

ADDRESS

CITY STATE ZIP

2. New Address

NAME

ADDRESS

CITY STATE ZIP

Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447

MAILED IN THE LAWS

FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY
VAN HECKE-WETTACH 064-A
CHAPEL HILL

NC 27599