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The **NORTH CAROLINA REGISTER**

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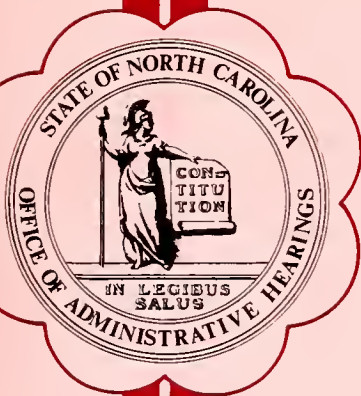
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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

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

ADOPTION AMENDMENT, AND REPEAL OF RULES

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

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

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

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

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

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

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER



*Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, 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

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NORTH CAROLINA REGISTER
Publication Schedule
(January 1993 - 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
*****	*****	*****	*****	*****	*****	*****
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	09/01/93
07/01/93	06/10/93	06/17/93	07/16/93	07/31/93	08/20/93	10/01/93
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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 6
ENTREPRENEURIAL DEVELOPMENT
BOARD**

WHEREAS the State of North Carolina is committed to the development of a vibrant economy for the people of the State; and

WHEREAS business in North Carolina operates in a global economy where information expands at a geometric rate and rapid responses are necessary to remain competitive, particularly in high-technology fields; and

WHEREAS an economic environment which nurtures fledgling and developing companies would serve both these functions; and

WHEREAS there is currently no government organization dedicated exclusively to collaboration and coordination among state and non-state entities in the creation and maintenance of a dynamic entrepreneurial business environment;

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

Section 1. ESTABLISHMENT

- A. The Entrepreneurial Development Board ("Board") is hereby established.
- B. The Entrepreneurial Development Advisory Council ("Advisory Council") is also hereby established.

Section 2. MEMBERSHIP

- A. The Board shall be composed of at least 20 members appointed by the Governor to serve at his pleasure. Ideally, a majority of the Board themselves should be entrepreneurs.
- B. The Secretary of Commerce, or his designee, shall serve as a non-voting, ex officio member of the Board.
- C. The Advisory Council may include state and non-state entities concerned with entrepreneurial and small business.

Section 3. CHAIR

The Governor shall appoint a Chair for the Board and the Advisory Council, both of whom shall serve at his pleasure.

Section 4. MEETINGS

- A. The Board shall meet at least quarterly at the call of its Chair.
- B. The Advisory Council shall meet as necessary to effect its purposes at the call of either its Chair or the Board's Chair.

Section 5. DUTIES

- A. The Board shall have the following duties and responsibilities:
 - 1. Make recommendations to the Governor and the General Assembly regarding policy, programs, and monies required to nurture entrepreneurial business growth and development throughout North Carolina, including changes in the state tax structure;
 - 2. Work to improve collaboration among the various state, local, federal, private, and non-profit entities involved in entrepreneurial business development;
 - 3. Examine the need for programs in the areas of export and contract assistance; training and education; funding resources; technological assistance; manufacturing assistance; and development of high-growth, startup, and fledgling entrepreneurial businesses;
 - 4. Develop a statewide, inclusive entrepreneurial development program;
 - 5. Study practices for entrepreneurial business development throughout the United States and the world and determine their applicability to North Carolina's economic environment;
 - 6. Provide a report to the Governor on January 31st of each year concerning the status of entrepreneurial development in North Carolina;
 - 7. Plan and conduct an annual Governor's Conference on Entrepreneurial Development;
 - 8. Review existing state and local small business programs to make recommendations for redirection, enhancement, or elimination; and

9. Undertake such other activities as are necessary to effect the Board's responsibility to foster development of a vibrant entrepreneurial community in North Carolina.
- B. The purpose of the Advisory Council is to provide such technical advice to the Board as it requests.

Section 6. ADMINISTRATION

1. The Department of Commerce shall provide staff and administrative support services for the Board.
2. The Board shall work closely with the NC Economic Development Board.
3. Board members shall receive reimbursement for reasonable expenses, as allowed by North Carolina law.

This Order is effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this the 12th day of April, 1993.

**EXECUTIVE ORDER NUMBER 7
ABOLISHING THE NORTH
CAROLINA DRUG CABINET**

WHEREAS, the duties of the North Carolina Drug Cabinet have been transferred to existing state agencies on the front line of crime fighting, including the Department of Justice and the Governor's Crime Commission,

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

Section 1. Abolishment.

The North Carolina Drug Cabinet established by Executive Order Number 80 by Governor James G. Martin, and reestablished by Executive Order Number 108, amended by Martin Executive Order Number 117, is hereby abolished. Executive Orders 108 and 117 of the Martin Administration are hereby rescinded.

This executive order shall be effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 13th day of April, 1993.

TITLE 13 - DEPARTMENT OF LABOR

CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

MAY 6 AND MAY 10 HEARINGS

CLARIFICATION TO THE NOTICE PUBLISHED IN 8:2 NCR 97-210:

The place of the 2:00 PM May 6 public hearing (announced on page 97 of the issue of April 15, 1993) has been changed from the Labor Building to the Highway Building auditorium, 1 South Wilmington Street, Raleigh, North Carolina.

Persons wishing to testify on the adoption of proposed 13 NCAC 7A .0401 (Carolina Star Program) or proposed 13 NCAC 7A .0601 - .0607 (Safety and Health Programs and Committees) may do so either at the above hearing on May 6, 1993, or at the continuation of that hearing to May 10, 1993, at 10:30 AM in Room 150 of the Highway Building, 1 South Wilmington Street, Raleigh, North Carolina.

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Low-Level Radioactive Waste Management Authority intends to amend rules cited as 1 NCAC 37 .0102 -.0103, .0201, .0208 and .0306. No hearing is required. This a changed version of proposed text the agency previously published on February 1, 1993 in Volume 7 Issue 21 of the NC Register in the course of Rulemaking Proceedings but did not adopt. A public hearing was previously held on February 22, 1993.

The proposed effective date of this action is August 2, 1993.

Reason for Proposed Action: Having received oral and written comments on proposed rule amendments, the Authority adopted changes to some of the amendments on April 7. Before formally adopting the amendments, the text should be published in the NC Register.

Comment Procedures: The Authority will receive written comments from the public through June 2, 1993. Written comments should be sent to: Rulemaking Coordinator, Chrystal H. Stowe, NCLLRWMA, 116 W. Jones Street, Suite 2109, Raleigh, NC 27603-8003.

CHAPTER 37 - N.C. LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY

SECTION .0100 - GENERAL INFORMATION

.0102 DEFINITIONS

(a) The definitions contained in G.S. 104G-2 and 15A 40 NCAC 11 .1202 3G .3302 apply to rules contained in this Chapter.

(b) As used in this Chapter "facility" means a low-level radioactive waste disposal facility as defined in G.S. 104G-2(7).

(c) As used in Section .0200 the term "proximity" means distance from a location or activity that could involve an impact, either positive or negative, or beneficial or detrimental.

(d) As used in this Chapter "community" means, primarily, a county of the State of North Carolina.

However, the term may include, as well, any local unit of government associated with an identifiable locality and a permanent population, such as a city or a town.

(e) Within this Chapter, "preferred site" means the license area and any contiguous or proximate land identified, at the time of preferred-site selection, as the intended location of administrative outbuildings or other appurtenances associated with the facility, whether or not such areas are identified in terms of precise legal description.

(f) Within this Chapter, "license area" means land within the preferred site that is designated for the location of such disposal cells and buffer zone as are to be described in an application for a license to dispose of such low-level radioactive waste as North Carolina may reasonably be expected to accept for disposal in the course of fulfilling its legal obligations to the Southeast Interstate Low-Level Radioactive Waste Management Compact, as such obligations are expressed in G.S. 104F-1, Article V(e).

(g) Within this Chapter, "participate in the Authority's selection of its preferred site" means:

- (1) to take part in the Authority's formal pre-voting discussion and deliberations at a meeting announced and conducted pursuant to Rule .0306(h) and (i) of this Chapter;
- (2) to cast a vote pertaining to site selection at the preferred-site selection meeting announced and conducted pursuant to Rule .0306 of this Chapter;
- (3) to cast a vote for the precise boundaries of any preferred site chosen at a meeting announced and conducted pursuant to Rule .0306 of this Chapter; or
- (4) to attempt to persuade or influence any other member to cast his votes in these matters in a particular way at any time after the announcement of the preferred-site selection meeting pursuant to Rule .0306(g) of this Chapter.

(h) Within this Chapter, "pecuniary interest in any potentially suitable site under active consideration" means any of the following:

- (1) personal ownership of any interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site;
- (2) ownership of a legal or equitable interest in any business entity owning an interest in real estate comprising all or

any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; within this Chapter, no person shall be considered to have an interest in any business entity whose interest in such a business entity does not exceed one-half of one per cent of the capital stock of such business entity;

- (3) full-time employment by any commercial business entity known to the individual to own any interest in real estate comprising all or any part of a site having undergone characterization and continuing thereafter as a candidate for selection by the Authority as its preferred site; or
- (4) receiving, either individually or as an owner, partner, or employee of a commercial business or professional entity, compensation in the amount of two thousand dollars (\$2,000) or more during the preceding calendar year from any person or business entity owning an interest in real estate comprising all or any part of any site under consideration by the Authority for selection as the preferred site.

(i) Within Rule .0306 of this Chapter, "significant pecuniary benefit" means the accrual of income in the amount of two thousand dollars (\$2,000) or more to an individual that would not have accrued to that individual but for the selection of a particular characterized site as the preferred site.

Statutory Authority G.S. 104G-6(a)(2); 104G-6(a)(20); 104G-9; 104G-23(a).

.0103 MAILING LIST

The Authority maintains mailing lists for its rulemaking and public meeting activities. Individuals wishing to be notified of these activities should send a letter to:

Low-Level Radioactive Waste Management
Authority
Mailing List
Suite 209 Commerce Building
49 W. Hargett Street
Raleigh, NC 27601
116 West Jones Street
Raleigh, NC 27603-8003

stating the particular activity or activities for which notice is requested and the name, address and phone number of requester. A fee may be charged to cover the actual cost of providing this notice.

Statutory Authority G.S. 104G-6; 104G-9; 150B-21.2.

SECTION .0200 - SITE SELECTION CRITERIA

.0201 INTRODUCTION

The rules contained in this Section set forth the criteria which the Authority will consider in selecting a site for the location of a low-level radioactive waste disposal facility. In selecting this site the Authority must comply with the applicable procedures, criteria, and terms and conditions siting criteria set forth in 15A 40 NCAC 11 .1200 (Land Disposal of Radioactive Waste) 3G-.3328 and G.S. 104G, which are incorporated in this Chapter by reference. All subsequent amendments and editions of the referenced material are included in this incorporation. The rules contained in this Section set forth additional criteria to be considered by the Authority in evaluating and selecting a site for the facility in accordance with G.S. 104G. The written justification for the criteria contained in these Rules is available from the Authority at the mailing address set out in 1 NCAC 37 .0103.

Statutory Authority G.S. 104G-6; 104G-7; 104G-9; 104G-23(a); 150B-21.6.

.0208 ADDITIONAL CRITERIA APPLICABLE ONLY TO SELECTION OF A PREFERRED SITE

In addition to the other criteria in this Section, the Authority will consider the following criteria only in its selection of a preferred site from among alternative characterized sites:

- (1) the advantages of minimizing the displacement of permanent residents and improvements to real property, including but not limited to ongoing businesses and commercial enterprises or utility easements and infrastructure, if any; and
- (2) the relative costs of facility development on alternative sites, including but not limited to:
 - (a) costs of acquisition of land or rights of way;
 - (b) costs of construction and appurtenant improvements; and

- (c) relocation costs, including those for permanent residents or improvements to real property including, but not limited to, ongoing businesses, commercial enterprises, or utility easements and infrastructure, if any.

Statutory Authority G.S. 104G-6; 104G-9; 104G-23(a).

SECTION .0300 - SITE SELECTION PROCEDURE

.0306 PREFERRED SITE

(a) The Authority shall select a preferred site in accordance with G.S. ~~104G-20~~ 104G-9 and the procedures contained in this Rule.

(b) The site shall be selected in accordance with the criteria set out in 1 NCAC 37 .0200.

(c) Prior to the selection of a preferred site, the Authority shall conduct at least one public meeting in each area where a potentially suitable site has been selected.

- (1) Notice of the meeting shall be published at least ~~45~~ 30 days in advance of the meeting. Notice of the meeting shall be published in a newspaper of general circulation in the area and shall be sent to the Chairman of the county commissioners, the county manager and the county health director of any county in which a site has been identified; the mayor, the manager and the Chairman of the council of any municipality in which a potentially suitable site has been identified, and any person who has requested a copy of the notice in accordance with the procedure set out in 1 NCAC 37 .0103. The notice shall include the date, time and place of the meeting; topics to be addressed at the meeting; the manner in which public comment will be accepted; and the name of the individual to contact for further information. No meeting scheduled to be conducted pursuant to this Rule shall be considered improperly noticed, however, except to the extent that such notice may fail to meet the standards expressed in G.S. 143-318.12 for public notice of official meetings of public bodies.

- (2) Should the conduct of any public meeting scheduled pursuant to this Rule be deemed by the Authority to be impracti-

cable for any reason, the Authority may provide for the receipt of written public comment as an alternative to such a public meeting. A decision by the Authority to accept written public comment in lieu of conducting a public meeting pursuant to this Rule will be published as a notice in a newspaper of general circulation in the area in which a meeting was scheduled; or, should such local publication be impracticable for any reason, notice will be published in a newspaper of general circulation in a community with a population in excess of 50,000 persons within 100 miles of the place at which the meeting was originally scheduled and will be mailed to the chairman of the county board of commissioners, the county manager, and the county health director of any county in which such a meeting was scheduled.

(d) Information considered during the selection process shall include such information provided by the site designation review committees as may be transmitted to the Authority by the county boards of commissioners pursuant to G.S. 104G-19(f) and information obtained at the public meetings, and may include additional information which the Authority deems appropriate.

(e) In making this selection, the Authority shall actively seek a suitable community interested in hosting the facility, from among the 2 or 3 sites selected, and shall provide information concerning:

- (1) the opportunities for involvement in the decision-making process regarding the construction and operation of the facility;
- (2) information regarding the facility operator and the proposed technology; and
- (3) economic incentives available to the host including reimbursement for lost land values, lost revenues, ~~income available from the trust fund,~~ and authorized taxes or fees.

(f) Prior to voting on any motion to select a preferred site, each member of the Authority will be afforded an opportunity to review the following relevant and material data and evidence:

- (1) G.S. 104E, 104F, and 104G;
- (2) 1 NCAC 37 and 15A NCAC 11 .0400 and .1200;
- (3) 10 CFR Part 61;
- (4) PHASE 1 SCREENING STUDY, IDENTIFICATION OF POTENTIAL-

- (5) LY SUITABLE AREAS, prepared by Ebasco Services, Inc., and submitted to the Authority November 30, 1988;
- (6) NCLLRW DISPOSAL SITE SCREENING PROCESS, PHASE 2 TASK 1 IDENTIFICATION OF CANDIDATE AREAS, prepared by Ebasco Services, Inc., and submitted to the Authority March 20, 1989;
- (7) SUMMARY OF QUESTION AND ANSWER SESSIONS, COMMUNITY FORUMS HELD BY THE NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, FEBRUARY 15 TO APRIL 25, 1989, prepared by Ebasco Services, Inc.;
- (8) 1:24,000 scale United States Department of the Interior Geological Survey topographic maps of each of the 116 potentially suitable site areas provided to the potential operator by Ebasco Services, Inc.;
- (9) PRECHARACTERIZATION REPORT, RICHMOND COUNTY FAVORABLE SITE AREA, NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, presented by Chem-Nuclear Systems, Inc., February 21, 1990;
- (10) PRECHARACTERIZATION REPORT, WAKE COUNTY/CHATHAM COUNTY FAVORABLE SITE AREA, NORTH CAROLINA LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY, presented by Chem-Nuclear Systems, Inc., February 21, 1990;
- (11) EXECUTIVE SUMMARY, REPORTS OF PRECHARACTERIZATION FINDINGS FROM FAVORABLE SITE AREAS FOR NORTH CAROLINA'S LOW-LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY, prepared by Chem-Nuclear Systems, Inc., February 21, 1990;
- (12) REVIEW OF CHEM-NUCLEAR SYSTEMS, INC., PRECHARACTERIZATION DATA, REPORTS AND RECOMMENDATIONS TO CHARACTERIZE FAVORABLE SITE AREAS, prepared by Ebasco Services, Inc.;
- (13) RESPONSES TO PUBLIC

COMMENTS RELATED TO PRECHARACTERIZATION ASSESSMENTS OF RICHMOND COUNTY, WAKE/CHATHAM COUNTY, ROWAN COUNTY AND UNION COUNTY FAVORABLE SITE AREAS, prepared for the North Carolina Low-Level Radioactive Waste Management Authority by the Authority Staff, Chem-Nuclear Systems, Inc., and Ebasco Services, Inc., April 1990;

- (13) Information not otherwise listed in this Rule that is provided to the Executive Director by the Board of Commissioners of any county in which land has undergone characterization, so long as such information is provided to the Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting;
- (14) An environmental impact report, prepared by the potential site operator in compliance with G.S. 104G-11(b), related to each potentially suitable characterized site;
- (15) Written reports of the potential site operator on each potentially suitable characterized site, to include a Safety Analysis Report;
- (16) Information obtained at public meetings conducted pursuant to Paragraph (c) of this Rule, or in written comments associated with such meetings, submitted by members of the public and received by the Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting; and
- (17) Other relevant and material evidence received by the Executive Director not less than 30 days before the Authority's scheduled preferred site selection meeting and recorded in the minutes of the preferred site selection meeting as evidence to be considered by the Authority.

(g) The Authority will publicly announce the date of the preferred-site selection meeting no less than 60 days before it convenes such a meeting. Thirty days before such an announced meeting, no additional materials will be added to the data and evidence compiled pursuant to Paragraph (f) of this Rule. These provisions do not preclude the Chairman of the Authority from postponing the preferred-site selection meeting to a date and time

after those initially announced pursuant to this Rule. Neither do they preclude the Authority, upon majority vote in open session during the preferred-site selection meeting, from adopting a motion specifically to request or consider additional data and evidence.

(h) Discussion of alternatives for preferred site selection.

- (1) The Authority will arrive at a majority selection from among the voting alternatives at its preferred-site selection meeting, and will continue deliberations at its preferred-site selection meeting with only such temporary recesses as may be essential until such a majority decision is achieved. Recesses may be of any duration that the Authority, upon motion and majority vote, deems appropriate for the stated purpose. Recesses may be for any purpose, including the collection of additional information pertaining to a characterized site by the staff or any contractor when the Authority requests such additional information pursuant to Paragraph (g) of this Rule.
- (2) No less than 60 days before the preferred-site selection meeting, the Authority staff will file with the Authority a written description of each characterized site. Each such described characterized site will be considered as a separate alternative at the preferred site selection meeting.
- (3) Free discussion by the Authority members of the relative merits of the alternatives may take place at the Authority's preferred-site selection meeting at any time, except when a vote is in progress. Those alternatives shall include:
 - (A) a separate alternative for each of the characterized sites described pursuant to Subparagraph (h)(2) of this Rule;
 - (B) none of the characterized sites; and
 - (C) undecided.
- (4) Discussion of all alternatives will conclude upon the Chairman's call for a vote on the alternatives, unless any member moves for continued discussion. Should such a motion be seconded, it may be adopted by vote of a majority of Authority members who cast votes on the question, and

discussion of the alternatives will then continue until such time as the Chairman again calls for a vote on the alternatives and no such motion for continued discussion is adopted. Alternatively, any member may move to discontinue further discussion and to vote on the alternatives, and such a motion, if seconded, may be adopted by vote of a majority of Authority members who cast votes on the question.

(i) Voting procedures:

- (1) Voting will be conducted on all alternatives at one time in roll-call format. Each member's name will be called, at which time that member must vote for one of the alternatives. No member may vote for more than one of the alternatives. In counting votes among the alternatives, abstentions, if any, shall count as "undecided."
- (2) Should no alternative other than "undecided" achieve a majority of votes cast, discussion of the relative merits of the alternatives will resume and further voting be conducted until an alternative other than "undecided" is selected by majority vote of those present and voting. Any alternative other than "undecided" receiving a majority of the votes cast at the preferred-site selection meeting shall constitute the Authority's action.
- (3) No site will be selected as the preferred site unless it receives the votes of a majority of those Authority members casting votes in open session. The Authority chairman shall vote in the same manner as any other member.

(j) After the Authority's selection of a preferred site, it may delegate to its contractors or staff the task of recommending the preferred site's precise boundaries in terms of a legal description. Precise boundaries may be drawn by reference to any of the criteria set out in 1 NCAC 37 .0200 and, in addition, to previously existing property boundaries. Recommendations for precise preferred-site boundaries shall be submitted to the Authority for formal approval.

(k) At no time after the Authority's announcement of the date of the meeting at which it will deliberate and vote on the selection of its preferred site will any member knowingly participate in the Authority's selection of its

preferred site, as such participation is defined in Rule .0102(g) of this Chapter, if that member, or any person in the member's immediate family:

- (1) has a pecuniary interest in any potentially suitable site under active consideration for such selection;
- (2) would receive a reasonably foreseeable significant pecuniary benefit from one of the alternative outcomes that would not accrue generally to persons similarly situated, such as employees of comparable employers or persons of the same or similar profession or occupation; or
- (3) is an employee of a business entity that would receive a reasonably foreseeable significant business advantage from one of the alternative outcomes that would not accrue generally to commercial entities in the same or similar business as the member's employer.

(l) Any member of the Authority who desires to excuse himself or herself from participating in the selection of a preferred site on grounds of a conflict of interest will declare the existence and general nature of the conflict in writing. Any such written declarations should be submitted to the Executive Director no less than 60 days prior to the beginning of the meeting convened for the purpose of formal site selection pursuant to Paragraphs (g) and (h) of this Rule and will be attached to the minutes of the Authority's preferred-site selection meeting. Any member who excuses himself or herself from participating on the grounds of a conflict of interest shall be counted as present for purposes of constituting a quorum within the meaning of G.S. 104G-5(f).

Statutory Authority G.S. 104G-4; 104G-6; 104G-9; 104G-11(b); 104G-19; 104G-23(a); 143-318.11; 143-318.12.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 41P .0008; 41R .0002.

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

The public hearing will be conducted at 10:00 a.m. on June 2, 1993 at the Albemarle Building, Room 943-2, 325 N. Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action: To make them consistent with the language and the intent of the American's With Disabilities Act, and with similar rules which have previously been amended.

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

CHAPTER 41 - CHILDREN'S SERVICES

SUBCHAPTER 41P - CHILD-PLACING AGENCIES: ADOPTION

.0008 ADOPTIVE STUDY

(a) The agency shall conduct an adoptive study with its applicants. The study process must include at least one office visit with the adoptive applicants, one home visit, and separate face-to-face interviews with each member of the household above six years of age. The study process must be a joint effort of the adoption agency and the applicants to determine the kind of child the applicants can best parent. Any study that was completed one year or more before placement of a child occurs must be updated to include current information about the family. The updated study shall focus on applicable items in Paragraph (b) of this Rule where change could be expected to have occurred. Physical examinations of family members must be current to within 12 months of the updated study.

(b) The agency shall study the following areas and shall record the information in the adoptive applicants' record:

- (1) the applicants' motivation for adoption;
- (2) the strengths and weaknesses of each member of the household;
- (3) the attitudes and feelings of the family, extended family, and significant others involved with the family toward accepting adoptive children, and parenting children not born to them;

- (4) the attitudes of the applicants toward the biological parents and in regard to the reasons the child is in need of adoption;
- (5) the applicants' attitudes toward child behavior and discipline;
- (6) the applicants' plan for discussing adoption with the child;
- (7) the emotional stability and maturity of applicants;
- (8) the applicants' ability to cope with problems, stress, frustrations, crises, and loss;
- (9) the applicants' ability to give and receive affection;
- (10) the applicants' child-caring skills and willingness to acquire additional skills needed for the child's development;
- (11) the applicants' ability to provide for the child's physical and emotional needs;
- (12) the applicants' record of criminal convictions;
- (13) the adjustment of birth children or previously adopted children, including school reports, if applicable;
- (14) report of a physical examination for members of the adoptive family living in the household within six months of the study that verifies no communicable disease, specific illness, or disabilities that would ~~interfere with the family's abilities to parent a child~~ pose a direct threat to a child;
- (15) the applicants' ability to provide financially for the child or children to be adopted with or without agency financial assistance through adoption subsidy;
- (16) the applicants' personal character references;
- (17) the applicants' religious orientation, if any;
- (18) the location and physical environment of the home;
- (19) the plan for child care if parents work; and
- (20) recommendations for adoption in regard to the number, age, sex, characteristics, and special needs of children who could be best served by the family.

(c) The adoptive home study must be prepared and typed for review by the agency's adoption review committee, and it must become part of the applicants' permanent record.

(d) Narrative dictation during the provisional

period of licensure must be recorded by agency staff providing problem pregnancy services, conducting adoptive studies, and providing post-placement services following each contact with the child, biological parents, and adoptive parents and this dictation must become part of the permanent record.

Statutory Authority G.S. 131D-10.5; 143B-153.

SUBCHAPTER 41R - LICENSING STANDARDS: RESIDENTIAL CAMPS PROVIDING FOSTER CARE FOR CHILDREN

.0002 ADMINISTRATION AND ORGANIZATION

(a) Children's camps providing foster care at either a permanent camp site or in a wilderness setting shall comply with the administrative and organizational requirements set forth in 10 NCAC 41N.

(b) The Director of the children's camp shall be no younger than 21 years of age, have a bachelor's degree, and a minimum of three years experience in child-adolescent services.

(c) Counselors will be at least 21 years of age and shall be required prior to ~~employment~~ assuming the position and annually thereafter to present a medical statement from a ~~physician~~ licensed medical provider ~~verifying that they suffer from no communicable diseases or disabilities~~ that verifies no communicable disease, specific illness, or disabilities which would ~~interfere with their ability to work with or care for children~~ pose a direct threat to the health or safety of children. The ~~pre-employment~~ statement shall be written based upon examination not more than six months prior to employment.

(d) The children's camps shall provide staff necessary to insure the health and safety of each child in care. The camp shall meet the qualifications outlined as follows:

- (1) there shall be at least one counseling staff member on duty for every eight children in residence; and
- (2) during sleeping hours, the counselors shall be located so that no child will be out of calling range.

(e) At least 15 hours of in-service training shall be provided annually for all staff working directly with the children. Training shall be specific to the assigned duties of staff and be designed to improve work with children in areas such as behavior management, communication and relationship

skills, education, problem solving, first aid, meal preparation, trip planning, using community resources, goal setting and evaluation, schedule planning, water safety and crisis intervention. Records of such training will be kept on file, which would include the date, the subject, method of training, and the name of the person(s) who conducted the training.

(f) A children's camp shall employ personnel who are responsible for supervising the staff who provide day-by-day guidance to each child to ensure the continued training and development of such staff in the discharge of their assigned duties.

(g) First aid training is required for all counseling staff as follows:

- (1) First aid training received must be documented in the files for all group counselors and their supervisors;
- (2) First aid training must be conducted by a certified instructor or a licensed professional; and
- (3) First aid training must be current. Certificates or statements of training must be contained in the camp files and all first aid training is to be updated every three years.

(h) Water safety activity training is required for all counseling staff as follows:

- (1) all group counseling staff and their immediate supervisors shall have successfully completed the basic rescue and water safety course, with certification documented in the camp files; and
- (2) basic rescue and water safety training shall be updated every three years.

Statutory Authority G.S. 131D-10.5.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to amend rules cited as 10 NCAC 42H .0906 - .0907, .0910.

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

The public hearing will be conducted at 10:00 a.m. on June 2, 1993 at the Albemarle Building, 9th Floor Conference Room, 325 North Salisbury Street, Raleigh, NC 27603.

Reason for Proposed Action:

10 NCAC 42H .0906(h) & .0910 - Conformity and consistency with the rules governing Licensure of Home Care Agencies.

10 NCAC 42H .0906(k) & .0907 - To clarify certain current In-Home Aide Services requirements.

Comment Procedures: Comments may be presented in writing anytime before or at the public hearing or orally at the hearing. Time limits for oral remarks may be imposed by the Commission Chairman. Any person may request copies of these Rules by calling or writing to Don Bowen, Division of Social Services, 325 North Salisbury Street, Raleigh, NC 27603, (919) 733-3055.

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42H - IN-HOME AIDE SERVICES

SECTION .0900 - PROGRAM REQUIREMENTS

.0906 ASSESSMENT AND REASSESSMENTS

(a) The purpose of the initial assessment and regular reassessments is to determine each individual's or family's level of functioning and determine or confirm the need for In-Home Aide Services.

(b) The initial assessment and reassessments must be conducted by an appropriate professional and are prerequisites to providing In-Home Aide Services.

(c) An initial assessment is not a prerequisite when the health, safety, or well-being of an individual or family is at risk. In these instances the initial assessment must be completed within five working days of the onset of services.

(d) The initial assessment and reassessment must be conducted in the individual's or family's home and must address the mental, social, environmental, economic, and physical health status of the individual or family, as well as an individual's ability to perform activities of daily living (ADL's) and instrumental activities of daily living (IADL's).

(e) The initial assessment and reassessments must be signed and dated by the professional responsible for assuring the completion of the

initial assessment and reassessments.

(f) An initial assessment must be completed prior to the professional's development of an In-Home Aide Service Plan.

(g) A full reassessment must be completed at least every 12 months or as the individual's or family's situation warrants.

(h) A review of the individual's or family's situation must be completed by an appropriate professional at least quarterly. When Level II or III - Personal Care tasks are provided to a client, the quarterly review must be conducted in the client's home. If a reassessment is conducted, it meets the requirements for a quarterly review.

(i) If the individual or family needs Home Management tasks at Level I or II, the initial assessment and reassessments must be completed by a social worker or other appropriate professional, such as a registered nurse or registered dietitian. If a registered nurse or dietitian is conducting the initial assessment or reassessment at Level I or II, and the individual's or family's social needs appear more extensive than the assessor is able to adequately evaluate, then a social worker must be consulted for further input. If the individual or family needs Home Management tasks at Level III or IV, the initial assessment and reassessments must be completed by a social worker.

(j) If the individual or family needs Personal Care tasks at Level III, a registered nurse must complete the physical health status and the ADL portions of the initial assessment and reassessments. For Level II Personal Care tasks, if a social worker or registered dietitian is conducting the initial assessment or reassessment and the individual's or family's personal care needs appear more extensive than the assessor is able to adequately evaluate, then an appropriate health professional must be consulted for further input.

(k) Consultation with a registered nurse is required for Level II clients receiving Personal Care tasks if the client's personal care needs have increased due to changes in a medically related problem to determine the appropriate level of In-Home Aide Services.

Statutory Authority G.S. 143B-153.

.0907 IN-HOME AIDE SERVICE PLAN

(a) Each individual must have an In-Home Aide Service Plan which is based on the initial assessment and regular reassessments.

(b) The In-Home Aide Service Plan must include:

- (1) Measurable client outcome goals;

- (2) In-Home Aide Service level or levels to be provided;
- (3) Specific tasks to be performed;
- (4) Frequency of service provision;
- (5) Anticipated duration of the service; conditions for continuing or discontinuing service;
- (6) Signature of agency's professional staff developing the service plan;
- (7) A physician's signature, if required by a specific funding source.

(c) When a client receiving Level II - Personal Care Services requests assistance with one or more of the following tasks:

- (1) Applying ace bandages, TED's or binders;
- (2) Applying or removing prosthetic devices; and
- (3) Self-monitoring of temperature, pulse, blood pressure and weight;

the In-Home Aide Service Plan must specify that the client has requested such assistance and that the client is responsible for directing these tasks and for making decisions regarding actions to be taken as a result of temperature, pulse, blood pressure and weight readings.

(d) (e) All changes in tasks must be documented and dated on the In-Home Aide Service Plan by the responsible professional.

(e) (d) Children and their families must have a plan that is consistent with the family's services plan to prevent family disruption and unnecessary out-of-home placement of children.

Statutory Authority G.S. 143B-153.

.0910 AIDE SUPERVISION

(a) It is the responsibility of the agency providing the In-Home Aide Service to assure that supervision is given to all aides.

(b) Regardless of the level of tasks performed, supervisory home visits must be made at least twice during the first month of the aide's employment.

(c) Following the first month of the aide's employment, supervisory home visits must be made as follows:

- (1) Level I - at least quarterly;
- (2) Level II - at least quarterly;
- (3) Level III - at least ~~every 60 days~~ quarterly;
- (4) Level IV - at least every 60 days.

(d) The frequency of aide supervision must be increased as needed to respond to the capabilities of the aide and the needs of the client.

(e) Each service provider agency must assure at least some portion of the supervisory visits occur when the aide is providing assistance or care to clients.

(f) Aides providing In-Home Aide Services subject to home care agency licensure as specified in Rule .0913 of this Section must be supervised in accordance with requirements codified in 10 NCAC 3L .1110 including subsequent amendments and editions. Copies of these Rules may be obtained from the Office of Administrative Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447, (919) 733-2678, at a cost of two dollars and fifty cents (\$2.50) for up to 10 pages and fifteen cents (\$0.15) for each additional page at the time of adoption of this Rule.

Statutory Authority G.S. 143B-153.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Standards Division intends to adopt rules cited as 12 NCAC 21 .0104, .0203, .0210 - .0214, .0306; amend rules cited as 12 NCAC 21 .0101 -.0103, .0202, .0204 -.0206, .0208, .0301, .0304 -.0305. No hearing is required. This is a revised version of the proposed text published in March 1, 1993 edition of the North Carolina Register, Volume 7, Issue 23.

The proposed effective date of this action is August 2, 1993.

Reason for Proposed Action: After taking written comments and those oral comments made at the public hearing held April 2, 1993, under advisement, it was determined that some revision of the proposed text was necessary. The changes that have been made require that the text be republished in the N.C. Register.

Comment Procedures: Interested persons may submit written comments from May 4, 1993 through June 2, 1993. Such written comments must be delivered or mailed to the Criminal Justice Standards Division, P.O. Drawer 149, Raleigh, NC 27602-0149.

Editor's Note: The agency wishes to adopt a new 12 NCAC 21 .0203 and renumber rules 12

NCAC 21 .0203 to .0204; .0204 to .0205; .0205 to .0206; .0207 to .0108.

CHAPTER 2 - OFFICE OF THE ATTORNEY GENERAL

SUBCHAPTER 2I - COMPANY AND RAILROAD POLICE

SECTION .0100 - GENERAL PROVISIONS

.0101 LOCATION

The administrative office of for the commissioning of company and railroad police officers and the certification of company police agencies is located in the office of the Criminal Justice Standards Division. Correspondence should be directed to:

Company Police Administrator
Criminal Justice Standards Division
Post Office Drawer 149
Raleigh, North Carolina 27602-0149
Telephone: (919) 733-2530

Statutory Authority G.S. 74E.

.0102 PURPOSES

The purposes of the Attorney General's Office in granting company and railroad police commissions are:

- (1) ~~to allow those organizations and corporations described in G.S. 74A-1 to employ individuals who possess full arrest authority, and~~
- (2) ~~to raise the level of competence of company and railroad police by establishing minimum standards for obtaining a police commission;~~
- (1) to allow those organizations and corporations described in G.S. 74E-2 to apply for certification as a company police agency;
- (2) to allow those organizations and corporations described in G.S. 74E-2 to employ individuals commissioned as company police officers pursuant to G.S. 74E-6; and
- (3) to ensure the integrity, proficiency, and competence of company police officers and establishing minimum standards for obtaining and maintaining both company police officer commissions and company police agency certifications.

Statutory Authority G.S. 74E-2; 74E-6.

.0103 ADMINISTRATIVE STAFF

The administrative staff responsible for company ~~and railroad~~ police commissions and company police agency certifications consists of assigned personnel from the Criminal Justice Standards Division. The duties of this staff are to carry out the policies of the law and regulations herein and to actively police the individuals already commissioned as company police officers to assure compliance with the law in all respects.

Statutory Authority G.S. 74E-4.

.0104 DEFINITIONS

In addition to any definitions set forth in G.S. 74E, the following definitions will apply throughout this Chapter, unless the context clearly defines otherwise:

- (1) "Agency Records" means those records specified pursuant to this Subchapter and that documentation required to be maintained and compiled under the requirements of G.S. 74E.
- (2) "Badge" means a shield bearing the title of "Company Police Officer" or "Railroad Police", "Campus Police," or "Special Police" and the name of the agency and the officer's issued identification card provided by the Attorney General which identifies the individual as a company police officer.
- (3) "Calendar Year" shall be defined solely for the purpose of in-service training as a period beginning January 1 and ending on December 31.
- (4) "Certification" means:
 - (a) company police officers - the authority granted by the North Carolina Criminal Justice Education and Training Standards Commission to those individuals who meet the minimum requirements as a sworn law enforcement officer pursuant to Title 12, Chapter 9B of the North Carolina Administrative Code.
 - (b) company police agency - the authority granted by the Attorney General to those Company Police agencies who meet the minimum requirements established for such agencies pursuant to this Chapter.
- (5) "Commission" as it pertains to criminal offenses, means a finding by an administrative body, pursuant to the provisions of G.S. 150B, that a person performed the acts necessary to satisfy the elements

of a specified criminal offense.

- (6) "Commissioned company police officer" means those individuals authorized by the Company Police Administrator to exercise all law enforcement powers within the constraints provided in G.S. 74E and classified as a company police officer pursuant to G.S. 74E-6(b).
- (7) "Company Police Administrator" means the individual who serves as the head of the administrative staff to whom the Attorney General designated the authority to act upon any company police agency commission or company police agency certification pursuant to the provisions of G.S. 74E and the rules promulgated thereunder. Said administrator is responsible for the individual officer's or agency's compliance with the Company Police Act.
- (8) "Company Police Agency" means any public or private entity, association, corporation or company as defined by G.S. 74E-2(b).
- (9) "Conviction or convicted" means and includes, for the purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilty by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (10) "Department Head" means the chief administrator of any company police agency. The Department Head is to include the Company Police Chief or a designee formally appointed in writing as the Department Head, and who shall hold and maintain a commission as a company police officer.
- (11) "Felony" means any offense designated a felony by the laws, statutes, or ordinances of the jurisdiction in which the offense occurred.
- (12) "High School" means a school accredited as a high school by:
 - (a) the Department or Board of Education of the state in which the high school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which

- the high school is located.
- (13) "In-Service Training" means any and all training as prescribed in 12 NCAC 21 .0202 which must be satisfactorily completed by company police officers, in accordance with the standards established therein, during each full calendar year of commissioning as a company police officer.
- (14) "Insurance Carrier" means any entity, corporation, company or professional association as defined in G.S. 58 and who is authorized by the North Carolina Commissioner of Insurance to do business in North Carolina as an insurance carrier or underwriter.
- (15) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Criminal Justice Education and Training Standards Commission.
- (a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A misdemeanor" criminal offenses are motor vehicle or traffic offenses designated as misdemeanors under G.S. 20 (Motor Vehicles), similar laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (G.S. 20-138.1) which expressly included herein as a Class A Misdemeanor, if the defendant was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)].
- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum pun-

ishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B misdemeanor" criminal offenses are motor vehicles or traffic offenses designated as being misdemeanors under G.S. 20 (Motor Vehicles) or similar laws of other jurisdictions with the following exceptions. Class B misdemeanor does expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b) (driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). This definition further includes a violation of G.S. 20-138.1 (impaired driving), if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense.

- (16) "On Duty" means that period of time which the commissioned company police officer is being compensated for his or her services by the officer's employer and ending once the officer's compensation for his duties terminates.
- (17) "Polygraph Examination" means an examination requested by the Company Police Administrator of all new and probationary company police applicants during the application process. This examination will be conducted by the State Bureau of Investigation and the results will be forwarded to the Company Police Administrator. In addition, the Company Police Administrator may require that a polygraph examination be administered to transfer applicants holding general certification or currently commissioned company police officers, as deemed necessary.

Statutory Authority G.S. 74E.

SECTION .0200 - COMMISSIONING

.0202 MINIMUM STANDARDS FOR COMMISSIONING COMPANY

POLICE

Persons eligible for a company police commission on the basis of their employment as prescribed in G.S. 74A-4 ~~74E-4~~, must meet the following requirements before a Commission company police commission will be granted:

- (1) ~~be a legal resident of North Carolina~~ be a citizen of the United States;

~~Note: This Rule does not apply to an applicant who is employed by a railroad company when such railroad company is engaged in interstate trips through this State and the applicant is employed by the railroad company as a railroad policeman.~~

- (2) be a high school graduate or have passed the General Educational Development Test indicating high school equivalency; A specific exception to this educational requirement is granted to:
 - (a) an applicant who was the holder of a valid company police commission on June 30, 1972; or
 - (b) an applicant properly certified as a law enforcement officer by the Criminal Justice Education and Training Standards Commission on March 14, 1973. In either case, the exception will not be applicable if the applicant has had more than a 12 month break in service;
- (3) have attained a score of not less than 80 percent on a written examination of basic knowledge of laws of arrest, search, and investigation, and of these Rules to be administered by a representative of the North Carolina Department of Justice;

Note: All examination questions will be based on the book Arrest, Search, and Investigation ~~which is~~ as published by and available from the Institute of Government, the University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27514, and these Rules.

Applicants will be advised in writing of test dates and sites at least five days prior to the examination. In the event an applicant fails to successfully complete the examination, only one re-test will be allowed. Upon an applicant's failure to complete the second test, the applicant will be ineligible to apply for or receive a company police commission for a peri-

od of one year from the date of the second unsuccessful completion;

- (4) meet the minimum standards for criminal justice officers established by the North Carolina Criminal Justice Education and Training Standards Commission, appearing in Title 12, Chapter 9 of the North Carolina Administrative Code; which Standards are hereby ~~adopted~~ incorporated by reference, and shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G. S. 150B-14(e)~~ referenced material.
- (5) applicants who do not hold ~~General Certification~~ general certification as a law enforcement officer issued by the Criminal Justice Education and Training Standards ~~Division~~ Commission or the North Carolina Sheriff's Education and Training Standards Commission, must submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation; ;
- (6) be at least 20 years of age;
- (7) have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive test result using a gas chromatography mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (c) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
 - (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall automatically include any later amendments and editions of the referenced material;
 - (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the

- (f) results to the date of employment; the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Item (8) of this Rule; and
- (g) every agency head shall be responsible for making adequate arrangements for the services of a Medical Review officer (MRO) for the purpose of review of drug tests reported by the laboratory and such officer shall be a licensed physician;
- (8) notify the Company Police Administrator in writing of all criminal offenses for which the officer is arrested, pleads no contest, pleads guilty, or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Item, as an offense where the maximum punishment allowable is 60 days or less. The notifications required must specify the nature of the offense, the court in which the case was handled and the date of the conviction. The notifications must be received by the Company Police Administrator within 30 days of the date of the case disposition. Applicants and officers required to notify the Company Police Administrator under this Item shall also make the same notification to their Department Head within 20 days of the date the case was disposed of in court. However, the notification to the Company Police Administrator does not excuse the officer from making an independent notification otherwise required by either the Criminal Justice Education and Training Standards Commission or the Sheriffs' Education and Training Standards Commission. The notifications required by this section shall be required while the application is pending as well as, subsequent to a commission being issued;
- (9) be of good moral character;

- (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 2I .0211(b), such that the applicant would be ineligible for commissioning as a Company Police officer.

Statutory Authority G.S. 74E-4.

.0203 APPLICATION FOR COMPANY POLICE AGENCY

Each company police agency shall complete and submit to the Company Police Administrator the following items and documentation:

- (1) an application form;
- (2) articles of incorporation, partnership agreements or other agency originating documentation, which specifies the agency's law enforcement functions;
- (3) names and addresses for all corporate officers, private entities and partners associated with the corporation or partnership;
- (4) a copy of the company police agency's insurance policy, or if self insured, the certificate of self insurance (applicable to non-public entities only);
- (5) statements indicating the results of a criminal history record check on each principal or corporate officer of the public or private entity, corporation or partnership, through the clerk of superior court in each county where the individual resided or maintained a residence or place of business over a five year period prior to such application. However, this Rule does not require the agency to submit a criminal history record check on currently commissioned company police officers;
- (6) the appropriate fees as required by 12 NCAC 2I .0206;
- (7) a listing of the names and addresses of all employing businesses and institutions for which the company police agency has contracted with to provide services.

Statutory Authority G.S. 74E.

.0204 APPLICATION FOR COMPANY POLICE OFFICER

~~(a) Each company, agency or institution which employs company police officers shall be registered with the Company Police Administrator. In order to be registered, each company, agency or~~

institution which desires to employ company police officers shall give written notice of that intent to the Company Police Administrator. Incorporated companies shall also submit copies of their articles of incorporation.

(b) ~~Each application for a company police commission shall be submitted to the Company Police Administrator and must contain the following:~~

The application for a company police officer must contain:

- (1) a written request from the ~~chief executive officer~~ Department Head of the company, agency or institution requesting that a company police commission be issued to the applicant. An oral request will not satisfy this requirement; and
- (2) if the applicant holds ~~General Certification~~ general certification issued by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission, the application must contain the following:
 - (a) ~~(A)~~ Medical History Statement (Form F-1);
 - (b) ~~(B)~~ Medical Examination Report (Form F-2);
 - (c) ~~(C)~~ Two complete fingerprint cards;
 - (d) ~~(D)~~ Two recent 1" x 1-1/4" (non-polaroid) close-up color photographs (not more than three months old);
 - (e) ~~(E)~~ Satisfactory proof of a negative drug screen;
 - (f) ~~(F)~~ Satisfactory proof of ~~successful completion of annual in-service firearms requalification training; all in-service training requirements specified by the North Carolina Criminal Justice Education and Training Standards Commission, which standards are hereby incorporated by reference and shall automatically include any later amendments and editions of the referenced material;~~
 - (g) ~~(G)~~ Authorization for release of records (CP-1);
 - (h) ~~(H)~~ Drug Screen Consent Form (CP-2); ~~or~~
 - (i) Appropriate fees as specified in 12 NCAC 21 .0206;
 - (j) An appropriate background investigation as specified in 12 NCAC

- (k) 21 .0205 (Form F-8); and
Personal History Statement (Form F-3)
(not more than three months old); or
- (3) if the applicant does not hold ~~General Certification~~ general certification, the application must contain the following:
 - (a) ~~(A)~~ Medical History Statement (Form F-1);
 - (b) ~~(B)~~ Medical Examination Report (Form F-2);
 - (c) ~~(C)~~ Personal History Statement (not more than three months old), (Form F-3);
 - (d) ~~(D)~~ Report of Qualification Appraisal Interview (Form F-4);
 - (e) ~~(E)~~ Proof of High School graduation or GED;
 - (f) ~~(F)~~ Two complete fingerprint cards;
 - (g) ~~(G)~~ Two recent 1" x 1-1/4" (non-polaroid) close-up color photographs (not more than three months old);
 - (h) ~~(H)~~ Proof of satisfactory completion of a Criminal Justice Education and Training Standards Commission accredited basic law enforcement training course;
 - (i) ~~(I)~~ Satisfactory proof of a negative drug screen;
 - (j) ~~(J)~~ Authorization for Release of Records (CP-1);
 - (k) ~~(K)~~ Drug Screen Consent Form (CP-2); ;
 - (l) Appropriate fees as specified in 12 NCAC 21 .0206; and
 - (m) Background investigation as specified in 12 NCAC 21 .0205 (Form F-8); or
- (4) if the applicant is currently a commissioned officer under G.S. 74A at the time these rules are adopted, the applicant shall only be required to submit the following documentation to the Company Police Administrator to be postmarked no later than August 31, 1993:
 - (a) Application Form;
 - (b) Two Photo Identification Cards;
 - (c) Initial Application Fee.

All other documentation currently valid in the commissioned officer's file will be transferred to a new file for the officer under Chapter 74E.

Statutory Authority G.S. 74E.

~~.0204~~ .0205 BACKGROUND

INVESTIGATION

A background investigation of each applicant will be conducted by the State Bureau of Investigation. An application will be denied upon a finding that the applicant:

- (1) ~~committed some act which constitutes dishonesty or fraud;~~
- (2) ~~committed a crime involving the infliction of injury to another person;~~
- (3) ~~lacks good moral character, has intemperate habits or lacks truth, honesty, and integrity;~~
- (4) ~~committed a felony or some other crime involving moral turpitude or involving the illegal use, carrying or possession of a dangerous weapon;~~
- (5) ~~made any false statement or gave any false information in connection with the application.~~

(a) Any company police agency contemplating the commissioning of an applicant as a company police officer shall, prior to employment, complete a background investigation on such applicant. The investigation shall examine the applicant's character traits and habits relevant to performance as a company police officer and shall determine whether the applicant is of good moral character. The investigation shall be submitted to the Company Police Administrator utilizing the Commission-approved Form F-8 (Summary of Background Investigation).

(b) Prior to the investigation, the applicant shall complete a Personal History Statement (Form F-3) to provide a basis for the investigation.

(c) The Department Head shall conduct the applicant's background investigation. The Department Head shall document the results of the investigation and shall include in the report of investigation:

- (1) biographical data;
- (2) family data;
- (3) scholastic data;
- (4) employment data;
- (5) interviews with the applicant's references; and
- (6) a summary of the Department Head's findings and conclusions regarding the applicant's moral character.

(d) The agency may use the method of documenting the results of the background investigation it deems most appropriate to its needs. However, the company police program's "Summary of Background Investigation" form shall be used as a guide for minimum information collected and recorded by the investigator.

(e) In the event that an individual applying for commission as a company police officer is the Department Head, he shall not conduct his own background investigation. The investigation must be performed by a city or county agency in the county where the company police agency has residency; or contract with a private investigator.

Statutory Authority G.S. 74E-4.

.0205 .0206 FEE

Upon notification that the application has been approved, the applicant shall forward a check in the amount of five dollars (\$5.00) made out to the North Carolina Department of Justice, Criminal Justice Standards Division to:

Director, North Carolina Criminal Justice Education and

Training Standards Commission

P.O. Drawer 149

Raleigh, North Carolina 27602

(a) Upon notification that an application for a company police agency certification or a company police officer commission has been approved, the applicant shall forward a certified check or money order made out to the North Carolina Department of Justice to the:

Company Police Administrator

Criminal Justice Standards Division

Post Office Drawer 149

Raleigh, North Carolina 27602-0149

(b) The following fees shall be due and payable prior to the issuance of company police agency certification or a company police officer commission.

- (1) Application for certification as a company police agency - \$250.00.
- (2) Annual renewal of certification as a company police agency - \$200.00.
- (3) Application for reinstatement of certification as a company police agency - \$1,000.00.
- (4) Application for commission as a company police officer - \$100.00.
- (5) Annual renewal of commission as a company police officer - \$50.00.
- (6) Application for reinstatement of commission as a company police officer - \$150.00.

(c) Currently commissioned company police officers will be required to submit the Application for Commission as a company police officer fee as set forth in Subparagraph (b)(4) of this Rule.

Statutory Authority G.S. 74E-12.

.0207 .0208 OATH

Every ~~police~~ company police officer so appointed shall, before entering upon the duties of his office, take and subscribe to the oath provided for in G.S. 11-11 before an officer authorized by G.S. 11-7.1 to administer oaths, and shall forward a copy of the executed oath within 10 days of the day on which the oath is subscribed to the Company Police Administrator.

Statutory Authority G.S. 11-11; 74E-4.

.0210 LIABILITY INSURANCE

(a) Any applicant for a non-public company police agency certification must file with the Company Police Administrator, either a copy of the liability insurance policy or a certificate of self insurance, at the following address:

Company Police Administrator
Criminal Justice Standards Division
Post Office Drawer 149

Raleigh, North Carolina 27602-0149

(b) Any notice of cancellation by an insurance carrier shall be delivered by certified mail, return receipt requested, to the following address:

Company Police Administrator
Criminal Justice Standards Division
Post Office Drawer 149

Raleigh, North Carolina 27602-0149

Statutory Authority G.S. 74E-3.

.0211 SUSPENSION, REVOCATION OR DENIAL OF AGENCY CERTIFICATION

(a) A company police agency certification may be suspended, revoked or denied upon a finding that the agency has:

- (1) failed to pay any required fees;
- (2) failed to produce or maintain a copy of a liability insurance policy or a certificate of self insurance;
- (3) failed to meet any of the requirements for certification provided in 12 NCAC 21 .0203;
- (4) failed to provide any of the required documentation pursuant to 12 NCAC 21 .0203;
- (5) failed to allow for the reasonable inspection of the Company Police agency records pursuant to G.S. 74E-4(3);
- (6) failed to ensure compliance by the agency's company police officers of any and all in-service training requirements

as specified by 12 NCAC 21 .0202;

- (7) failed to submit the required in-service training compliance reports as required by 12 NCAC 21 .0202;
- (8) failed to submit any and all reports, notification or other information required or requested by the Company Police Administrator;
- (9) knowingly made a material misrepresentation of any information required for certification or commissioning from the Company Police Administrator or the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (10) knowingly and willfully by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training, certification or commissioning from the Company Police Administrator of the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission;
- (11) aided another in obtaining or attempting to obtain credit, training, or certification from the Company Police Administrator, the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriff's Education and Training Standards Commission by means of deceit, fraud or misrepresentation; or
- (12) failed to ensure that any employee not commissioned as a company police officer is not violating a prohibition set forth in 12 NCAC 21 .0304.

(b) An agency whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

Statutory Authority G.S. 74E-4.

.0212 SUSPENSION, REVOCATION, OR DENIAL OF OFFICER COMMISSION

(a) A company police commission shall be revoked or denied upon a finding that the officer has committed or been convicted of:

- (1) any felony (unless pardoned by the President of the United States or a state Governor); or
- (2) any crime for which the authorized punishment could have been imprisonment for more than two years.

(b) The Attorney General, or his designee, may revoke, suspend, or deny the commission of a company police officer when the Company Police Administrator finds that the applicant for commission or the commissioned company police officer has committed or been convicted of:

- (1) a crime or unlawful act as defined in 12 NCAC 21 .0104(15)(b) as a Class B misdemeanor and which occurred after the date of initial certification;
- (2) a crime or unlawful act as defined in 12 NCAC 21 .0104(15)(b) as a Class B misdemeanor within a five-year period prior to the date of application for certification;
- (3) four or more crimes or unlawful acts as defined in 12 NCAC 21 .0104(15)(b) as Class B misdemeanors regardless of the date of commission or conviction;
- (4) four or more crimes or unlawful acts as defined in 12 NCAC 21 .0104(15)(a) as a Class A misdemeanor, each of which occurred after the date of initial certification; or
- (5) four or more crimes or unlawful acts as defined in 12 NCAC 21 .0104(15)(a) as a Class A misdemeanor except the applicant may be certified if the last conviction or commission occurred more than two years prior to the date of the application for certification.

(c) In addition, a company police commission shall be revoked or denied upon a finding that the officer:

- (1) lacks good moral character;
- (2) fails to meet any of the required minimum standards as specified in 12 NCAC 21 .0202;
- (3) has been terminated from employment with the company police agency for which the officer is commissioned or is no longer employed with such company police agency;
- (4) has committed any act prohibited by 12 NCAC 21 .0304; or
- (5) termination, suspension, or revocation of the certification of the company police agency with which the officer is commissioned.

(d) An officer whose certification has been suspended, revoked, or denied may appeal the action in accordance with the provisions of G.S. 150B.

Statutory Authority G.S. 74E-4.

.0213 PERIOD OF SUSPENSION, REVOCATION OR DENIAL

(a) When the Attorney General, or his designee, suspends or denies the commission of a company police officer, the period of sanction shall not be less than three years. However, the Attorney General, or his designee, may either reduce or suspend the period of sanction under 12 NCAC 21 .0212(b) or substitute a period of probation in lieu of suspension of a commission following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a crime other than those listed in Paragraph (a) of this Rule;
- (2) refusal to submit to the applicant or lateral transferee drug screen required by 12 NCAC 21 .0202(8);
- (3) production of a positive result on a drug screen reported to the Company Police Administrator where the positive result cannot be explained to the Company Police Administrator's satisfaction;
- (4) material misrepresentation of any information required for company police commissioning;
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempting to obtain credit, training or commissioning as a company police officer by any means of false pretense, deception, fraud, misrepresentation or cheating; or
- (6) failure to make either of the notifications as required by 12 NCAC 21 .0202(9).

(b) When the Attorney General, or his designee, suspends or denies the commission of a company police officer, the period of sanction shall be continued so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy all basic training requirements;
- (2) failure to meet or maintain the minimum standards of employment specified in 12 NCAC 21 .0202(4);

- (3) discharge from a criminal justice agency for impairment of physical or mental capabilities; or
- (4) failure to meet the in-service training requirements as prescribed by the North Carolina Criminal Justice Education and Training Standards Commission.

Statutory Authority G.S. 74E-4; 74E-10.

.0214 SUMMARY SUSPENSIONS

(a) The Company Police Administrator, through designation by the Attorney General, may summarily suspend the commission of the company police officer before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Company Police Administrator, the public health, safety, or welfare requires this emergency action of summary suspension. The Company Police Administrator has determined that the following conditions specifically affect the public health, safety, or welfare, and therefore, the Company Police Administrator may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification; or
- (2) the commissioned company police officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in Title 12, Chapter 9 of the North Carolina Administrative Code.

(b) A summary suspension shall be effective on the date specified in the order of the summary suspension or upon the service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain in effect during the proceedings.

(c) Upon verbal notification by the Company Police Administrator that the company police commission of any officer is being summarily suspended by written order, the Department Head of the company police agency shall take such steps as are necessary to ensure that the officer does not perform duties requiring a company police commission through the Attorney General.

Statutory Authority G.S. 74E-4; 74E-10.

SECTION .0300 - CONDUCT OF COMMISSIONED POLICEMEN

.0301 TENURE

A company police officer commission or company police agency certification shall remain in effect until:

- (1) The Attorney General directs termination;
- (2) The company police officer employee ceases to be employed as a police officer by a company or institution which can employ company or railroad police by a company police agency;
- (3) The surety bond expires or is cancelled; The required liability insurance is terminated or suspended by the agency's insurance carrier;
- (4) The need for a commission no longer exists;
- (5) Evidence is presented that the person has committed an act which would have originally caused denial of the application or an act prohibited by Rule .0304 of this Section; or
- (6) The Criminal Justice Education and Training Standards Commission suspends or revokes an officer's certification for cause.

Statutory Authority G.S. 74E-4; 74E-6; 74E-10.

.0304 PROHIBITED ACTS

In addition to the prohibited acts set forth elsewhere in these Regulations Rules and in Chapter 74A 74E, the following acts are prohibited and may result in civil or criminal action or both:

- (1) use of excess force while making an arrest in the performance of their official duties;
- (2) carrying a concealed weapon except:
 - (a) when on his own business property or at home;
 - (b) when employed as private police by the administration or board of trustees of any public or private institution of higher education, while acting in the discharge of those duties, and while on property owned, used, or operated by a school, college, or university as a part of the education institution; and a company police officer, while on-duty and acting in the discharge of his official duties and while within those property jurisdiction limitations specifically set forth and described under G.S. 74E-6;
 - (c) when employed as railroad police and in the performance of their official

duties;

- (3) activating or operating a red light in or on any vehicle in this State unless such vehicle is exempted from the provisions of G.S. 20-130.1(b);
- (4) activating or operating a blue light in or on any vehicle in this State except:
 - (a) when operating a motor vehicle used primarily by company or railroad police in the performance of their official duties; ~~and~~
 - (b) when in property jurisdiction limitations specifically described under G.S. 74A-2 74E-6; or
 - ~~(e) when in hot pursuit as defined in G.S. 74A-2;~~
 - (c) when in continuous or immediate pursuit of a person for an offense committed upon real property owned by or in the possession or control of their employer or real property or in the possession and control of a person who has contracted with the employer to provide on-site police security personnel services for the property; or
 - (d) during the transportation of an arrestee, which the company policy agency has taken into custody;
- (5) activating or operating a siren when operating a any motor vehicle used primarily by any company ~~or railroad~~ police agency in the performance of their official duties when ~~off~~ outside of the property jurisdiction limitations specifically described under G.S. 74A-2 74E-6 unless in ~~hot~~ immediate and continuous pursuit;
- (6) ~~represent~~ representing in any manner at any time that he is a federal, state, county, or municipal law enforcement officer, unless the company police officer is dually certified as one of the classifications listed in this Rule;
- (7) ~~impede~~ impeding traffic, ~~stop~~ stopping motorists or pedestrians, or in any manner ~~impose~~ imposing or ~~attempt~~ attempting to impose his will upon another person as police authority unless:
 - (a) he is on the property specifically described under G.S. 74A-2 74E-6; or
 - (b) in hot pursuit; when in immediate and continuous pursuit of any person for an offense which occurred within the property jurisdiction limitations specifically described under G.S. 74E-

6;

- (8) use using or ~~attempted~~ attempting to use ~~of~~ authority granted under a company police commission pursuant to this Subchapter outside the political boundaries of North Carolina; or
- (9) violating Rule .0306 of this Section.

Statutory Authority G.S. 74E-4; 74E-6.

.0305 TRANSFERS

No individual commissioned as a company ~~or railroad~~ policeman can transfer his company police commission from one employing company police agency to another.

Statutory Authority G.S. 74E-4; 74E-6.

.0306 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

(a) Badges:

- (1) All company police officers shall, when on duty, wear a badge bearing the name of the certified company police agency and the general title of Company Police Officer or the specific title of:
 - (A) Railroad Police officer; or
 - (B) Campus Police Officer; or
 - (C) Special Police Officer.
- (2) The badge is to be carried at all times by the company police officer. The badge shall always be worn in plain view, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0304 of this Section.
- (3) No identification card shall be issued to or possessed by any company police officer except in the form of identification issued to the officer by the Attorney General.

(b) Uniforms:

- (1) All company police officers shall, when on duty, wear the uniform of the company police agency unless directed to wear other attire by the Department Head.
- (2) When wearing civilian attire, the company police officer shall comply with 12 NCAC 21 .0306(a).
- (3) Those company police agencies which employ both company police commissioned and non-commissioned security personnel shall provide the commissioned company police officers

with a uniform of a different color that would clearly distinguish the company police officer from other employees of the agency.

- (4) The uniform of the company police officer shall bear shoulder patches that contain:

(A) the terms "Railroad Police Officer," "Campus Police Officer," or "Special Police Officer"; and

(B) the name of the company police agency.

(c) Vehicles:

- (1) Each marked vehicle used by a company police agency subject to this Rule should prominently display the agency name and one of the following agency classifications: "Railroad Police," "Campus Police," or "Special Police".

- (2) The Department Head shall ensure that employees who have not been commissioned as company police officers do not operate any marked vehicle used by the company police agency.

- (3) The Department Head shall ensure that employees who are not commissioned as a company police officer do not operate any company police vehicle with a blue light contained therein.

- (4) The Department Head shall ensure that any marked company police agency vehicle is not operated outside of those property jurisdiction limitations set forth in G.S. 74E-6, unless such operation is performed by an on-duty officer in the performance of his official duties and authorized by the Department Head.

(d) Except as provided in Paragraph (e) of this Rule, all company police agencies shall comply with the provisions of this rule for badges, vehicles, uniforms, and other equipment no later than July 1, 1994.

(e) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are regulated by the Tennessee Valley Authority, United States Nuclear Regulatory Commission, or the Railroad Police Certification Act of 1990.

Statutory Authority G.S. 74E-7.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to amend rule cited as 12 NCAC 7D .0701.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 11:00 a.m. on May 18, 1993 at the State Bureau of Investigations, Conference Room, 3320 Old Garner Road, Raleigh, NC 27626-0500.

Reason for Proposed Action: Requires a licensee to maintain records showing that an unarmed security guard has been properly trained.

Comment Procedures: Interested persons may present their views either in writing or orally at the hearing. In addition, the record of hearing will be open for receipt of written comments until June 2, 1993. Written comments must be delivered to or mailed to: James Kirk, Alarm Systems Licensing Board, 3320 Old Garner Rd., P.O. Box 29500, Raleigh, NC 27626.

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

.0701 APPLICATION FOR UNARMED SECURITY GUARD REGISTRATION

(a) Each employer or his designee shall submit and sign an application form for the registration of each employee to the Board. This form shall be accompanied by:

- (1) one set of classifiable fingerprints on an applicant fingerprint card;
- (2) two recent head and shoulders color photographs of the applicant of acceptable quality for identification, one inch by one inch in size;
- (3) statements of any criminal record obtained from the appropriate authority in

each area where the applicant has resided within the immediate preceding 48 months; and

- (4) the applicant's non-refundable registration fee.

(b) The employer of each applicant for registration shall give the applicant a copy of the application and shall retain a copy of the application and shall retain a copy of the application in the individual's personnel file in the employers's office.

(c) The applicant's copy of the application shall serve as a temporary registration card which shall be carried by the applicant when he is within the scope of his employment and which shall be exhibited upon the request of any law enforcement officer or other authorized representative of the Board.

(d) A statement signed by a certified trainer that the applicant has successfully completed the training requirements of 12 NCAC 7D .0707 shall be submitted to the Administrator not later than 80 days from the hiring of an unarmed security guard.

(e) A copy of the statement specified in Paragraph (d) of this Rule shall be retained by the licensee in the individual applicant's personnel file in the employer's office.

Statutory Authority G.S. 74C-5; 74C-11; 74C-13.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend rules cited as 12 NCAC 9A .0103, .0107, .0201, .0204 - .0205; 9B .0101, .0104, .0202, .0211, .0220 - .0222, .0309 - .0310, .0403 - .0404; 9C .0303, .0308, .0601, .0603 - .0604 and repeal rule cited as 12 NCAC 9B .0217.

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

The public hearing will be conducted at 9:00 a.m. on May 20, 1993 at the Lobby of the John A. Walker Center, Wilkes Community College, Collegiate Drive, Wilkesboro, North Carolina 28697.

Reason for Proposed Action: The Standards Commission has authorized rule-making authority

to amend several of its administrative rules in order to better define the minimum standards that regulate the criminal justice officer profession.

12 NCAC 9B .0217 - The State Alcohol Law Enforcement Division no longer desires to have a special Basic Law Enforcement Training Course for its agents and therefore the Standards Commission has authorized rule-making authority to repeal this rule.

Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. In addition, the record of hearing will be open for receipt of written comments from May 3, 1993 to June 2, 1993. Written comments not presented at the hearing should be directed to David Cashwell, Director of Criminal Justice Standards Division, at the address given below. The proposed rules are available for public inspection and copies may be obtained at the following address: Criminal Justice Standards Division, P.O. Drawer 149, Raleigh, NC 27602 (Room 150, Court of Appeals Bldg., 1 W. Morgan St., Raleigh, NC).

CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 9A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

.0103 DEFINITIONS

The following definitions apply throughout this Chapter, except as modified in 12 NCAC 9A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(b).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Commission" means the North Carolina Criminal Justice Education and Training Standards Commission.
- (4) "Commission of an offense" means a

finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.

- (4) (5) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (5) (6) "Correctional Officer" means any employee of the North Carolina Department of Correction who is responsible for the custody or treatment of inmates.
- (6) (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(c) and further includes probation and parole intake officers; probation/parole officers-surveillance; probation/parole intensive officers; and, state parole case analysts.
- (7) (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- (8) (9) "Criminal Justice Training Points" means points earned toward the Criminal Justice Officers' Professional Certificate Program by successful completion of commission-approved criminal justice training courses. Twenty classroom hours of commission-approved criminal justice training equals one criminal justice training point.
- (9) (10) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee formally appointed in writing by the Department head.
- (10) (11) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (11) (12) "Educational Points" means points earned toward the Professional Certificate

Programs for studies satisfactorily completed for semester hour or quarter hour credit at an accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.

- (12) (13) "Enrolled" means that an individual is currently actively participating in an on-going formal presentation of a commission-accredited basic training course which has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
 - (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
 - (b) for Youth Services and Department of Correction personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- (13) (14) "High School" means a school accredited as a high school by:
 - (a) the Department or board of education of the state in which the school is located; or
 - (b) the recognized regional accrediting body; or
 - (c) the state university of the state in which the school is located.
- (14) (15) "In-Service Training" means any and all training prescribed in Subchapter 9E Rule .0102 which must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- (15) (16) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (16) (17) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, which reads:

As a law enforcement officer, my fundamental duty is to serve ~~mankind~~ the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the ~~Constitutional~~ constitutional rights of all ~~men~~ to liberty, equality, and justice.

I will keep my private life unsullied as an example to all; and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed ~~in both~~ in my personal and official life, I will be exemplary in obeying the ~~laws of the land~~ law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

(47) (18)"Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are governed by the

provisions of Chapter 17E of the General Statutes.

(48) (19)"Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of commission-approved law enforcement training courses. Twenty classroom hours of commission-approved law enforcement training equals one law enforcement training point.

(49) (20)"Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.

(20) (21)"Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:

(a) "Class A Misdemeanor" means an act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "class A misdemeanor" criminal offenses are motor vehicle or traffic offenses designated as misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina, similar laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving (G.S. 20-138.1) which is expressly included herein as a class A misdemeanor, if the defendant was sentenced under punishment level three [G.S. 20-179(i)], level four [G.S. 20-179(j)], or level five

- [G.S. 20-179(k)].
- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state, or any other jurisdiction, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "class B misdemeanor" criminal offenses are motor vehicles or traffic offenses designated as being misdemeanors under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions with the following exceptions. Class B misdemeanor does expressly include, either first or subsequent offenses of G.S. 20-138(a) or (b), G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b) (driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). This definition further includes a violation of G.S. 20-138.1 (impaired driving) if the defendant was sentenced under punishment level one [G.S. 20-179(g)] or punishment level two [G.S. 20-179(h)] for the offense.
- (24) (22) "Parole Case Analyst" means an employee of the North Carolina Department of Correction who works under the supervision of the North Carolina Parole Commission, whose duties include analyzing and processing cases under consideration for parole, preparing and presenting parole recommendations, analyzing and processing executive clemency matters and interviewing inmates.
- (22) (23) "Pilot Courses" means those courses developed consistent with the curriculum development policy adopted by the Commission on May 30, 1986. This policy shall be administered by the Education and Training Committee of the Commission consistent with Rule 9C .0404.
- (23) (24) "Probation/Parole Officer" means an employee of the Division of Adult Probation and Parole whose duties include supervising, evaluating, treating, or instructing offenders placed on probation or parole or assigned to any other community-based program operated by the Division of Adult Probation and Parole.
- (24) (25) "Probation/Parole Intake Officer" means an employee of the Division of Adult Probation and Parole, other than a regular Probation/Parole officer, whose duties include conducting, preparing, or delivering investigations, reports, and recommendations, either before or after sentencing, upon the request or referral of the court, the Parole Commission, or the Director of the Division of Adult Probation and Parole.
- (25) (26) "Probation/Parole Intensive Officer" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole officer, probation/parole intake officer, and probation/parole officer-surveillance who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole, whose duties include supervising, investigating, reporting, counseling, treating, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who serves as the lead officer in such a unit.
- (26) (27) "Probation/Parole Officer - Surveillance" means an employee of the Division of Adult Probation and Parole other than a regular probation/parole and a probation/parole intake officer who is duly sworn, empowered with the authority of arrest and is an authorized representative of the courts of North Carolina and the Department of Correction, Division of Adult Probation and Parole whose duties include supervising, investigating, reporting, and surveillance of serious offenders in an intensive probation and parole program operated by the Division of Adult Probation and Parole who is trained in community corrections and law

enforcement techniques.

- (27) (28) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHz frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHz frequency (K) band and either of which operates in the stationary and/or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHz (Ka) band and operates in either the stationary or moving mode.
- (28) (29) "Resident" means any youth committed to a facility operated by the North Carolina Division of Youth Services.
- (29) (30) "School" or "criminal justice school" means an institution, college, university, academy, or agency which offers criminal justice, law enforcement, penal, correctional, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (30) (31) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (31) (32) "Speed-Measuring Instruments" means those devices or systems formally approved and recognized under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically restricted in the approved list of 12 NCAC 9C .0601.
- (32) (33) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (33) (34) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.
- (34) (35) "State Youth Services Officer" means an employee of the North Carolina Division of Youth Services whose duties include the evaluation, treatment,

instruction, or supervision of juveniles committed to that agency.

Statutory Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217.

.0107 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in Article 3A of G.S. Chapter 150B;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(c) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in Title 26, Chapter 3 of the North Carolina Administrative Code are hereby adopted by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such adoptions by reference shall automatically include any later amendments and editions of the ~~adopted matter as authorized by G.S. 150B-14(e)~~ incorporated material as provided by G.S. 150B-21.6.

(d) Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in Title 26, Chapter 3 of the North Carolina Administrative

Code and that 26 NCAC 3 .0001(2); .0002(a)(1); and .0003(b); .0025; and .0026 shall not apply.

(e) An applicant for certification or a certified officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request an administrative hearing.

Statutory Authority G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40.

SECTION .0200 - ENFORCEMENT OF RULES

.0201 INVESTIGATION OF VIOLATION OF RULES

(a) If any criminal justice agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of these Rules, the Commission may take action to correct the violation and to ensure that similar violations do not occur.

(b) Before taking action against an agency, school, or individual for a violation, the Standards Division shall investigate the alleged violation and present a report of its findings to the Standards Committee of the Commission.

(c) The Standards Committee shall convene prior to the next regular meeting of the Commission, shall consider the report of the Standards Division, and shall prepare its recommended disposition of the case for the full commission make a determination as to whether or not probable cause exists that the Commission's rules have been violated.

(d) ~~The Commission shall consider fully the recommendations of the Standards Committee regarding alleged violations of these Rules. The Commission may:~~

The Standards Committee may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) request the Attorney General to authorize an investigation by the State Bureau of Investigation of the alleged violation;
- (3) direct the Standards ~~Committee~~ Division to conduct an administrative hearing in the matter, pursuant to Rule .0107 of this Subchapter and 26 NCAC 3; or
- (4) ~~impose~~ determine the appropriate sanctions against the violator pursuant to ~~Section .0200 of these the~~

Commission's Rules.

Statutory Authority G.S. 17C-6; 17C-10.

.0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a criminal justice officer when the Commission finds that the officer has committed or been convicted of:

- (1) a felony; or
- (2) a crime for which the authorized punishment included imprisonment for more than two years.

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 9B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 9B .0200 or 12 NCAC 9B .0400 for the category of the officer's certification;
- (3) has committed or been convicted of:
 - (A) a crime or unlawful act defined in 12 NCAC 9A .0103 as a Class B misdemeanor; or
 - (B) four or more crimes or unlawful acts defined in 12 NCAC 9A .0103 as a Class A misdemeanor, each of which occurred after the date of initial certification;
- (4) has been discharged by a criminal justice agency for commission or conviction of:
 - (A) a motor vehicle offense requiring the revocation of the officer's driver's license; or
 - (B) any other offense involving moral turpitude;
- (5) has been discharged by a criminal justice agency because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a criminal justice officer;
- (6) has knowingly made a material

misrepresentation of any information required for certification or accreditation;

- (7) has knowingly and willfully, by any means of false pretense, deception, fraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraudation, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the Commission;
- (9) has failed to make either of the notifications as required by 12 NCAC 9B .0101(7);
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16; or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 9E;
- (12) has refused to submit to an applicant or lateral transferee drug screen as required by these Rules; or
- (13) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 9C .0310, where the positive result cannot be explained to the Commission's satisfaction.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended, revoked, or denied.

Statutory Authority G.S. 17C-6; 17C-10.

.0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

(a) When the Commission revokes or denies the certification of a criminal justice officer, the period of the sanction shall be permanent where the cause of sanction is:

- (1) commission or conviction of a felony;
or

- (2) commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
- (3) the second suspension of an officer's certification for any of the causes requiring a five-year period of suspension.

(b) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a crime other than those listed in Paragraph (a) of this Rule; or
- (2) refusal to submit to the applicant or lateral transferee drug screen required by these Rules; or
- (3) production of a positive result on a drug screen reported to the Commission under 12 NCAC 9C .0310, where the positive result cannot be explained to the Commission's satisfaction; or
- (4) material misrepresentation of any information required for certification or accreditation; or
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempt to obtain credit, training or certification by any means of false pretense, deception, fraudation, misrepresentation or cheating; or
- (6) failure to make either of the notifications as required by 12 NCAC 9B .0101(7); or
- (7) removal from office under the provisions of G.S. 128-16; or the provisions of G.S. 14-230.

(c) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements; or
- (2) failure to meet or maintain the minimum standards of employment; or
- (3) discharge from a criminal justice

- agency for impairment of physical or mental capabilities; or
- (4) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 9E.

Statutory Authority G.S. 17C-6; 17C-10.

**SUBCHAPTER 9B - STANDARDS FOR
CRIMINAL JUSTICE EMPLOYMENT:
EDUCATION; AND TRAINING**

**SECTION .0100 - MINIMUM STANDARDS
FOR CRIMINAL JUSTICE EMPLOYMENT**

**.0101 MINIMUM STANDARDS FOR
CRIMINAL JUSTICE OFFICERS**

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character as determined by a thorough background investigation;
- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed physician or surgeon to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
 - (a) the drug screen shall be urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
 - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;
 - (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites;
 - (d) the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug

Testing Programs are hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c);

- (e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment;
- (f) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify other drugs to be tested for in addition to those drugs set out in Subparagraph (c) of this Rule.

Note: Although not presently required by these Rules, the Commission recommends that every candidate for a position as a criminal justice officer be examined by a licensed psychiatrist or clinical psychologist prior to employment, or be administered a psychological evaluation test battery to determine his mental and emotional suitability to perform the duties of an officer.

- (6) have been interviewed personally by the Department head or his representative or representatives, to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (7) notify the Standards Division of all criminal offenses which the officer pleads no contest to, pleads guilty to or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b) (driving while license permanently revoked or permanently suspended) and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Subparagraph must be

in writing, must specify the nature of the offense, the court in which the case was handled and the date of the conviction. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court. The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's conviction(s), shall also notify the Standards Division of all criminal convictions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Subparagraph.

Statutory Authority G.S. 17C-6; 17C-10.

.0104 MEDICAL EXAMINATION

(a) Each applicant for employment as a criminal justice officer shall complete the Commission's Medical History Statement Form within one year prior to employment by the employing agency and shall be examined by either a physician or surgeon licensed to practice medicine in North Carolina or by a physician or surgeon authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to help determine one's fitness in carrying out the physical requirements of the criminal justice officer position.

(b) The examining physician shall record the results of the examination on the Commission's Medical Examination Report Form and shall include notation of any evidence of past or present defects, diseases, injuries, operations, or conditions of an abnormal or unusual nature.

Statutory Authority G.S. 17C-6; 17C-10.

SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND

CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

.0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each commission-accredited criminal justice training course, the school director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established by the Commission.
 - (A) The school director shall schedule course presentation for delivery as follows:
 - (i) Each basic training course required for criminal justice officer certification shall be presented with a minimum of 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed. This Rule shall not apply to presentations of the "Basic Training--State Youth Services Officers" course.
 - (ii) The "Criminal Justice Instructor Training Course" shall be presented with a minimum of 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed.
 - (B) In the event of exceptional or emergency circumstances, the Director of the Standards Division may, upon written finding of justification, grant a waiver of the minimum hours requirement.
- (2) Select and schedule qualified instructors who are properly certified by the Commission. The selecting and scheduling of instructors is subject to special requirements as follows:
 - (A) In the presentation of a delivery of the "Basic Recruit Training--Law Enforcement" course:
 - (i) No instructor shall be scheduled to instruct in a high liability topic area as identified under Rule .0304(a) of this Subchapter unless specifically certified for that topic

- area by the Commission.
 - (ii) No single individual may be scheduled to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the "Basic Recruit Training--Law Enforcement" course presentation.
 - (iii) Where the school director shows exceptional or emergency circumstances and the school director documents that an instructor is qualified to instruct more than 35 percent of the total hours of the curriculum, the Director of the Standards Division may grant written approval for the expansion of the individual instructional limitation.
- (B) In the presentation of a delivery of the "Criminal Justice Instructor Training Course":
- (i) At least one evaluator of trainee performance shall be scheduled for each six trainees and in course delivery no evaluator will be assigned more than six trainees.
 - (ii) Each evaluator, as well as the instructors, must have successfully completed a commission-accredited instructor training course or an equivalent instructor training course as determined by the Commission.
 - (iii) Each instructor and evaluator must document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.
- (3) Provide each instructor with a commission-approved course outline and all necessary additional information concerning the instructor's duties and responsibilities.
- (4) Review each instructor's lesson plans and other instructional materials for conformance to established commission standards and to minimize repetition and duplication of subject matter.
- (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities and equipment for training in all topic areas.
- (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
- (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing course trainees; and
 - (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
- A copy of such rules, regulations and requirements shall be submitted to the Director of the Standards Division as an attachment to the Pre-delivery Report of Training Course Presentation. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing agency or department at the time the trainee enrolls in the course.
- (7) If appropriate, recommend housing and dining facilities for trainees.
- (8) Not less than 15 days before commencing delivery of the "Basic Recruit Training--Law Enforcement" course, submit to the commission a Pre-delivery Report of Training Course Presentation (Form F-10A) along with the following attachments:
- (A) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (B) A copy of any rules, regulations, and requirements for the school and, when appropriate, completed applications for Professional Lecturer Certification.
 - (C) The Director of the Standards Division shall review the submitted Pre-delivery Report together with all attachments and notify the school director of any apparent deficiency.
- (9) Not less than 30 days before commencing delivery of the "Criminal Justice Instructor Training Course", submit to the commission a Pre-delivery Report of Training Course Presentation with the following attachments:
- (A) The name and credentials of the

- school director.
 - (B) A comprehensive course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (C) The names and credentials of all instructors and evaluators.
 - (D) A copy of any rules, regulations, and requirements for the school.
 - (E) The Director of the Standards Division shall review the submitted Pre-delivery Report together with all attachments and notify the school director of any apparent deficiency.
- (10) Administer the course delivery in accordance with commission-approved procedures, guidelines, and standards and ensure that the training offered is as effective as possible.
 - (11) The school director or designated certified instructor shall Monitor monitor the presentations of all probationary instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. These evaluations shall be prepared on commission-approved forms and forwarded to the Commission. Based on this evaluation, the school director shall have the added responsibility for recommending approval or denial of requests for General Instructor Certification.
 - (12) The school director or designated certified instructor shall Monitor monitor the presentations of all other instructors during course delivery and prepare formal written evaluations on their performance and suitability for subsequent instructional assignments. Any designated certified instructor who is evaluating the instructional presentation of another instructor shall, at a minimum, hold certification in the same instructional topic area as that for which the instructor is being evaluated. Instructor evaluations shall be prepared on commission-approved forms in accordance with commission standards. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request.
- (13) Administer or designate a qualified person to administer appropriate tests as determined necessary at various intervals during course delivery:
 - (A) to determine and record the level of trainee comprehension and retention of instructional subject-matter; and
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced criminal justice officer; and
 - (C) to determine subject or topic areas of deficiency for the application of Rule .0405(a)(3) of this Subchapter.
 - (14) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning, development, presentation, or administration of a course has been delegated.
 - (15) During a delivery of the "Basic Recruit Training--Law Enforcement" course, make available to authorized representatives of the Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.
 - (16) Report the completion of each presentation of a commission-accredited criminal justice training course to the Commission as follows:
 - (A) "Basic Recruit Training--Law Enforcement". Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall submit to the Commission a Post-delivery Report of Training Course Presentation (Form F-10B).
 - (B) Special arrangements shall be made between the school director and the Director of the Standards Division for the reporting of law enforcement achievement in a commission-accredited Public Safety Officer course.
 - (C) Upon successful completion of a commission-accredited training course by correctional, state youth services, or probation/parole trainees, the

director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a monthly Report of Training Course Completion.

- (D) "Criminal Justice Instructor Training Course". Not more than 10 days after course completion the school director shall submit to the Commission a Post-delivery Report containing the following:

- (i) Class enrollment roster.
- (ii) Course schedule with designation of instructors and evaluators utilized in delivery.
- (iii) Scores recorded for each trainee on both the 80 minute skill presentation and the final written examination.
- (iv) Designation of trainees who successfully complete the course in its entirety and whom the school director finds to be competent to instruct.

(b) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each commission-accredited radar, radar and time-distance or time-distance speed measurement operator training course or re-certification course, the school director shall:

- (1) select and schedule qualified radar or time-distance speed measurement instrument instructors who are properly certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction. The following requirements apply to operator certification training:
 - (A) Provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
 - (B) Require the instructor to complete the motor-skill examination form on each trainee indicating the level of proficiency obtained on each specific instrument;
 - (C) Require each instructor to sign each individual form and submit the original to the school director.
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation.

- (A) The request shall contain a period of course delivery including the proposed starting date, course location and the number of trainees to be trained in each type of approved speed-measurement instrument;

- (B) The Director of the Standards Division shall review the request and notify the school director of the accepted delivery period unless a conflict exists with previously scheduled programs.

- (3) during the delivery of the training course, make available to authorized representatives of the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee.

- (4) upon completing delivery of the Commission-accredited course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the school director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-delivery Report of Training Course Presentation. This report shall include the original motor-skill examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

Statutory Authority G.S. 17C-6.

.0211 CRIMINAL JUSTICE TD/SMI INSTRUCTOR TRAINING COURSE

(a) Each time-distance speed measurement instrument instructor training course shall consist of a minimum of 30 hours of instruction in addition to the requirements set forth in 12 NCAC 9B .0210(a). This additional 30 hours shall provide the trainee with the skills and knowledge to proficiently perform the function of a criminal justice time-distance speed measurement instrument instructor. This course shall be for a period not to exceed eight consecutive weeks.

(b) Each applicant for the time-distance speed measurement instrument instructor training course shall meet the minimum entry requirements of 12 NCAC 9B .0210(c) and 12 NCAC 9B .0309, and in addition thereto shall have successfully completed the training course of 12 NCAC 9B .0210(d).

(c) Each time-distance speed measurement instrument instructor training course shall include all topic areas specified in 12 NCAC 9B .0210(d). The additional 30 instructional hours in the time-distance speed measurement instrument instructor training course shall include but not be limited to the following topic areas and corresponding instructional hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- | | |
|--|---------|
| (1) Overview and Introduction to Time-Distance Speed Measurement Instruments (TDSMI) Training | 2 Hours |
| <ul style="list-style-type: none"> (A) description of the objectives of a time-distance speed measurement instrument training program; (B) identification of specific requirements for TDSMI instructors, operators and equipment as set forth in G.S. 17C and G.S. 8-50.2. | |
| (2) Basic Principles of Time-Distance Speed Measurement Instruments | 3 Hours |
| <ul style="list-style-type: none"> (A) description of the basic principles on which time-distance speed measurement instruments operate; (B) explanation of the procedures used in calibrating time-distance speed measurement instruments; (C) description of the basic operating procedures required when employing time-distance speed measurement instruments. | |
| (3) Legal and Operational Consideration of Time-Distance Speed Measurement Instruments | 4 Hours |
| <ul style="list-style-type: none"> (A) demonstration of basic skills in preparing and presenting evidence and testimony concerning speed enforcement and speed measurement; (B) identification and description of accepted operating procedures for the proper use of time-distance speed measurement instruments; (C) identification and description of factors which may affect the selection of various speed measurement sites. | |
| (4) Classroom Familiarization with Specific Time-Distance Speed Measurement Instruments: | 1 Hour |
| <ul style="list-style-type: none"> demonstration of the familiarity with the functions and operating procedures of approved time-distance speed measurement instruments. | |
| (5) Moot Court | 2 Hours |
| <ul style="list-style-type: none"> (A) preparation of complete, concise and effective direct testimony for time-distance speed measurement instrument cases; (B) respond properly and effectively to cross examination. | |
| (6) Field Operation of Specific Time-Distance Speed Measurement Instruments | 8 Hours |
| <ul style="list-style-type: none"> (A) description of the functional components of approved time-distance speed measurement instruments; (B) description of the setup, calibration and operation procedures of approved time-distance speed measurement instruments; (C) operation and performance of all procedural requirements of actual patrol with approved time-distance speed measurement instruments. | |
| (7) Motor-Skill Performance Testing: | 8 Hours |
| <ul style="list-style-type: none"> (A) demonstration of the ability to successfully setup, calibrate and operate approved time-distance speed measurement instruments for which the trainee seeks certification in accordance with criteria specified on a standardized trainee performance evaluation form; | |

(B) demonstration by the trainee of the ability to estimate vehicular speed using criteria specified on a standardized trainee evaluation form, if the 30 hour time-distance instructor course concludes more than six weeks after the trainee successfully completes the training specified in 12 NCAC 9B .0210.

- | | | |
|-----|---------------|--------|
| (8) | Course Review | 1 Hour |
| (9) | Written Test | 1 Hour |

Total 30 Hours

(d) The "Time-Distance Operator Course" as published by the North Carolina Justice Academy is hereby adopted by reference, and shall automatically include any later amendments and editions of the adopted matter as authorized by G.S. 150B-14(c), to apply as basic curriculum for the criminal justice time-distance speed measurement instrument instructor training course for time-distance speed measurement instructors as administered by the Commission. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division
North Carolina Department of Justice
1 West Morgan Street
Court of Appeals Building
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at cost at the address in this Rule.

(e) Commission-accredited schools that are accredited to offer the "Criminal Justice TD/SMI Instructor Training Course" are: The North Carolina Justice Academy.

Statutory Authority G.S. 17C-6.

.0217 BASIC TRAINING -- ALCOHOL LAW ENFORCEMENT AGENTS

(a) ~~The basic training course for alcohol law enforcement agents appointed by the Secretary of Crime Control and Public Safety as authorized under General Statute 18B-500 shall consist of a minimum of 604 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as an alcohol law enforcement agent.~~

(b) ~~Each basic training course for alcohol law enforcement agents shall include the following identified topic areas and minimum instructional hours for each area:~~

(1)	Orientation	3 Hours
(2)	Physical Training	75 Hours
(3)	History of ALE	1 Hour
(4)	Constitutional Law, Government and Civil Rights	14 Hours
(5)	Firearms	56 Hours
(6)	Knowledge of Law, General Criminal Law and Evidence	36 Hours
(7)	Chapter 18B	40 Hours
(8)	ABC Regulations	32 Hours
(9)	Controlled Substances Act Enforcement	16 Hours
(10)	First Responder	24 Hours
(11)	ALE Vehicle Operations	40 Hours
(12)	Arrest, Search and Seizure	40 Hours
(13)	Agent Survival Enforcement Psychology	4 Hours
(14)	Enforcement Sociology	4 Hours
(15)	Stress Management	4 Hours
(16)	Defensive Tactics	44 Hours
(17)	Civil Liability	4 Hours
(18)	DUI and Motor Vehicle Law	14 Hours
(19)	ALE Investigations	24 Hours
(20)	Written Communications	40 Hours

(21) Criminal Justice System	24 Hours
(22) Verbal Communications	12 Hours
(23) Evidence	2 Hours
(24) Juvenile Law	16 Hours
(25) Observation	6 Hours
(26) Math	2 Hours
(27) ALE Tactical Operations	4 Hours
(28) Hazardous Devices, Explosives and Components	4 Hours
(29) Community Relations, Human Relations, Ethics and Courtesy	8 Hours
(30) ALE Policy and Procedure	8 Hours

Statutory Authority G.S. 17C-6; 17C-10.

.0220 RE-CERTIFICATION COURSE FOR RADAR OPERATORS

(a) Each re-certification course for radar operators shall consist of a minimum of 8 hours of review and testing designed to determine if the individual possesses the skills and knowledge to continue to proficiently perform those tasks essential to function as a radar operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a radar operator re-certification course shall: meet the requirements of 12 NCAC 9C .0308(c) and (d).

- (1) ~~Be currently certified in a probationary or general status as a law enforcement officer.~~
- (2) ~~Have been certified as a radar operator within the three years preceding the completion date of the re-certification course.~~

(c) ~~Sheriffs, deputy sheriffs and federal~~ Federal law enforcement personnel shall be allowed to participate in radar operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 9B .0220(b)(1) and (b)(2), but such personnel must have successfully completed the radar operator training course (12 NCAC 9B .0212) or the radar TD/SMI operator training course (12 NCAC 9B .0213), within the three years preceding the completion date of the re-certification course.

(d) Each radar operator re-certification course shall include the following topic areas and corresponding testing hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

(1) Course Orientation:	1/2 Hour
(A) registration and description of course;	
(B) review of the performance requirements for successful completion of the radar operator re-certification course.	
(2) Legal and Operational Considerations:	1 1/2 Hours
(A) review of operator testing and calibration procedures;	
(B) review of required operating procedures of radar instruments.	
(3) Motor-Skill Performance Testing:	4 Hours
(A) demonstration of the ability to properly setup, test, calibrate and operate the radar instruments for which the operator seeks re-certification in accordance with criteria specified on standardized performance evaluation forms;	
(B) demonstration of the ability to estimate vehicular speed in accordance with criteria specified on standardized performance evaluation forms.	
(4) Written Test	2 Hours
Total	8 Hours

Statutory Authority G.S. 17C-6.

.0221 RE-CERTIFICATION COURSE FOR RADAR AND TD/SMI OPERATORS

(a) Each re-certification course for radar and time-distance speed measurement instrument operators shall consist of a minimum of 13 hours of review and testing designed to determine if the individual possesses the

skills and knowledge to continue to proficiently perform those tasks essential to function as a radar and time-distance operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a radar and time-distance operator re-certification course shall: meet the requirements of 12 NCAC 9C .0308(c) and (d).

- (1) ~~Be currently certified in a probationary or general status as a law enforcement officer.~~
- (2) ~~Have been certified as a radar and time distance operator within the three years preceding the completion date of the re-certification course.~~

(c) ~~Sheriffs, deputy sheriffs, and federal~~ Federal law enforcement personnel shall be allowed to participate in radar and time-distance operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 9B .0221(b)(1) and (b)(2), but such personnel must have successfully completed the radar and TD/SMI operator training course (12 NCAC 9B .0213) or the radar operator training course (12 NCAC 9B .0212) and the TD/SMI operator training course (12 NCAC 9B .0214), ~~within the three years preceding the completion date of the re-certification course.~~

(d) Each combined re-certification course for radar and time-distance speed measurement instrument operators shall include all topic areas specified in 12 NCAC 9B .0220(d). The additional 5 hours in the time-distance speed measurement instrument operators re-certification course shall include but not be limited to the following topic areas and corresponding testing hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- | | |
|--|---------|
| (1) Motor-Skill Performance Testing: | 4 Hours |
| Demonstration of the ability to properly setup, test, calibrate, and operate the time-distance instruments for which the operator seeks re-certification in accordance with criteria specified on standardized performance evaluation forms. | |
| (2) Written Test | 1 Hour |
| Total | 5 Hours |

Statutory Authority: G.S. 17C-6.

.0222 RE-CERTIFICATION COURSE FOR TD/SMI OPERATORS

(a) Each re-certification course for time-distance speed measurement instrument (TD/SMI) operators shall consist of a minimum of 8 hours of review and testing designed to determine if the individual possesses the skills and knowledge to continue to proficiently perform those tasks essential to function as a time-distance operator. This course shall be presented within a period not to exceed one week.

(b) Each applicant for a time-distance operator re-certification course shall: meet the requirements of 12 NCAC 9C .0308(c) and (d).

- (1) ~~Be currently certified in a probationary or general status as a law enforcement officer.~~
- (2) ~~Have been certified as a time distance operator within the three years preceding the completion date of the re-certification course.~~

(c) ~~Sheriffs, deputy sheriffs and federal~~ Federal law enforcement personnel shall be allowed to participate in time-distance operator re-certification courses at the discretion of the school director without meeting the requirements specified in 12 NCAC 9B .0222(b)(1) and (b)(2), but such personnel must have successfully completed the radar and TD/SMI operator training course (12 NCAC 9B .0213) or the TD/SMI operator training course (12 NCAC 9B .0214), ~~within the three years preceding the completion date of the re-certification course.~~

(d) Each time-distance operator re-certification course shall include the following topic areas and corresponding testing hours and incorporate the corresponding minimum trainee performance objectives within the course curriculum:

- | | |
|--|-------------|
| (1) Course Orientation: | 1/2 Hour |
| (A) registration and description of course; | |
| (B) review of the performance requirements for successful completion of the TD/SMI operator re-certification course. | |
| (2) Legal and Operational Considerations: | 1 1/2 Hours |
| (A) review of operator testing and calibration procedures; | |
| (B) review of required operating procedures of time-distance instruments. | |
| (3) Motor-Skill Performance Testing: | 4 Hours |

- (A) demonstration of the ability to properly setup, test, calibrate, and operate the time-distance instruments for which the operator seeks re-certification in accordance with criteria specified on standardized performance evaluation forms;
- (B) demonstration of the ability to estimate vehicular speed in accordance with criteria specified on standardized performance evaluation forms.
- (4) Written Test:

2 Hours

Total

8 Hours

Statutory Authority G.S. 17C-6.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

.0309 RADAR AND TD SPEED MEASUREMENT INSTRUMENT INSTRUCTORS

In addition to all requirements contained in 12 NCAC 9B .0308 of this Section, applicants in this category shall complete a 30 hour instructor training course in time-distance speed measurement as required in 12 NCAC 9B .0211. An applicant meeting the requirements for radar and T/D speed measurement instrument instructor certification shall be issued a certification to run concurrently with the existing radar instructor certification.

12-month period, successful completion of the appropriate instructor training program as required in 12 NCAC 9B .0308 will be required to obtain instructor certification. This prescribed 12-month period does not extend the instructor certification period.

Statutory Authority G.S. 17C-6.

Statutory Authority G.S. 17C-6.

.0310 TERMS AND CONDITIONS -- SMI INSTRUCTORS

(a) The term of a radar instructor or a radar and time-distance speed measurement instrument instructor is two years from the date the Commission issues the certificate, unless sooner terminated by the Commission. The certificate may be renewed for subsequent three year periods. The SMI instructor desiring renewal shall:

- (1) Hold general instructor certification as required in 12 NCAC 9B .0303.
- (2) Have been active in the SMI classroom instructional process during the previous certification period.
- (3) Successfully complete a commission-approved SMI instructor re-certification course as required in 12 NCAC 9B .0218 or .0219.

(b) All SMI instructors seeking re-certification shall successfully complete the re-certification course within 12 months from expiration of the initial certification period or re-certification period; ~~but not sooner than six months prior to the expiration of the previous certification.~~ If re-certification training is not obtained within the

SECTION .0400 - MINIMUM STANDARDS FOR COMPLETION OF TRAINING

.0403 EVALUATION FOR TRAINING WAIVER

(a) The division staff shall evaluate each law enforcement officer's training and experience to determine if equivalent training has been satisfactorily completed as specified in Rule .0402(a). Applicants for certification with prior law enforcement experience shall have been employed in a full-time, sworn law enforcement position in order to be considered for training evaluation under this Rule. Applicants for certification with a combination of full-time and part-time experience shall be evaluated on the basis of the full-time experience only. The following criteria shall be used by division staff in evaluating a law enforcement officer's training and experience to determine eligibility for a waiver of training requirements:

- (1) Persons having completed a commission-accredited basic training program and not having been duly appointed ~~and as a sworn as a~~ law enforcement officer within one year of completion of the program shall complete a subsequent commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination prior to obtaining probationary law enforcement certification; unless the Director determines that a delay in applying for certification was not due to neglect on the part of the applicant, in which case the Director may accept a commission-accredited basic training program which is over one year old. Such extension of the one year period shall not exceed 30 days from the expiration date of a commission-accredited basic training program.
- (2) Out-of-state transferees shall be evaluated to determine the amount and quality of their training and experience. Out-of-state transferees cannot have a break in service exceeding one year. At a minimum, out-of-state transferees shall have two years' full-time, sworn law enforcement experience and have successfully completed a basic law enforcement training course accredited by the State from which transferring. Prior to employment as a certified law enforcement officer, out-of-state transferees must successfully complete the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 9E .0100. At a minimum, out-of-state transferees shall successfully complete a commission-accredited training program which includes the following enumerated topics of North Carolina law and procedure and shall successfully pass the State Comprehensive Examination in its entirety within the 12 month probationary period.

Laws of Arrest, Search and Seizure	16 Hours
Elements of Criminal Law	24 Hours
Juvenile Laws and Procedures	8 Hours
Controlled Substances	6 Hours
ABC Laws and Procedures	4 Hours
Motor Vehicle Laws	20 Hours
Total	<u>78 Hours</u>

- (3) Persons who have completed a minimum 369-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning October 1, 1984 and have been separated from a sworn position for over one year but less than three years who have had a minimum of two years' experience as a full-time, sworn law enforcement officer in North Carolina shall successfully complete the refresher training enumerated in Rule .0403(a)(~~3~~) (2) and shall successfully pass the State Comprehensive Examination in its entirety within the 12 month probationary period. Prior to employment as a certified law enforcement officer, these persons shall successfully complete the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 9E .0100.
- (4) Persons out of the law enforcement profession for over one year but less than three years who have had less than two years' experience as a full-time, sworn law enforcement officer in North Carolina shall complete a commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination.

- (5) Persons out of the law enforcement profession for over three years regardless of prior training or experience shall complete a commission-accredited basic training program in its entirety and shall successfully pass the State Comprehensive Examination.
- (6) Persons who separated from law enforcement employment during their probationary period after having completed a commission-accredited basic training program and who have separated from a sworn law enforcement position for more than one year shall complete a subsequent commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination.
- (7) Persons who separated from a sworn law enforcement position during their probationary period after having successfully completed a commission-accredited basic training program and who have separated from a sworn law enforcement position for less than one year shall serve a new 12 month probationary period, but need not complete an additional training program.
- (8) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and who have separated from a sworn law enforcement position for over one year but less than two years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period. Prior to employment as a certified law enforcement officer, these persons shall successfully complete the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 9E .0100.

Laws of Arrest, Search and Seizure	16 Hours
Elements of Criminal Law	24 Hours
Juvenile Laws and Procedures	8 Hours
Controlled Substances	6 Hours
ABC Laws and Procedures	4 Hours
Motor Vehicle Laws	20 Hours
Law Enforcement Driver Training	16 Hours
<hr/>	
Total	94 Hours

- (9) Persons who have completed a minimum 160-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Training and Standards Council under guidelines administered beginning on July 1, 1973 and continuing through September 30, 1978 and have been separated from a sworn law enforcement position for over two years shall be required to complete a current commission-accredited basic training program in its entirety regardless of training and experience and shall successfully pass the State Comprehensive Examination.
- (10) Persons who have completed a minimum 240-hour basic law enforcement training program accredited by the North Carolina Criminal Justice Education and Training Standards Commission under guidelines administered beginning October 1, 1978 and continuing through September 30, 1984 and have been separated from a sworn position over one year but less than three years shall be required to complete the following portions of a commission-accredited basic training program and successfully pass the State Comprehensive Examination within the 12 month probationary period. Prior to employment as a certified law enforcement officer, these persons shall successfully complete the employing agency's in-service firearms training and qualification program as prescribed in 12 NCAC 9E .0100.

Laws of Arrest, Search and Seizure	16 Hours
Elements of Criminal Law	24 Hours
Juvenile Laws and Procedures	8 Hours
Controlled Substances	6 Hours
ABC Laws and Procedures	4 Hours
Motor Vehicle Laws	20 Hours

- (11) Persons previously holding law enforcement certification in accordance with G.S. 17C-10(a) who have been separated from a sworn law enforcement position for over one year and who have not previously completed a minimum basic training program accredited by either the North Carolina Criminal Justice Training and Standards Council or the North Carolina Criminal Justice Education and Training Standards Commission shall be required to complete a commission-accredited basic training program in its entirety and shall successfully pass the State Comprehensive Examination prior to employment.
 - (12) Persons who have completed training as a federal law enforcement officer and are appointed as a sworn law enforcement officer in North Carolina shall be required to complete a commission-accredited basic training program in its entirety and shall successfully pass the State Comprehensive Examination.
 - (13) Applicants with part-time experience who have a break in service in excess of one year shall complete a commission-accredited basic training program in its entirety and successfully pass the State Comprehensive Examination prior to employment.
 - (14) Applicants who hold or previously held certification issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. The division staff shall determine the amount of training required of these applicants.
 - (15) Alcohol law enforcement agents who separate from employment with the Division of Alcohol Law Enforcement and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The division staff shall determine the amount of training required of these applicants.
 - (16) Wildlife enforcement officers who separate from employment with the Wildlife Enforcement Division and transfer to another law enforcement agency in a sworn capacity shall be subject to evaluation of their prior training and experience on an individual basis. The division staff shall determine the amount of training required of these applicants.
- (b) In those instances not specifically incorporated within this Section or where an evaluation of the applicant's prior training and experience determines that required attendance in the entire "Basic Recruit Training--Law Enforcement" course would be impractical, the Director of the Standards Division is authorized to exercise his discretion in determining the amount of training those persons shall complete during their probationary period.
- (c) The following criteria shall be used by division staff in evaluating prior training and experience of local confinement personnel to determine eligibility for a waiver of training requirements:
- (1) Persons who hold probationary, general or grandfather certification as local confinement personnel and separate after having completed a commission-accredited course as prescribed in 12 NCAC 9B .0224 or .0225 and have been separated for more than one year shall complete a subsequent commission-accredited training course in its entirety and successfully pass the State Comprehensive Examination during the probationary period as prescribed in 9B .0401(a).
 - (2) Persons who separated from a local confinement personnel position after having completed a commission-accredited course as prescribed in 12 NCAC 9B .0224 or .0225 and who have been separated for less than one year shall serve a new 12 month probationary period, but need not complete an additional training program.
 - (3) Applicants who hold or previously held "Jailer Certification" issued by the North Carolina Sheriff's Education and Training Standards Commission shall be subject to evaluation of their prior training and experience on an individual basis. Where the applicant properly obtained certification and successfully completed the required 120 hour training course, and has not had a break in service in excess of one year, no additional training will be required.
 - (4) Persons holding certification for local confinement facilities who transfer to a district or county confinement facility shall satisfactorily complete the course for district and county confinement facility personnel, as adopted by reference in 12 NCAC 9B .0224, in its entirety and successfully pass the State Comprehensive Examination during the probationary period as prescribed in 9B .0401(a).

Statutory Authority G.S. 17C-2; 17C-6; 17C-10.

.0404 TRAINEE ATTENDANCE

(a) Each trainee enrolled in an accredited "Basic Recruit Training--Law Enforcement" course shall attend all class sessions. The trainee's department head shall be responsible for the trainee's regular attendance at criminal justice training courses in which the trainee is enrolled.

(b) The school director may recognize valid reasons for class absences and may excuse a trainee from attendance at specific class sessions. However, in no case may excused absences exceed 10 percent of the total class hours for the course offering.

(c) If the school director grants an excused absence from a class session, he shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation or in a subsequent course delivery as is permissible under Rule 9B .0405.

(d) A trainee shall not be eligible for administration of the comprehensive written examination nor certification for successful course completion if the cumulative total of class absences, with accepted make-up work, exceeds ten percent of the total class hours of the accredited course offering and should be expediently terminated from further course participation by the school director at the time of such occurrence.

(e) A school director may terminate a trainee from course participation or may deny certification of successful course completion where the trainee is habitually tardy to, or regularly departs early from, class meetings or field exercises.

(f) Where a trainee is enrolled in a program as required in 12 NCAC 9B .0212, .0213, .0214, .0215, .0218, .0219, .0220, .0221, or .0222, attendance shall be 100 percent in order to receive successful course completion, and the scheduled course hours exceed the minimum requirements of the Commission, the trainee, upon the authorization of the school director, may be deemed to have satisfactorily completed the required number of hours for attendance provided the trainee's attendance is not less than 100 percent of the minimum instructional hours as required by the Commission.

(g) A trainee enrolled in a presentation of the "Criminal Justice Instructor Training Course" under Rule .0209 of this Subchapter shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion.

(h) A trainee, enrolled in a presentation of the local confinement facility course under Rule .0225 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. The school director shall schedule appropriate make-up work and ensure the satisfactory completion of such work during the current course presentation for all absenteeism.

(i) A trainee, enrolled in a presentation of the "Specialized Instructor Training - Firearms" course under Rule .0226 of this Subchapter, the "Specialized Instructor Training - Driving" course under Rule .0227 of this Subchapter, or the "Specialized Instructor Training - Defensive Tactics" course under Rule .0232 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Appropriate make-up work must be completed during the current course presentation for all absenteeism.

(j) A trainee, enrolled in a presentation of the "Radar Instructor Training Course" under Rule .0210 of this Subchapter, or the "Time-Distance Speed Measurement Instrument Instructor Training Course" under Rule .0211 of this Subchapter, shall not be absent from class attendance for more than 10 percent of the total scheduled delivery period in order to receive successful course completion. Appropriate make-up work must be completed during the current course presentation for all absenteeism.

Statutory Authority G.S. 17C-2; 17C-6; 17C-10.

SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

.0303 PROBATIONARY CERTIFICATION

(a) Before a prospective criminal justice officer may be administered the oath of office, exercise the power of arrest, or commence active service as an officer, the employing agency shall have in its possession the person's Probationary Certification.

(b) The Commission shall certify as a probationary officer a person meeting the minimum standards for criminal justice employment when the person's employing agency submits a completed

Report of Appointment to the Standards Division.

- (1) The Standards Division shall issue the person's Probationary Certification to the employing agency.
- (2) If an oath is required, the official administering an oath of office to the person shall be presented the person's Probationary Certification prior to the swearing. The administering official shall sign and date the oath on the Probationary Certification. The employing agency shall return a copy of the signed Probationary Certification to the Standards Division within 10 days of the administration of the officer's oath.
- (3) If no oath is required, the officer's department head shall endorse the Probationary Certification and enter the date on which the officer's service commenced, returning a copy of the certification to the Standards Division within 10 days of the commencement of the officer's service.

(c) The officer's Probationary Certification shall remain valid for one year from the date the certification is issued by the Standards Division unless sooner terminated for cause.

(d) Before a prospective law enforcement officer, except ~~alcohol law enforcement agents and~~ wildlife enforcement officers, can be issued a Probationary Certification, the prospective officer must have successfully completed the required basic training course stipulated in 12 NCAC 9B .0205(b).

~~(e) Before a prospective alcohol law enforcement agent can be issued a Probationary Certification, the prospective officer must have successfully completed the first eleven weeks of the Basic Training: Alcohol Law Enforcement Agent's course stipulated in 12 NCAC 9B .0217(b).~~

~~(f)~~ (e) Before a prospective wildlife enforcement officer can be issued a Probationary Certification, the prospective officer must have successfully completed the required basic training course stipulated in 12 NCAC 9B .0228(b).

~~(g)~~ (f) An applicant for certification who holds a valid Probationary Certification issued by the North Carolina Sheriffs' Education and Training Standards Commission shall be certified as a probationary law enforcement officer as specified under Paragraphs (b), (c) and (d) of this Rule.

~~(h)~~ (g) Where the local governing authority lawfully declares the existence of a public emergency, the department head of the criminal justice

agency of the jurisdiction may swear persons as law enforcement officers without first obtaining Probationary Certification for those officers. The employing agency shall obtain Probationary Certification for such emergency officers not more than 20 days after the administration of their oath of office.

Statutory Authority G.S. 17C-6; 17C-10.

.0308 INSTRUMENT OPERATORS CERTIFICATION PROGRAM

(a) Certification shall be issued in one of the following categories:

- (1) radar operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 9B .0210, .0211, .0212, .0213, .0218, .0219, .0220, or .0221;
- (2) radar and time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 9B .0211, .0213, .0219, or .0221;
- (3) time-distance speed measurement instrument operator certification or re-certification requiring successful completion of the training program as required in 12 NCAC 9B .0211, .0213, .0214, .0219, .0221, or .0222.

(b) Certification in either category will reflect operational proficiency in the designated type(s) of approved equipment for which the trainee has been examined and tested. Such certification shall be for a two year period from the date of issue and re-certifications shall be for a three year period from the date of issue, unless sooner terminated by the Commission. However, if retesting on the motor-skill area is necessary, re-certification shall be for a two year period from the date of issue, unless sooner terminated by the Commission. At a minimum, the applicant shall meet the following requirements for operator certification or re-certification within 90 days of course completion and upon the presentation of documentary evidence showing that the applicant:

- (1) has successfully completed the training program as required in 12 NCAC 9B .0210, .0211, .0212, .0213, .0214, .0218, .0219, .0220, .0221, or .0222; and
- (2) has successfully completed a commission-accredited basic law

enforcement training course as required in 12 NCAC 9B .0400 and is currently certified in a probationary status or holds general law enforcement certification; or

- (3) if the applicant is a sheriff, deputy sheriff, or other sworn appointee with arrest authority governed by the provisions of Chapter 17E of the General Statutes, has met and is in total compliance with the then current employment and training standards as established and made effective for such position by the North Carolina Sheriffs' Education and Training Standards Commission.

(c) Certified operators shall be notified by the Commission not less than 90 days prior to expiration of certification. All applicants for re-certification shall successfully complete a commission-approved re-certification course within 12 months from the expiration of the previous certification. If re-certification is not obtained within the 12 month period, successful completion of the appropriate operator training programs as required by 12 NCAC 9B .0409(a) will be required to obtain operator certification. This prescribed 12 month period shall not extend the operator certification period beyond its specified expiration date. When a re-certification course is successfully completed prior to the expiration of the previous certification, the new certification shall be issued by the Criminal Justice Standards Division effective upon the receipt of the Post-delivery Report of Training Course Presentation.

(d) Re-certification shall be issued only to officers with current law enforcement certification.

(e) All certifications issued pursuant to this Rule and the standards in effect between November 1, 1981 and July 1, 1982 shall continue with full force and effect; however, said certifications shall be subject to the provisions of 12 NCAC 9C .0308(c) and (d).

Statutory Authority G.S. 17C-6.

SECTION .0600 - EQUIPMENT AND PROCEDURES

.0601 APPROVED SPEED-MEASURING INSTRUMENTS

(a) The following speed-measuring instruments are approved for radio microwave (radar) use, provided they are not equipped with dual antennas:

- (1) repealed
- (2) repealed

(3)	repealed	
(4)	repealed	
(5)	repealed	
(6)	repealed	
(7)	repealed	
(8)	repealed	
(9)	repealed	
(10)	repealed	
(11)	repealed	
(12)	Kustom HR-8	Stationary
(13)	Kustom HR-12	Moving/Stationary
(14)	repealed	
(15)	repealed	
(16)	Kustom KR-11	Moving/Stationary
(17)	MPH K-15	Stationary
(18)	MPH K-55	Moving/Stationary
(19)	MPH S-80	Moving/Stationary
(20)	repealed	
(21)	repealed	
(22)	Decatur Ra-Gun (RAS & "N" Series)	Stationary
(23)	repealed	
(24)	Decatur Ra-Gun 1 and 2 (RAS) (Included in No. 22)	
(25)	Kustom KR-10 SP	Moving/Stationary
(26)	repealed	
(27)	repealed	
(28)	Kustom Falcon	Stationary
(29)	Kustom Roadrunner	Stationary
(30)	Kustom Trooper	Moving/Stationary
(31)	Decatur MVR 715	Moving/Stationary
(32)	Decatur MVR 724	Moving/Stationary
(33)	Decatur Hunter	Moving/Stationary
(34)	Kustom PRO-1000	Moving/Stationary
(35)	MPH K15 II (86)	Stationary
(36)	<u>Applied Concepts Stalker</u>	<u>Moving/Stationary</u>

(b) The following speed-measuring instruments are approved for time-distance use provided that the instrument is not capable of accepting double time or double distance into the computer:

(1)	KR-11; Stopwatch Mode <u>repealed</u>	Kustom Signals, Inc.
(2)	repealed	
(3)	Vasear-I <u>repealed</u>	Federal Sign and Signal Corporation
(4)	Vasear-II <u>repealed</u>	Federal Sign and Signal Corporation
(5)	Vascar Plus	Traffic Safety Systems, Inc.

(c) All approved models and types of radio microwave (radar) speed-measuring instruments are made subject to and restricted as follows:

- (1) The automatic operate functions have been disconnected.
- (2) The automatic alarms, audio and visual have been disconnected.
- (3) The automatic locking functions have been disconnected.
- (4) The instrument does not provide an external control that would permit the adjustment or correction of the zero or calibration readings.
- (5) The "High Speed Lock" function has been disconnected.

Note: The automatic functions that shall be disconnected are any and all automatic violation alarm or lock capabilities that occur prior to the speed measuring instrument being manually locked by the operator.

(d) All speed measuring instruments, as herein defined, purchased on or after July 1, 1982 for speed

enforcement shall meet or exceed performance specifications as provided in the "Model Performance Specifications for Police Traffic Radar Devices" as prepared by the Law Enforcement Standards Laboratory of the National Bureau of Standards and published by the National Highway Traffic Safety Administration, United States Department of Transportation (as in effect July 1, 1982). Copies of the document in this Rule are available from the agency address at the cost of reproduction.

(e) Prior to inclusion as an approved speed measuring instrument, the manufacturer of said instrument shall certify in writing to the agency that said instrument meets or exceeds the standards of 12 NCAC 9C .0601(d) and provide a copy of a testing report or other document illustrating the method and results used in such certification.

Statutory Authority G.S. 17C-6.

.0603 TESTING: RADIO MICROWAVE (RADAR)

(a) The minimum specific test for radio microwave (radar) shall include:

- (1) Transmission Frequency Test. X-Band, ~~and~~ K-Band, ~~and~~ Ka Band instruments, when operated at the standard supply voltage, the transmission frequency shall be within plus-minus .2 percent of the assigned frequency as specified in Subchapter 90.103, paragraph 22 of the F.C.C. rules and regulations.
- (2) The technician testing each radar instrument shall test each instrument against the operator calibration and testing for accuracy procedures required by G.S. 17C-6(a)(13) and G.S. 8-50.2(b)(4) for each approved instrument.

(b) During the radio microwave (radar) accuracy test the technician shall test each instrument to determine that the:

- (1) Automatic operate function is disconnected.
- (2) Automatic alarms, audio and visual is disconnected.
- (3) Automatic locking capability is disconnected.
- (4) Instrument does not provide an external control that would permit the adjustment or correction of the zero or calibration readings.
- (5) The "High Speed Lock" function is disconnected.
- (6) If the above five functions have not been disconnected the radio microwave (radar) instrument shall not pass the test.

Note: The automatic functions that shall be disconnected are any and all automatic violation alarm or lock capabilities that occur prior to the speed measuring instrument being manually locked by the operator.

(c) Tuning Fork Accuracy Test:

- (1) Every tuning fork K-Band and X-Band used to determine radio microwave (radar) accuracy shall be tested by a technician possessing at least a valid second class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission. This test shall be conducted in accordance with the requirements prescribed in G.S. 8-50.2.
- (2) When tested in accordance with (c)(1) of this Rule the frequency of vibration shall read within plus-minus .75 mph of that speed stamped on the tuning fork.
- (3) All tuning forks that are not stamped with a serial number for identification purposes shall be so impressed on the handle or heel, not on the tine portion, by the testing technician. The serial number is to be the same as the serial number on the radar amplifier, radar control cabinet, radar antenna or such other identifying number as assigned by the owning agency.

Statutory Authority G.S. 17C-6.

.0604 TESTING: TIME-DISTANCE

(a) The minimum specific test for time-distance speed-measuring instruments shall include:

- (1) The time-distance device shall not be capable of accepting double time or double distance into the computer.
- (2) ~~KR-11 by Kustom Signals, Inc. (Stopwatch Mode). Enter 440 yards with the speed distance select switches. Set the CLK. Range control to the extreme counter clockwise position. With power (PWR) on, press the test button. The KR-11 will automatically~~

~~conduit and display in the readout windows the light test sequence, internal circuitry test, (cross checked), and the stopwatch mode accuracy test. The stopwatch mode accuracy test shall display exactly 55 in the target window and 16.2 in the patrol window.~~

- (3) ~~Vasear I and II by Federal Sign and Signal Corporation~~
 - (A) ~~with the power on and the computer erased and ready to accept distance and time information, enter an exact quarter or one half mile of distance from a pre-measured location on the highway by turning the distance switch on at the beginning of the pre-measured course and off at the end of the pre-measured course. Enter 15.0 seconds for one quarter mile of distance or 30.0 seconds for one half mile of distance by turning on and then off the time switch. A mile per hour reading of 60.0 mph plus minus 00.1 is acceptable.~~
 - (B) ~~the linearity of the Vasear I computer is to be checked when using either the one quarter or one half mile distance. One quarter mile distance and 20 seconds of time equals 45 mph plus minus 00.1 mph, 10 seconds of time equals 90 mph plus minus 00.1 mph. One half mile of distance and 20 seconds of time equals 90 mph plus minus 00.1 mph, 60 seconds of time equals 30 mph plus minus 00.1 mph.~~
 - (C) ~~a plus minus 00.1 variation is acceptable when testing Vasear I and II computers for accuracy.~~
 - (4) (2) ~~Vasear Plus by Traffic Safety Systems, Inc. Turn the power switch off, set all thumbwheels to zero, turn power on, display shall read all eights (8). If any other numbers are displayed there is a malfunction which shall be corrected before proceeding further with the testing procedures. Then, with power on, dial into thumbwheels the distance to be used to calibrate, either a quarter mile 02500 or one half mile 05000. Enter an exact quarter or one half mile of distance from a pre-measured location on the highway by turning the distance switch on at the beginning of the pre-measured course~~

and off at the end of the pre-measured course. Dial into the thumbwheels the calibration number now displayed in the readout. Turn power switch off then on and again travel through the pre-measured course turning the distance switch on at the beginning of the course and off at the end of the course. Enter 15.0 seconds of time for one quarter mile distance or 30.0 seconds for one half mile distance. Press distance recall button. Display shall read distance you originally dialed into thumbwheels within plus-minus 1 percent. One quarter mile readout shall be between 02475 and 02525. One half mile readout shall be between 04950 and 05050. If distance readout is correct release the distance recall button. A mph reading of 60.0 mph plus-minus 1 percent is acceptable (.6 mph plus-minus or 59.4 to 60.6).

- (b) Stopwatch Accuracy Test:
 - (1) Every stopwatch used to enter a known amount of time into the time-distance speed-measuring instrument computer to determine accuracy shall be tested by a technician possessing at least a valid second class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission. This test shall be conducted in accordance with the requirements prescribed in G.S. 8-50.2.
 - (2) The stopwatch shall be hand held, with a total time accumulation of at least five minutes. The stopwatch shall be accurate within plus-minus one second in five minutes.

Statutory Authority G.S. 17C-6.

TITLE 13 - DEPARTMENT OF LABOR

CHAPTER 7 - OFFICE OF OCCUPATIONAL SAFETY AND HEALTH

MAY 6 AND MAY 10 HEARINGS

CLARIFICATION TO THE NOTICE PUBLISHED IN 8:2 NCR 97-210:

The place of the 2:00 PM May 6 public hearing

(announced on page 97 of the issue of April 15, 1993) has been changed from the Labor Building to the Highway Building auditorium, 1 South Wilmington Street, Raleigh, North Carolina.

Persons wishing to testify on the adoption of proposed 13 NCAC 7A .0401 (Carolina Star Program) or proposed 13 NCAC 7A .0601 - .0607 (Safety and Health Programs and Committees) may do so either at the above hearing on May 6, 1993, or at the continuation of that hearing to May 10, 1993, at 10:30 AM in Room 150 of the Highway Building, 1 South Wilmington Street, Raleigh, North Carolina.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Coastal Management intends to amend rules cited as 15A NCAC 7H .0203, .0205 - .0207, .1703 and adopt rules cited as 15A NCAC 7H .2001 - .2005.

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

The public hearing will be conducted at 4:00 p.m. on May 27, 1993 at the Comfort Inn, 8031 Old Oregon Inlet Road, Nags Head, NC.

Reason for Proposed Action:

15A NCAC 7H .0203, .0205 - .0207- *The proposed amendments are being made to create a consistent use of terminology within the stated management objectives for various areas of environmental concern.*

15A NCAC 7H .1703 - *The CRC has decided that no fee will be charged for permitting work necessary to respond to emergency situations.*

15A NCAC 7H .2001 - .2005 - *The adoption of these New General Permit rules would be to authorize reconfiguration, minor modifications, repair and improvements to existing pier and mooring facilities regardless of their commercial/non-commercial status or the cost of the proposal. The General Permit will authorize those types of facility modifications provided that there is no increase in the number of boatslips. This processing fee (\$50.00) is in accordance with other CRC permit rules.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than June 2, 1993. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Dedra Blackwell, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.*

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0200 - THE ESTUARINE SYSTEM

.0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE SYSTEM

It is the objective of the Coastal Resources Commission to ~~give high priority to the protection and coordinated management of~~ conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

Statutory Authority G.S. 102(b)(1); 102(b)(4); 113A-107(a); 113A-107(b); 113A-124.

.0205 COASTAL WETLANDS

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Coastal wetlands contain some, but not necessarily all, of the

following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*),
- (2) Black Needlerush (*Juncus roemerianus*),
- (3) Glasswort (*Salicornia* spp.),
- (4) Salt Grass (*Distichlis spicata*),
- (5) Sea Lavender (*Limonium* spp.),
- (6) Bulrush (*Scirpus* spp.),
- (7) Saw Grass (*Cladium jamaicense*),
- (8) Cat-tail (*Typha* spp.),
- (9) Salt Meadow Grass (*Spartina patens*),
- (10) Salt Reed Grass (*Spartina cynosuroides*).

Included in this definition of coastal wetlands is "such contiguous land as the Secretary of EHNR reasonably deems necessary to affect by any such order in carrying out the purposes of this Section." [G.S. 113-230(a)].

(b) Significance. The unique productivity of the estuarine system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal marshlands. The amount of exportation and degree of importance appears to be variable from marsh to marsh, depending primarily upon its frequency of inundation and inherent characteristics of the various plant species. Without the marsh, the high productivity levels and complex food chains typically found in the estuaries could not be maintained.

Man harvests various aspects of this productivity when he fishes, hunts, and gathers shellfish from the estuary. Estuarine dependent species of fish and shellfish such as menhaden, shrimp, flounder, oysters, and crabs currently make up over 90 percent of the total value of North Carolina's commercial catch. The marshlands, therefore, support an enormous amount of commercial and recreational businesses along the seacoast.

The roots, rhizomes, stems, and seeds of coastal wetlands act as good quality waterfowl and wildlife feeding and nesting materials. In addition, coastal wetlands serve as the first line of defense in retarding estuarine shoreline erosion. The plant stems and leaves tend to dissipate wave action, while the vast network of roots and rhizomes resists soil erosion. In this way, the coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

Marshlands also act as nutrient and sediment traps by slowing the water which flows over them and causing suspended organic and inorganic particles to settle out. In this manner, the nutrient storehouse is maintained, and sediment harmful to marine organisms is removed. Also, pollutants and excessive nutrients are absorbed by the marsh

plants, thus providing an inexpensive water treatment service.

(c) Management Objective. To ~~give highest priority to the protection and management of~~ conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values; to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses shall be those consistent with the management objective in this Rule. Highest priority of use shall be allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses may include, but would not be limited to, the following examples: restaurants and businesses; residences, apartments, motels, hotels, and trailer parks; parking lots and private roads and highways; and factories. Examples of acceptable land uses may include utility easements, fishing piers, docks, and agricultural uses, such as farming and forestry drainage, as permitted under North Carolina's Dredge and Fill Act ~~and/or~~ or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(1); 113A-124.

.0206 ESTUARINE WATERS

(a) Description. Estuarine waters are defined in G.S. 113A-113(b)(2). The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment, Health, and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

(b) Significance. Estuarine waters are the dominant component and bonding element of the entire estuarine system, integrating aquatic influences from both the land and the sea. Estuaries are among the most productive natural environments of North Carolina. They support the

valuable commercial and sports fisheries of the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and reproduce. Of the ten leading species in the commercial catch, all but one are dependent on the estuary. This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy, fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The circulation of estuarine waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish, flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats, eel grass beds, salt marshes, submerged vegetation flats, clam and oyster beds, and important nursery areas.

Secondary benefits include the stimulation of the coastal economy from the spin off operations required to service commercial and sports fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations, and tourist related industries. In addition, there is considerable non-monetary value associated with aesthetics, recreation, and education.

(c) Management Objective. To ~~give the highest priority to the conservation and management of~~ conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine system.

(d) Use Standards. Suitable land/water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and its vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(2); 113A-124.

.0207 PUBLIC TRUST AREAS

(a) Description. Public trust areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the mean high water mark; all navigable natural bodies of water and lands thereunder to the mean high water level or mean water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing significant public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

- (1) the use of the body of water by the public,
- (2) the length of time the public has used the area,
- (3) the value of public resources in the body of water,
- (4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water,
- (5) whether the creation of the artificial body of water required permission from the state, and
- (6) the value of the body of water to the public for navigation from one public area to another public area.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support valuable commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to ~~preserve~~ conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in

Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which significantly interferes with the public right of navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses will not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below mean high tide, cause adverse water circulation patterns, violate water quality standards, or cause degradation of shellfish waters are generally considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas.

Statutory Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(5); 113A-124.

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

.1703 PERMIT FEE

The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department. The agency shall not charge a fee for permitting work necessary to respond to emergency situations.

Statutory Authority G.S. 113-229(c)(1); 113A-107(a),(b); 113A-113(b); 113A-118.1; 113A-119.

SECTION .2000 -GENERAL PERMIT FOR AUTHORIZING MINOR MODIFICATIONS AND REPAIR TO EXISTING PIER/MOORING FACILITIES IN ESTUARINE AND PUBLIC TRUST WATERS

.2001 PURPOSE

This permit will allow for reconfiguration, minor modifications, repair and improvements to existing pier and mooring facilities in estuarine waters and public trust areas according to the authority

provided in Subchapter 7J .1100 of this Chapter and according to the following guidelines. This permit will not apply to the Ocean Hazard AEC.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2002 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his/her name and address.

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained and signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent property owners have been notified by certified mail of the proposed work. Such notice should instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within ten days of receipt of the notice, and, indicate that no response will be interpreted as no objection. DCM staff will review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the applicant will be notified that he/she must submit an application for a major development permit; or
- (3) a dated plat(s) showing existing development and the proposed development.

(c) Approval of individual projects will be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section. Construction authorized by this permit must be completed within 90 days of permit issuance or the general authorization expires and a new permit may be required to begin or continue construction.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2003 PERMIT FEE

The applicant must pay a permit fee of fifty dollars (\$50.00) by check or money order payable to the Department.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2004 GENERAL CONDITIONS

(a) Structures authorized by this permit shall conform to the standards herein.

(b) Individuals shall allow authorized representatives of the Department of Environment, Health, and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no unreasonable interference with navigation or use of the waters by the public by the existence of piers or mooring pilings.

(d) This general permit may be either modified, suspended or revoked in whole or in part according to the provisions of G.S. 113A-107 if the Department determines that such action would be in the best public interest. This general permit will not be applicable to proposed construction where the Department believes that authorization may be warranted, but that the proposed activity might significantly affect the quality of the human environment, or unnecessarily endanger adjoining properties.

(e) This general permit will not be applicable to proposed construction when the Department determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values.

(f) The Department may, on a case-by-case basis, determine that the general permit shall not be applicable to a specific construction proposal. In those cases, individual permit applications and review of the proposed project will be required according to 15A NCAC 7J.

(g) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(h) Development carried out under this permit must be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

Statutory Authority G.S. 113A-107; 113A-118.1.

.2005 SPECIFIC CONDITIONS

(a) All proposed work must be carried out

within the existing footprint of the development with no increase in the number of slips nor any change in the existing use. "Existing footprint" is defined as the area delineated by the outer most line of tie pilings, ends of piers, and upland basin or area within an enclosing breakwater, whichever is greater.

(b) Modifications to piers and mooring facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier(s) or piling(s) and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier(s) or piling(s) commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to a line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this rule to the maximum extent practicable.

Statutory Authority G.S. 113A-107; 113A-118.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that EHNHR - Commission for Health Services intends to amend rule cited as 15A NCAC 18A .2537.

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

The public hearing will be conducted at 1:30 p.m. on June 2, 1993 at the Highway Building, First Floor Auditorium, 1 South Wilmington Street, Raleigh, NC.

Reason for Proposed Action: This amendment is

to prevent enforcement of a rule which might cause a serious and unforeseen threat to public welfare. This amendment will eliminate the requirement to move bathhouses and locker rooms at some older public swimming pools.

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. Persons who wish to speak at the hearing should contact John P. Barkley at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. 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: This Rule was filed as a temporary rule effective May 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 18 ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2500 - PUBLIC SWIMMING POOLS

.2537 MAINTENANCE AND OPERATION

(a) All public swimming pools constructed or remodeled on or after May 1, 1991 shall be maintained and operated in accordance with the Rules of this Section.

(b) On or after May 1, 1993 all public swimming pools including those constructed prior to May 1, 1991 shall be maintained and operated in accordance with the following:

- (1) All safety provisions of Rule .2530 of this Section shall be met.
- (2) Decks shall be structurally sound and provide uniform walking surface with no offset greater than one half inch (1.3 cm).
- (3) There shall be no loose coping.
- (4) Artificial lighting shall be provided in accordance with Rule .2524 of this Section for all pools used when natural lighting is not sufficient to make all parts of the pool and pool area clearly visible.
- (5) Fences and gates shall be constructed and maintained in accordance with Rule .2528 of this Section except that public swimming pools built prior to May 1, 1993 are not required to relocate gates or doors to meet provisions of Rule .2528(6) of this Section.
- (6) Floating safety ropes and bottom markings shall be provided as required in Rule .2523 of this Section where the slope of the pool bottom exceeds 1 to 10 vertical rise to horizontal distance.
- (7) Depth markings shall be provided as described in Rule .2523 of this Section.
- (8) Drain covers shall be in good condition and securely attached.
- (9) Damaged face plates or fittings shall be repaired or replaced.
- (10) Underwater light niches shall be maintained or covered so as not to present a potential hazard to bathers.
- (11) Surface skimmers shall be maintained in working condition with baskets and weirs in place. Overflow gutters and grates shall be maintained in working condition.
- (12) Pool ladders with non-skid treads and stair railings shall be maintained and securely fastened in place. Contrasting color bands at least two inches wide shall be applied and maintained on the leading edge of stair treads.
- (13) Diving equipment and pool slides including stairs and railing shall be main-

tained in good working order.

Statutory Authority G.S. 130A-282.

TITLE 21 - OCCUPATIONAL LICENSING BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board for Licensing of Geologists intends to amend rule cited as 21 NCAC 21 .0107.

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

The public hearing will be conducted at 8:00 a.m. on June 25, 1993 at the Offices of Law Environmental, Inc., 4333 Wilmont Road, Charlotte, NC 28208.

Reason for Proposed Action: Allow Board to set fees as necessary to meet operating costs.

Comment Procedures: In writing to Chairman, North Carolina Board for Licensing of Geologists, P.O. Box 27402, Raleigh, NC 27611, by June 4, 1993 or at the public hearing.

CHAPTER 21 - BOARD OF GEOLOGISTS

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROCEDURES

.0107 FEES

(a) Completed application forms must be accompanied by the prescribed fee. Application fees will not be refunded regardless of Board approval or disapproval of the application. Prescribed fees shall be set by the Board up to the following limits:

(1)	application forms for licensing as geologist	\$5.00	\$10.00
(2)	application for license	\$50.00	\$100.00
(3)	examination	\$100.00	\$300.00
(4)	application for license by comity	\$50.00	\$100.00
(5)	biennial renewal of license	\$70.00	\$150.00
(6)	biennial renewal of license by N.C. resident geologists practicing less than 15 days per year	\$30.00	\$50.00
(7)	replacement of license	\$10.00	\$25.00
(8)	application for reinstatement of license	\$50.00	\$100.00
(9)	licensed geologist stamp and seal, cost plus:	\$5.00	\$10.00
(10)	application for corporate registration		\$50.00
(11)	annual renewal of corporate registration		\$25.00
(12)	registered geological corporation stamp and seal, cost plus:	\$5.00	\$10.00
(13)	<u>application for reinstatement of corporate registration</u>		\$50.00

(b) All licenses will expire biennially on ~~July 1~~ June 30. Biennial renewal fees received after ~~July 1~~ June 30 and before September 1 of the renewal year shall be subject to the assessment of a late penalty of twenty-five dollars (\$25.00).

(c) All certificates of registration for corporations will expire annually on ~~July 1~~ June 30. Annual renewal fees for certificates of registration for corporations received after ~~August 1~~ June 30 and before ~~December 31~~ September 1 shall be subject to a late payment penalty of twenty-five dollars (\$25.00).

(e d) Licenses or corporate certificates of registration that have not been renewed by September 1st of the renewal year may only be renewed by filing a reinstatement application and submitting a the reinstatement fee.

(d e) Licenses that have been suspended under G.S. 89E-19 may be reinstated by filing a reinstatement

application and paying the reinstatement fee.

Statutory Authority G.S. 55B-2(6); 55B-10; 55B-11; 89E-5; 89E-8; 89E-10; 89E-12; 89E-13; 89E-19.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of State Personnel/State Personnel Commission intends to adopt rules cited as 25 NCAC 1E .1401 - .1409; and amend rule cited as 25 NCAC 1J .0802.

The proposed effective date of this action is August 2, 1993.

The public hearing will be conducted at 9:00 a.m. on June 8, 1993 at the State Personnel Development Center, 101 W. Peace Street, Raleigh, N.C.

Reason for Proposed Action:

25 NCAC 1E .1401 - .1409 - To offer guidance and clarification to state agencies and universities in implementing new federal legislation (The Family and Medical Leave Act of 1993, P.L. 103-3).

25 NCAC 1J .0802 - To clarify and define the appointments of the Governor's Awards Committee for Recognition of State Employees.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail addressed to: Barbara A. Coward, 116 W. Jones Street, Raleigh, N.C. 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .1400 - FAMILY AND MEDICAL LEAVE

.1401 PURPOSE

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment

discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1402 ELIGIBLE EMPLOYEES

(a) Permanent Employees - An employee who has been employed with State government for at least one year and who has worked at least 1080 hours (half-time) during the past 12 months is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12-month period for one or more of the following reasons:

- (1) For the birth of a child and to care for the child after birth, provided the leave is taken within a 12-month period following birth;
- (2) For the employee to care for a child placed with the employee for adoption, provided the leave is taken within a 12-month period following adoption;
- (3) For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or
- (4) Because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position.

Leave without pay beyond the 12-week period will be administered under 25 NCAC 1E .1100 Other Leaves Without Pay.

(b) Temporary Employees - This Rule does not cover temporary employees since the maximum length of a temporary appointment is one year; however, if, by exception, a temporary employee is extended beyond one year, the employee would be covered if they had worked at least 1250 hours during the past 12-month period. Any leave granted to a temporary employee would be without pay.

(c) Spouses Employed by the Same Agency - If a husband and wife are employed by the same agency, the aggregate number of workweeks of leave is limited to 12 workweeks during any 12-month period where such leave is taken pursuant to the provisions in Subparagraphs (a)(1) and (2) of this Rule and pursuant to Subparagraph (a)(3) of

this Rule if the leave requested is to care for a parent who has a serious health condition.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1403 DEFINITIONS

(a) Parent - a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.

(b) Child - is a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability who is:

- (1) a biological child;
- (2) an adopted child;
- (3) a foster child - a child for whom the employee performs the duties of a parent as if it were the employee's child;
- (4) a step-child - a child of the employee's spouse from a former marriage;
- (5) a legal ward - a minor child placed by the court under the care of a guardian;
- (6) a child of an employee standing in loco parentis.

(c) Spouse - a husband or wife.

(d) Serious health condition - an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1404 LEAVE CHARGES

(a) For the birth of a child, the parents shall exhaust available vacation leave before going on leave without pay, except that sick leave may be used during the period of disability.

(b) For the adoption of a child, the parents shall exhaust vacation leave before going on leave without pay.

(c) For the illness of an employee's child, spouse, or parent, the employee shall exhaust available sick and vacation leave before going on leave without pay.

(d) For the employee's illness, the employee shall exhaust available sick and vacation leave before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose whether to use the balance of available leave or begin drawing short-term disability benefits.

(e) Periods of paid leave shall account for any part of the 12 workweeks. This includes leave taken under the Voluntary Shared Leave Rules (25 NCAC 1E .1300).

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1405 INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

(a) The employee may not take leave intermittently or on a reduced work schedule for child birth and care or for adoption unless the employee and agency agree otherwise.

(b) With approval of the agency, the employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition. If such leave is foreseeable, based on planned medical treatment, the agency may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1406 EMPLOYEE RESPONSIBILITY

(a) The employee shall apply in writing to the supervisor for leave requested under this Rule as follows:

- (1) Birth or adoption - The employee shall give the agency no less than 30 days' notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.
- (2) Planned Medical Treatment - When the necessity for leave to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must make a reasonable effort to schedule the treatment so as not unduly to disrupt operations, subject to the approval of the employee's health care provider or the health care provider of the employee's child, spouse or parent. The employee must also give 30 day's notice of the intention to take leave, subject to the actual date of the

treatment.

(b) If the employee will not return to work, the agency should be notified immediately. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1407 CERTIFICATION

(a) The agency may require that a claim for leave because of adoption be supported by acceptable proof of adoption.

(b) The agency may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse, or parent be supported by a doctor's certification which includes the following:

- (1) The date on which the serious health condition began;
- (2) The probable duration of the condition;
- (3) The appropriate medical facts regarding the condition;
- (4) A statement that the leave is needed to care for the child, spouse, or parent, and an estimate of the amount of time that is needed; or that the employee is unable to perform the functions of the position, whichever applies; and
- (5) Where certification is necessary for intermittent leave for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment.

(c) Where the agency has reason to doubt the validity of the certification, the agency may require the employee to get the opinion of a second doctor designated or approved by the agency. Where the second opinion differs from the opinion in the original certification provided, the agency may require the employee to get the opinion of a third doctor designated or approved jointly by the employer and the employee. The third opinion is final and is binding on the agency and the employee. The agency may require that the employee get subsequent recertifications on a reasonable basis. The second and third certification and the recertifications must be at the agency's expense.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1408 EMPLOYMENT AND BENEFITS PROTECTION

(a) Reinstatement - The employee shall be

reinstated to the same position held when the leave began or one of like status, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the employer on the employee's status and intention to return to work. The agency also may require that the employee receive certification that the employee is able to return to work.

(b) Benefits - The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.

(c) Health Benefits - The State shall maintain coverage for the employee under the State's group health plan for the duration of leave at no cost to the employee. The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

.1409 INTERFERENCE WITH RIGHTS

(a) Actions Prohibited - It is unlawful to interfere with, restrain, or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Rule. -

(b) Protected Activity - It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

- (1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Rule;
- (2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Rule; or
- (3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Rule.

Statutory Authority G.S. 126-4(5); P.L. 103-3.

SUBCHAPTER 1J - EMPLOYEE RELATIONS

SECTION .0800 - GOVERNOR'S AWARD FOR EXCELLENCE

.0802 AWARDS COMMITTEE

The Awards program is administered by the State Personnel Commission, with one member of the commission serving as chairperson for the Awards Committee. The Governor will make other appointments to the committee to assist the commission in the selection of the final awards. The duties of the committee are as follows:

- (1) Each year the committee shall recommend to the Governor the week to be proclaimed as "North Carolina State Employees Appreciation Week."
- (2) The committee shall make annual selection of those state employees to receive the Governor's Award for Excellence.

(a) The Awards program is administered by the State Personnel Commission with administrative support provided by the Office of State Personnel. A Governor's Awards Committee for Recognition of State Employees shall be established and shall consist of five members with the chairperson being a member of the State Personnel Commission appointed by its chairperson. The chairperson shall serve at the pleasure of the State Personnel Commission. At any time when over two people are to be appointed, two members shall be appointed for a term of two years and one or two members shall be appointed for a term of four years. Upon the expiration of the respective terms, the successors are appointed for a term of four years. Two members shall be current or former State employees and two shall be from the private business sector or the public at large.

(b) The awards shall be presented annually each fall. The Committee will select the employees to receive the Governor's Award for Excellence from among the nominations submitted by each department and university.

(c) The Office of State Personnel shall recommend to the Governor the week to be proclaimed as "North Carolina State Employees Appreciation Week" and coordinate a date for the awards ceremony.

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

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

Key:

<i>Citation</i>	=	<i>Title, Chapter, Subchapter and Rule(s)</i>
<i>AD</i>	=	<i>Adopt</i>
<i>AM</i>	=	<i>Amend</i>
<i>RP</i>	=	<i>Repeal</i>
<i>With Chgs</i>	=	<i>Final text differs from proposed text</i>
<i>Corr</i>	=	<i>Typographical errors or changes that requires no rulemaking</i>
<i>Eff. Date</i>	=	<i>Date rule becomes effective</i>
<i>Temp. Expires</i>	=	<i>Rule was filed as a temporary rule and expires on this date or 180 days</i>

NORTH CAROLINA ADMINISTRATIVE CODE

MARCH 93

TITLE	DEPARTMENT	TITLE	DEPARTMENT
2	Agriculture	21	Occupational Licensing Boards
4	Economic and Community Development	18 -	Electrical Contractors
10	Human Resources	21 -	Geologists
11	Insurance	32 -	Medical Examiners
12	Justice	42 -	Optometry
15A	Environment, Health and Natural Resources	48 -	Physical Therapy
		24	Independent Agencies
		3 -	Safety and Health Review Board
		25	State Personnel

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2 NCAC 48F .0301 - .0302		✓		✓		04/01/93	
4 NCAC 16A .0105		✓		✓		04/15/93	
16D .0101		✓				04/15/93	
.0105			✓			04/15/93	
16E .0105			✓			04/15/93	
16G .0312		✓				04/15/93	
.0510		✓				04/15/93	
.0513		✓				04/15/93	
.0721			✓			04/15/93	
.1203 - .1204		✓				04/15/93	
10 NCAC 3R .3001		✓				04/02/93	180 DAYS

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
			.3020		✓				04/02/93	180 DAYS
	14C		.1115		✓		✓		04/01/93	
	18A		.0605	✓					04/01/93	
	26B		.0119		✓				04/01/93	
			.0121		✓				04/01/93	
	45H		.0203		✓				04/01/93	
	50B		.0201		✓		✓		04/01/93	
			.0202		✓				04/01/93	
			.0203		✓		✓		04/01/93	
			.0206		✓				04/01/93	
			.0301		✓				04/01/93	
			.0306		✓				04/01/93	
			.0308		✓				04/01/93	
			.0313		✓				04/01/93	
			.0403		✓				04/01/93	
			.0406		✓				04/01/93	
11	NCAC	4	.0418 - .0419		✓				04/01/93	
			.0421		✓		✓		04/01/93	
			.0423		✓				04/01/93	
			.0424			✓			04/01/93	
			.0431	✓					04/01/93	
	11A		.0101			✓			04/01/93	
			.0102		✓				04/01/93	
			.0103 - .0104			✓			04/01/93	
			.0105		✓				04/01/93	
			.0107 - .0108			✓			04/01/93	
			.0401 - .0407			✓			04/01/93	
			.0409 - .0432			✓			04/01/93	
			.0435 - .0449			✓			04/01/93	
			.0452 - .0457			✓			04/01/93	
			.0460 - .0493			✓			04/01/93	
			.0501 - .0502		✓		✓		04/01/93	
11	NCAC	11A	.0503		✓				04/01/93	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0505 - .0508		✓				04/01/93	
.0510 - .0511		✓				04/01/93	
.0513		✓				04/01/93	
11B .0101 - .0103			✓			04/01/93	
.0104		✓				04/01/93	
.0105			✓			04/01/93	
.0107			✓			04/01/93	
.0108 - .0110		✓				04/01/93	
.0113		✓				04/01/93	
.0116 - .0118			✓			04/01/93	
.0119		✓		✓		04/01/93	
.0121			✓			04/01/93	
.0131		✓				04/01/93	
.0132			✓			04/01/93	
.0143			✓			04/01/93	
.0202 - .0214			✓			04/01/93	
.0215	✓					04/01/93	
.0216	✓			✓		04/01/93	
.0217 - .0221	✓					04/01/93	
.0222	✓			✓		04/01/93	
.0223	✓					04/01/93	
.0305		✓		✓		04/01/93	
.0402 - .0407			✓			04/01/93	
.0501			✓			04/01/93	
.0503		✓				04/01/93	
.0506 - .0507	✓					04/01/93	
.0508	✓			✓		04/01/93	
.0509 - .0513	✓					04/01/93	
.0514	✓			✓		04/01/93	
.0515	✓					04/01/93	
.0516	✓			✓		04/01/93	
.0517	✓					04/01/93	
11 NCAC 11B .0518	✓			✓		04/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0601 - .0602					✓				04/01/93	
.0604					✓				04/01/93	
.0608					✓		✓		04/01/93	
.0609					✓				04/01/93	
.0612					✓		✓		04/01/93	
.0615				✓					04/01/93	
11C	.0103				✓				04/01/93	
.0107						✓			04/01/93	
.0108 - .0109					✓				04/01/93	
.0111						✓			04/01/93	
.0114					✓		✓		04/01/93	
.0115 - .0116						✓			04/01/93	
.0117					✓		✓		04/01/93	
.0118					✓				04/01/93	
.0121						✓			04/01/93	
.0123						✓			04/01/93	
.0127 - .0128						✓			04/01/93	
.0129					✓				04/01/93	
.0132				✓			✓		04/01/93	
.0202 - .0205						✓			04/01/93	
.0206				✓			✓		04/01/93	
.0302 - .0306						✓			04/01/93	
.0307 - .0312				✓			✓		04/01/93	
.0403					✓				04/01/93	
.0501				✓			✓		04/01/93	
.0502				✓					04/01/93	
.0503				✓			✓		04/01/93	
.0601 - .0605				✓					04/01/93	
11D	.0104				✓				04/01/93	
.0105 - .0106						✓			04/01/93	
.0108 - .0109					✓				04/01/93	
.0111 - .0112					✓				04/01/93	
11	NCAC	11D	.0113 - .0114			✓			04/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0115					✓				04/01/93	
.0118					✓				04/01/93	
.0145 - .0147					✓				04/01/93	
.0153					✓				04/01/93	
.0159 - .0160					✓				04/01/93	
.0168					✓				04/01/93	
.0202						✓			04/01/93	
.0302					✓				04/01/93	
.0303					✓		✓		04/01/93	
.0304					✓				04/01/93	
.0305					✓		✓		04/01/93	
11E	.0102 - .0105					✓			04/01/93	
	.0201					✓			04/01/93	
	.0202				✓				04/01/93	
	.0203			✓					04/01/93	
	.0306 - .0310					✓			04/01/93	
	.0402 - .0405					✓			04/01/93	
11F	.0002 - .0004					✓			04/01/93	
	.0006 - .0010					✓			04/01/93	
11H	.0002			✓			✓		04/01/93	
	.0003 - .0010			✓					04/01/93	
12	.1301 - .1308			✓					04/01/93	
	.1309			✓			✓		04/01/93	
14	.0301 - .0308					✓			04/01/93	
	.0502				✓				04/01/93	
	.0505				✓				04/01/93	
	.0603 - .0604				✓				04/01/93	
12	NCAC	7D	.0205	✓			✓		04/01/93	
15A	NCAC	2B	.0309		✓				04/01/93	
			.0503		✓		✓		04/01/93	
			.0504		✓				04/01/93	
			.0505 - .0506		✓		✓		04/01/93	
15A	NCAC	2B	.0508		✓		✓		04/01/93	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
2H .1103		✓		✓		04/01/93	
7H .0308					✓		
6C .0417		✓				04/05/93	180 DAYS
7H .0208		✓				04/01/93	
13A .0001		✓				04/01/93	
.0002		✓		✓		04/01/93	
.0003 - .0012		✓				04/01/93	
.0013		✓		✓		04/01/93	
.0014		✓				04/01/93	
13B .1201		✓				04/01/93	
.1203		✓				04/01/93	
.1207		✓				04/01/93	
16A .0401			✓			04/01/93	
.1101	✓					04/01/93	
.1102	✓			✓		04/01/93	
.1103	✓					04/01/93	
.1104	✓			✓		04/01/93	
.1105	✓					04/01/93	
.1106	✓			✓		04/01/93	
.1107 - .1108	✓					04/01/93	
.1150 - .1151	✓					04/01/93	
.1201 - .1203	✓					04/01/93	
.1204	✓			✓		04/01/93	
.1205 - .1207	✓					04/01/93	
.1208 - .1209	✓			✓		04/01/93	
18A .1948		✓		✓		04/01/93	
.1956 - .1957		✓				04/01/93	
.1969	✓			✓		04/01/93	
19B .0313		✓		✓		04/01/93	
.0320 - .0321		✓				04/01/93	
.0503		✓				04/01/93	
20D .0233		✓				04/01/93	
15A NCAC 20D .0235		✓				04/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0243					✓				04/01/93	
.0248					✓				04/01/93	
24A .0101					✓		✓		04/01/93	
21	NCAC	18B	.0104		✓				04/01/93	
.0203					✓				04/01/93	
.0206					✓				04/01/93	
.0306					✓				04/01/93	
.0401					✓				04/01/93	
.0403					✓				04/01/93	
.1001					✓				04/01/93	
.1003					✓				04/01/93	
.1103					✓				04/01/93	
21			.0107					✓		
32H			.0101		✓				04/01/93	
.0102					✓		✓		04/01/93	
.0201					✓		✓		04/01/93	
.0202					✓				04/01/93	
.0301 - .0302					✓				04/01/93	
.0303					✓		✓		04/01/93	
.0401					✓				04/01/93	
.0402 - .0403					✓		✓		04/01/93	
.0404 - .0405					✓				04/01/93	
.0406 - .0407					✓		✓		04/01/93	
.0501 - .0505					✓				04/01/93	
.0601 - .0602					✓				04/01/93	
.0701					✓				04/01/93	
.0801					✓		✓		04/01/93	
.0802					✓				04/01/93	
.0901					✓		✓		04/01/93	
.1001 - .1004					✓				04/01/93	
21	NCAC	42A	.0001		✓				04/01/93	
.0005					✓				04/01/93	
21	NCAC	42B	.0101		✓				04/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0103 - .0104					✓				04/01/93	
.0107					✓		✓		04/01/93	
.0110					✓				04/01/93	
.0113				✓					04/01/93	
.0201					✓				04/01/93	
.0202					✓		✓		04/01/93	
.0203 - .0204				✓			✓		04/01/93	
.0302					✓		✓		04/01/93	
42E	.0102 - .0103				✓		✓		04/01/93	
.0203					✓		✓		04/01/93	
.0301					✓				04/01/93	
42L	.0002				✓		✓		04/01/93	
.0004				✓			✓		04/01/93	
.0005					✓		✓		04/01/93	
42M	.0001			✓			✓		04/01/93	
.0002 - .0003				✓					04/01/93	
.0004				✓			✓		04/01/93	
.0005				✓					04/01/93	
.0006				✓			✓		04/01/93	
48A	.0001				✓				04/01/93	
24	NCAC	3	.0505		✓		✓		04/01/93	
.0506					✓				04/01/93	
.0602					✓				04/01/93	
25	NCAC	1D	.0511		✓		✓		04/01/93	

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).

COMMERCE

Banking Commission

<i>4 NCAC 3F .0402 - Required and Permissible Investments</i>	<i>RRC Objection 01/21/93</i>
	<i>Obj. Cont'd 02/18/93</i>
<i>Agency Withdrew Rule</i>	<i>03/19/93</i>

Savings Institutions Division: Savings Institutions Commission

<i>4 NCAC 16A .0105 - Restrictions: Payment of Dividends & Repurchase of Stock</i>	<i>RRC Objection 03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/18/93</i>
<i>4 NCAC 16G .0311 - Required Provisions in Plan of Conversion</i>	<i>RRC Objection 03/18/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection 03/18/93</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Adult Health

<i>15A NCAC 16A .1208 - Use of Program Funds</i>	<i>RRC Objection 03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/18/93</i>

Coastal Management

<i>15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas</i>	<i>RRC Objection 11/19/92</i>
<i>Rule Returned to Agency</i>	<i>12/17/92</i>
	<i>RRC Objection 01/21/93</i>
<i>Rule Returned to Agency</i>	<i>02/18/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff. 03/01/93</i>
<i>15A NCAC 7H .1205 - Specific Conditions</i>	<i>RRC Objection 03/18/93</i>

Environmental Health

<i>15A NCAC 18A .1948 - Site Classification</i>	<i>RRC Objection 03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/18/93</i>

Environmental Management

<i>15A NCAC 2H .1103 - Definitions</i>	<i>RRC Objection 02/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 03/18/93</i>
<i>15A NCAC 2H .1110 - Implementation</i>	<i>RRC Objection 02/18/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 03/18/93</i>

Laboratory Services

<i>15A NCAC 20D .0234 - Criteria & Procedures: Decert./Denial/Downgrading</i>	<i>RRC Objection 03/18/93</i>
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Solid Waste Management

<i>15A NCAC 13A .0013 - The Hazardous Waste Permit Program - Part 270</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

Wildlife Resources and Water Safety

<i>15A NCAC 101 .0001 - Definitions</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Rule Returned to Agency</i>		<i>01/21/93</i>

HUMAN RESOURCES

Children's Services

<i>10 NCAC 41E .0514 - Child Care & Development: Health</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>10 NCAC 41Q .0201 - Personnel</i>	<i>RRC Objection</i>	<i>04/15/93</i>

Medical Assistance

<i>10 NCAC 50B .0203 - Application Processing Standards</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

INDEPENDENT AGENCIES

N.C. Housing Finance Agency

<i>24 NCAC 1M .0202 - Eligibility</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
<i>24 NCAC 1M .0204 - Selection Procedures</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
<i>24 NCAC 1M .0205 - Administration</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
<i>24 NCAC 1M .0206 - Program Fees</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Withdrew Rule</i>		<i>01/21/93</i>
<i>24 NCAC 1M .0301 - Goal and Objectives</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
<i>24 NCAC 1M .0302 - Eligibility Requirements</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
<i>24 NCAC 1M .0303 - Threshold Review Criteria</i>	<i>RRC Objection</i>	<i>10/15/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
<i>24 NCAC 1M .0306 - Funding Commitment</i>	<i>RRC Objection</i>	<i>10/15/92</i>

<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0401 - Goals and Objectives	RRC Objection	10/15/92
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0402 - Eligibility Requirements	RRC Objection	10/15/92
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0403 - Threshold Review Criteria	RRC Objection	10/15/92
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>11/19/92</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>12/17/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>01/21/93</i>

INSURANCE

Consumer Services

11 NCAC 4 .0428 - Enforcement	RRC Objection	03/18/93
<i>Agency Revised Rule</i>	RRC Objection	03/18/93

Financial Evaluation Division

11 NCAC 11A .0602 - Licensure	RRC Objection	11/19/92
<i>Agency Revised Rule</i>	RRC Objection	11/19/92
<i>Rule Returned to Agency</i>		12/17/92
Agency Filed Rule for Codification Over RRC Objection	Eff.	12/29/92
11 NCAC 11B .0508 - Foreign Company Securities: Verifiable Capital/Surplus	RRC Objection	03/18/93
<i>Agency Revised Rule</i>	Obj. Removed	03/18/93
11 NCAC 11B .0607 - Application - Employers	RRC Objection	03/18/93
11 NCAC 11B .0608 - Deposits: Bonds: Excess Insurance - Employers	RRC Objection	03/18/93
<i>Agency Revised Rule</i>	Obj. Removed	03/18/93
11 NCAC 11B .0610 - Application - Groups	RRC Objection	03/18/93
11 NCAC 11H .0002 - License - Steps	RRC Objection	03/18/93
<i>Agency Revised Rule</i>	Obj. Removed	03/18/93

JUSTICE

Private Protective Services

12 NCAC 7D .0205 - Corporate Business License	RRC Objection	02/18/93
<i>Agency Revised Rule</i>	Obj. Removed	03/18/93
12 NCAC 7D .0809 - Authorized Firearms	RRC Objection	04/15/93

LICENSING BOARDS AND COMMISSIONS

Electrical Contractors

21 NCAC 18B .0703 - Reciprocity: Virginia	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93

Medical Examiners

21 NCAC 32A .0001 - Location	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0101 - Definitions	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0209 - Fee	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0210 - Deadline	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0211 - Passing Score	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0212 - Time and Location	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0213 - Graduate Medical Ed & Training for Licensure	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0214 - Personal Interview	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0215 - Examination Combinations	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0305 - Examination Basis for Endorsement	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0309 - Personal Interview	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0314 - Passing Flex Score	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32B .0315 - Ten Year Qualification	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32C .0003 - Prerequisites for Incorporation	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32C .0006 - Charter Amendments and Stock Transfers	RRC Objection	02/18/93
Rule Returned to Agency - Improper Notice	Obj. Cont'd	02/18/93
21 NCAC 32H .0102 - Definitions	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 32H .0901 - Conditions	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

Optometry

21 NCAC 42B .0302 - Continuing Education	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 42E .0203 - Consultant: Advisor, Staff Optometrist/Ind Contractor	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 42L .0005 - Written Answers to the Notice of Hearing	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93
21 NCAC 42M .0006 - Termination	RRC Objection	03/18/93
Agency Revised Rule	Obj. Removed	03/18/93

REVENUE

Individual Income Tax Division

<i>17 NCAC 6B .0107 - Extensions</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .0115 - Additions to Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .0116 - Deductions from Federal Taxable Income</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .0117 - Transitional Adjustments</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>
<i>17 NCAC 6B .3406 - Refunds</i>	<i>RRC Objection</i>	<i>08/20/92</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/17/92</i>

STATE PERSONNEL**Office of State Personnel**

<i>25 NCAC 1D .0511 - Reduction in Force Priority Consideration</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>03/18/93</i>

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

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).

10 NCAC 3H .0315(b) - NURSING HOME PATIENT OR RESIDENT RIGHTS

Dolores O. Nesnow, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3H .0315(b) void as applied in *Barbara Jones, Petitioner v. North Carolina Department of Human Resources, Division of Facility Services, Licensure Section, Respondent* (92 DHR 1192).

15A NCAC 30 .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 30 .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

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.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1483	Reilly	04/07/93	
Alcoholic Bev. Control Comm. v. Mild & Wild, Inc., Sheila Scholz	93 ABC 1475	Nesnow	03/23/93	
COMMERCE				
Lester Moore v. Weatherization Assistance Program	93 COM 0105	Gray	03/08/93	
CRIME CONTROL AND PUBLIC SAFETY				
Anthony L. Hart v. Victims Compensation Comm.	92 CPS 0937	Chess	03/01/93	
Jennifer Ayers v. Crime Victims Compensation Comm.	92 CPS 1195	Reilly	03/19/93	
Janie L. Howard v. Crime Victims Compensation Comm.	92 CPS 1787	Reilly	03/26/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Charles L. Wilson v. Environment, Health, & Natural Resources	91 EHR 0664	Morgan	03/23/93	
Urley C. Stallings v. Environment, Health, & Natural Resources	92 EHR 0062	Gray	03/15/93	
Safeway Removal, Inc. v. Environment, Health, & Natural Res.	92 EHR 0826	West	03/12/93	8:1 NCR 83
Elizabeth City/Pasquotank Cty Mun Airport Auth v. EHNH	92 EHR 1140	Gray	04/13/93	
Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Angela Power, Albert Power v. Children's Special Health Svcs.	93 EHR 0008	Becton	03/24/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
HUMAN RESOURCES				
O.C. Williams v. Human Resources	91 CSE 0036*2	Morgan	03/30/93	
O.C. Williams v. Human Resources	91 CSE 1158*2	Morgan	03/30/93	
William A. Dixon v. Human Resources	91 CSE 1277	Morrison	03/04/93	
Gregory L. Washington v. Human Resources	92 CSE 0075	Morgan	04/01/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Joyce P. Williams v. Human Resources	92 DHR 1275	Gray	03/15/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*3	Reilly	03/25/93	
Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	
Leroy Snuggs v. Human Resources	92 CSE 1360	Morrison	04/15/93	
James P. Miller III v. Human Resources	92 CSE 1361	Gray	04/16/93	
Larry L. Crowder v. Human Resources	92 CSE 1396	Reilly	04/15/93	

* Consolidated cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Carlos Bernard Davis v. Human Resources	92 CSE 1404	Reilly	04/15/93	
Charles S. Ferrer v. Human Resources	92 CSE 1416	Mann	04/15/93	
Roy Chester Robinson v. Human Resources	92 CSE 1423	Reilly	04/15/93	
William E. Ingram v. Human Resources	92 CSE 1450	Reilly	04/15/93	
Jo Ann Kinsey v. NC Memorial Hospital Betty Hutton, Volunteer Svc.	92 DHR 1612	Chess	03/08/93	
Amy Clara Williamson v. NC Mem Hosp Betty Hutton, Volunteer Svc.	92 DHR 1613	Chess	03/08/93	
Betty Butler v. Human Resources	92 DHR 1614	Chess	03/09/93	
Billy Smith v. Human Resources	92 CSE 1629	Reilly	03/25/93	
Anthony Curry v. Human Resources	92 CSE 1631	Reilly	03/25/93	
Larry W. Golden v. Human Resources	92 CSE 1633	Reilly	03/25/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652*	Reilly	03/25/93	
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	

INSURANCE

Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
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JUSTICE

Marilyn Jean Britt v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1088	Morrison	03/16/93	
Tim McCoy Deck v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1367	Chess	04/01/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	

LABOR

Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
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STATE PERSONNEL

Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	
Laverne B. Hill v. Transportation	92 OSP 0431*	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432*	West	03/08/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Betty Bradsher v. UNC-CH	92 OSP 1733	Becton	03/30/93	
Jamal Al Bakkat-Morris v. Glenn Sexton (DSS)	92 OSP 1741	Becton	03/24/93	
Brenda Kay Barnes v. Human Resources	92 OSP 1768	Morrison	03/17/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNH	93 OSP 0111	Reilly	04/16/93	

STATE TREASURER

Herman D. Brooks v. Bd of Trustees /Teachers' & St Emp Ret Sys	91 DST 0566	Gray	04/13/93	
Henrietta Sandlin v. Teachers' & State Emp Comp Major Medical Plan	92 DST 0305	Morgan	04/12/93	
Mary Alyce Carmichael v. Bd/Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	

TRANSPORTATION

Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
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STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 0941

CLAYTON BREWER,
Petitioner,

v.

NORTH CAROLINA STATE UNIVERSITY,
Respondent.

RECOMMENDED DECISION

This contested case was brought by Clayton Brewer ("Brewer") against North Carolina State University ("State"). State terminated Brewer's employment in its Physical Plant Division on May 24, 1991 as a result of alleged improper personal conduct. Brewer contested his dismissal through all required internal grievance procedures. This contested case was heard May 20-22, 1992 in Raleigh by Administrative Law Judge Thomas R. West.

ISSUES

- I. Did Petitioner knowingly and willfully disclose false or misleading information; or conceal prior employment history or other requested information in his application for employment at N.C. State University in the manner alleged in the letter of May 24, 1991 dismissing him from employment?
 - i. If so, were the disclosures or concealments significantly related to Petitioner's job responsibilities?
 - ii. If so, were the disclosures made in order to meet position qualifications?

WITNESSES

For Respondent:

Clayton Brewer	-	Petitioner
Diane Sortini	-	Employee Relations Manager, Division of Human Resources, North Carolina State University
Gayle Franks	-	Superintendent, Automotive Services Section, Physical Plant Division, North Carolina State University
Carl D. Fulp	-	Assistant Director for Engineering, Physical Plant Division, North Carolina State University
Gerald W. Sanders	-	Mechanic Supervisor, Automotive Services Section, Physical Plant Division, North Carolina State University

For Petitioner:

Michelle Parker	-	Industrial Hygienist, North Carolina Department of Labor
Frederick J. Thompson	-	Management Analyst, Quality

		Management Division, EPA; at times relevant to this case Supervisor of Plant Operation, Clevite Seals Company
Kathy Bass	-	Secretary, Physical Plant Division, North Carolina State University
Johnny E. Atkinson	-	Labor Crew Leader, Physical Plant Division, North Carolina State University
Gerald Hines	-	Equipment Operator, Physical Plant Division, North Carolina State University

EXHIBITS

Exhibits listing has been omitted from this publication. It can be obtained by contacting this office.

BURDEN OF PROOF

The burden of proof in this case is on North Carolina State University. State must show by the greater weight of the substantial evidence that it had just cause to terminate Brewer's employment.

OFFICIAL NOTICE

Official notice is taken of Chapter 126 of the North Carolina General Statutes and Title 25 of the North Carolina Administrative Code.

Based on a preponderance of the substantial evidence, the undersigned finds the following to be the facts:

FINDINGS OF FACT

1. Brewer was employed at State in the Physical Plant Division from April 1988 until May 24, 1991. Brewer was dismissed from his employment on May 24, 1991. At the time of his dismissal, Brewer was a permanent State employee subject to the Personnel Act (Chapter 126 of the General Statutes).
2. On May 24, 1991, State dismissed Brewer for improper personal conduct. Specifically, Brewer was dismissed for three falsifications:
 - a. State charged Brewer with falsifying his application by stating that he left a position he held earlier at State as a housekeeper for a better job when, in fact, he was separated for failure to report to work.
 - b. State charged Brewer with falsifying his application by stating he had left his job at Imperial Clevite for family reasons when actually Brewer was fired because of excessive absences.
 - c. State stated that Brewer "... also indicated on [his] application that [he] had not been dismissed from any job during the past twelve months (from the date of your application)." State failed to set out with any specificity in its letter of May 24, 1991 terminating Brewer's employment any falsification.
3. The letter dismissing Brewer from employment is dated May 24, 1991 and signed by Gayle H. Franks, Interim Superintendent, Automotive Services.
4. Brewer contends that State fired him because the day before he was fired he filed a complaint with

OSHA regarding State's violations of laws regarding the handling of asbestos and biohazardous materials.

5. In January 1988, Brewer was working as a temporary employee at State in "Heavy Equipment." "Heavy Equipment" is a section within the Physical Plant Division. On January 29, 1988, his supervisor, Gerald Sanders, asked Brewer to fill out an application for a full time job within the Physical Plant Division. The two were on an half-hour break. Sanders helped Brewer fill out the application. As a result of completing the application, Brewer was hired as a Machine Operator I in the Physical Plant Division, Heavy Equipment Section. His supervisor was Gerald Sanders.
6. Brewer stated on his application that he had worked at State as a "Housekeeper" from August 1987 until February 1988 at \$4.50 (an hour). Brewer listed his "Reason for Leaving" that job as "Better Job." In fact, Brewer had temporary employment as a Housekeeper Assistant at State from August 27, 1986 to March 6, 1987 performing maintenance and housekeeping work.
7. State has not alleged at any point in this contested case that the mis-statement of the dates of Brewer's temporary employment is a falsification. Instead, State alleges that the falsification that is material is Brewer's stated reason for leaving the temporary employment.
8. No witnesses testified, other than Brewer, who know the circumstances of why Brewer left State as a temporary employee in March 1987. On March 16, 1987, the Physical Plant Division completed a "Notice of Separation" form which shows that Brewer was terminated from his job as a Housekeeping Assistant #50 on March 6, 1987. The form has "X" marks next to the words "5 Day" and "Did Not Report." The reason given for the separation from employment is "Has failed to report. (Unknown)." The form contains the words "Recommended for reemployment: ____ Yes, ____ No." The word "No" is marked with an "X" and the words "Unsatisfactory Attendance" are typed beside the word "No."

The Notice of Separation has several categories in addition to "5 Day" to explain the reason why the employee is being separated from employment. Among them is the word "Dismissed." That word is not checked on the Notice of Separation.

9. The Notice of Separation has been in the Physical Plant's files since March 16, 1987.
10. On March 17, 1987, State completed a "SPA Personnel Action" form showing that Brewer was separated from employment effective March 6, 1987. The reason stated for the separation is "Unknown (Has Failed To Report To Work)."
11. State did not issue a letter to Brewer in 1987 terminating his employment for either personal misconduct or job performance and informing him of appeal rights. State did not terminate Brewer in 1987 for reasons relating to job performance or personal conduct.
12. Both the SPA Personnel Action form and the Notice of Separation were in Brewer's personnel file when Gayle Franks pulled the file at 1:00 p.m. on May 22, 1991.
13. On April 13, 1987, Brewer began work as a janitor at Imperial Clevite Seals Company in Morrisville. Brewer was paid \$5.97 per hour.
14. In late June 1987, Brewer told his supervisor, Fred Thompson, that he needed to go to Illinois to take care of some family problems. Brewer's 15-year old son had been jailed and Brewer wanted to be present when he made an appearance in court. Brewer was a probationary employee at Clevite. As a result, four infractions would result in his job being terminated automatically. Brewer had three infractions.

Brewer explained his situation to Thompson and the general manager, Robert Gens. Clevite had hired

and fired several janitors in a matter of four to five months and did not want to lose Brewer because he was one of the better employees they had had.

Thompson and Gens granted Brewer a three-day leave of absence. That, combined with the weekend, gave Brewer five days to take care of his business in Illinois. Thompson told Brewer that if he was not back after the leave of absence, that Clevite would fire him, and encouraged Brewer to give him a verbal resignation in case he was unable to return in five days. Thompson explained that if the resignation became effective, and he were subsequently contacted as a reference, it would not be stated that Brewer was terminated, but instead, resigned.

Brewer left North Carolina on Wednesday night and drove to Illinois arriving Thursday evening. On Friday, it was apparent to Brewer he could not be back at Clevite by Monday, so he telephoned Thompson and resigned.

15. On July 2, 1987, Clevite terminated Brewer's employment effective July 1, 1987.
16. When Brewer applied for the job at State which is at issue in this case, State verified his former employment. By April 1988, an "Employment Verification Questionnaire" completed by Robert Gens was in Brewer's personnel file. In response to a question asking the employee's reason for leaving, Gens wrote:

"Clayton was terminated for excessive absenteeism during his probationary period. The quality of his work was excellent! I personally met with him regarding his problem. He was in violation of our no fault attendance policy. I wish him the best and took a personal interest in him. We gave him a second chance and he lost it.... I hope he has his personal problems corrected. He was a hard worker."

17. State took no action in April 1988, or at any time before May 24, 1991, to fire Brewer for disclosing false or misleading information on his job application.
18. Brewer began working for Norrell Temporary Services in October 1987. Brewer came to work at State in November 1988 as a temporary employee in the Physical Plant Division working as a laborer. Brewer did not state a reason for leaving Norrell. No substantial evidence was introduced to show that Brewer was terminated from Norrell.
19. On Wednesday, May 22, 1991, Brewer, along with Gerald Hines and Johnny Atkinson, were directed to transport floor tiles that had been removed from a building at State to the landfill. The tiles had a backing containing asbestos. Many of the tiles were broken, thus rendering the asbestos friable. The tiles had been placed in bags containing a warning that asbestos containing materials were in the bags, but the broken tiles had cut several of the bags. The three laborers were directed by their supervisor, Gerald Sanders, to re-bag the damaged bags.
20. Between 8:00 a.m. and 8:30 a.m., the three laborers re-bagged the asbestos containing floor tiles. In the process, they became covered with dust. At approximately 8:30 a.m., the three stopped work and drove to the Physical Plant office to complain to their supervisor, Gerald Sanders. Sanders was Mechanic Supervisor, Automotive Services Section of the Physical Plant.

Atkinson was the crew leader. Atkinson told Sanders the men were refusing to do any more work. Sanders telephoned his supervisor, Gayle Franks, and told her his men were refusing to bag and move the floor tiles. Franks was Superintendent of the Automotive Services Section. The two hung up and Sanders told the men to wait. Brewer told Sanders that the material they were moving was asbestos and that he did not want Sanders to get in trouble, but that he was going to report whomever was in charge. Brewer told Sanders he had already called OSHA.

Subsequently, Franks telephoned Sanders. Franks told Sanders there was no danger, but that if the men felt they needed some protection, then Sanders was to provide the protection. Sanders told the three moving the floor tiles was not dangerous. Sanders directed the laborers to go to Central Stores to purchase paper jumpsuits and a box of masks. The masks Sanders told the laborers to buy are the kind commonly used to protect people from inhaling dust while performing yard or housework. The Administrative Law Judge takes official notice that the masks are not the respirators approved in the Code of Federal Regulations and the North Carolina Administrative Code for use in the removal of friable asbestos containing material.

Brewer and the other two drove to Central Stores and purchased the suits and masks.

Sanders had no training to determine whether the floor tiles had become dangerous and did not know the difference between friable and non-friable asbestos until the hearing of this case.

21. Sometime between Noon and 12:30 p.m., on May 22, 1991, Brewer telephoned OSHA and spoke with someone named "Greg."
22. Between 12:30 p.m. and 1:00 p.m., Brewer, Atkinson and Hines transported biohazardous material to the State veterinary school for autoclaving and disposal. While at the vet school, the three complained to a Life Safety Services employee. After the conversation, Brewer and Hines told Atkinson they were going to see someone in personnel.
23. On May 23, 1991, at approximately 1:00 p.m., Franks looked at Brewer's personnel file. Franks testified she reviewed the file with Carl Fulp, the Director of the Physical Plant, because another employee who was involved in a disciplinary conference had told her at Noon that Brewer had left the physical plant earlier for another job.
24. Diane Sortini is the Employee Relations Manager of the Division of Human Resources at State. At approximately 3:00 p.m., on Wednesday, May 22, 1991, Brewer, Atkinson and Hines came to her office to complain about moving the hazardous material. Sortini testified the three men refused to give their names and stated they wished to remain anonymous. Brewer did most of the talking for the group. The three told Sortini that their supervisor was Ms. Franks.
25. Sortini took notes of her meeting with Brewer, Hines and Atkinson. The notes indicate that she met with them on May 22, 1991. The notes contain the statement, "Note: One of the men, Clayton Brewer, told me that he had called OSHA and the Labor Department to report their unsafe working conditions." Brewer made the statement to Sortini as he was leaving her office.
26. Within an hour of her meeting with Brewer, Sortini spoke by telephone with Public Safety at State. She was told that a Life Safety Services employee, not a Public Safety Services employee had been approached by three physical plant employees.
27. At 4:15 p.m. on May 22, 1991, Ms. Franks and Mr. Fulp returned to the offices of the Physical Plant after having visited Capital Hydraulics. Gerald Sanders telephoned Franks and told her that the Physical Plant had "trouble." At that same time, Diane Sortini was on the telephone with Carl Fulp reporting that three men from the physical plant had come to her office very concerned about their working conditions transporting material. Sortini testified on direct examination that she did not identify the individuals. Sortini's notes, produced after her direct testimony, indicate she knew Brewer's name. Sortini told Fulp that Brewer had told her there would be an OSHA investigation.
28. Notes made by Sortini and Franks were produced after their direct testimony upon motion by counsel for Brewer and order of the undersigned. Significant portions were read into evidence. In a note dated "Wednesday, May 22, 1991, approx. 4:15 p.m.," Franks writes Sortini telephoned Fulp and told him that three men who refused to identify themselves showed up in her office and told her they had been sent to her by Public Safety. Franks' notes state, "One man did almost all of the talking,

a tall very skinny black man (Clayton Brewer).... [O]ne man indicated that he didn't want to be there (identified as Johnny Atkinson).... Clayton told her that there would be an investigation (OSHA)."

Both Sortini's notes and Franks' notes are typewritten and are editions of handwritten notes made contemporaneously with the meetings described.

The notes, and the testimony of Sortini and Franks taken together show that Sortini did not know Brewer when he came to see her, but that by 4:15 p.m. on May 22, 1991, Sortini, Franks and Fulp all knew that Brewer claimed to have filed a complaint with OSHA.

29. Sometime after May 24, 1991, Hines received a written reprimand for going to talk with Sortini.
30. On May 23, 1991, Franks and Sanders conducted a pre-dismissal conference with Brewer at 2:00 p.m. and suspended him.
31. On May 23, 1991, at 3:00 p.m., Brewer lodged a complaint with OSHA. Greg McGuire received the complaint.
32. On Friday, May 24, 1991, at 8:00 a.m., Franks held another conference with Brewer and gave him the letter introduced as Exhibit R5. Brewer was fired at 8:00 a.m. for the reasons set forth in Exhibit R5.
33. A health compliance officer with OSHA began an investigation on the afternoon of May 24, 1991.

As a result of the investigation, the North Carolina Department of Labor (OSHA) issued at least seven citations to State. The citations range in nature from "willful and serious," to "non-serious."

The Department of Labor found that "... employees of the physical plant were removing asbestos containing floor tiles without having had any initial personal monitoring to determine exposures. [N]one of the employees had any training in asbestos or respiratory protection."

If the citations had been issued in the private sector, the penalties assessed by the Department would have been Fifty Two Thousand (\$52,000.00) Dollars.

34. In 1987, it was the policy of State to consider the separation from employment of a person who failed to report to work as a termination for failure to report to work. State did not make Brewer aware of this policy in 1987. There is no evidence that when State separated Brewer from employment in 1987, it notified him of his termination and informed Brewer of his due process appeal rights.

The Administrative Law Judge takes official notice of 25 NCAC 1D .0518, effective November 1, 1989. The rule provides that an employee who is absent for three consecutive scheduled work days without making a satisfactory report is deemed to have voluntarily resigned.

35. In 1987, it was the policy of the Physical Plant at State not to rehire anyone who had been terminated. The policy is an internal one and is not a duly promulgated administrative rule.
36. There is no evidence that either policy described in Finding 34 and 35 above was ever communicated to Brewer.

Based on the foregoing, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Brewer did not knowingly and willfully disclose false or misleading information or conceal prior employment history or other requested information on his application for State employment in any

of the three ways alleged by State in the letter terminating his employment.

2. Because State did verify within 90 days of Brewer's employment the accuracy of his statements regarding prior employment at State and Imperial Cleveite, State is estopped as a matter of law from taking action three years later to terminate Brewer on the grounds that he falsified information relating to those two employments.
3. State was motivated to terminate Brewer's employment for reasons other than those articulated, which reasons do not constitute "just cause" and are improper.
4. State terminated Brewer's employment without just cause.

Based on the foregoing, the undersigned makes the following:

RECOMMENDED DECISION

The Personnel Commission should reinstate Brewer to his position, award him back pay and full benefits, and award him attorney fees in a reasonable amount.

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 2nd day of April, 1993.

Thomas R. West
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DHR 1192

BARBARA JONES,
Petitioner,

v.

N.C. DEPARTMENT OF HUMAN RESOURCES,
DIVISION OF FACILITY SERVICES,
LICENSURE SECTION,
Respondent.

RECOMMEND DECISION

The above-captioned hearing was heard before Administrative Law Judge Dolores O. Nesnow, on March 12, 1993, in Fayetteville, North Carolina.

APPEARANCES

For Petitioner: Barbara Jones
426 Palmerland Drive
Hope Mills, North Carolina 28348
Petitioner

For Respondent: June Ferrell
Associate Attorney General
North Carolina Department of Justice
P. O. Box 629
Raleigh, North Carolina 27602-0629
Attorney for Respondent

ISSUES

1. Did the Respondent err in substantiating neglect against Petitioner?
2. Did the Respondent err in entering the substantiation of neglect against Petitioner in the Nurse Aide Registry?

STATUTE AND RULE IN ISSUE

N.C. Gen. Stat. 131E-111
N.C. Admin. Code, tit. 10, r. 3H .0513
N.C. Gen. Stat. 108-101(m)

WITNESSES

For Petitioner: Barbara Jones, Petitioner

For Respondent: Barbara Jones, Petitioner
Valerie Raeford-Bard, DHR/DFS Complaints Investigator

ALJ Witness: Jayne Morrow Bunn, DHR/DFS Abuse and Neglect Supervisor

EXHIBITS

Exhibits listing has been omitted from this publication. It can be obtained by contacting this office.

Based upon the foregoing, the undersigned makes the following:

FINDINGS OF FACT

1. On February 2, 1992, Petitioner was employed at the Highland House Nursing Home (Highland House) in Fayetteville, North Carolina, as a nurses aide.
2. Petitioner was employed at Highland House for approximately 3 to 4 months.
3. Petitioner was at that time a certified nurses aide for approximately 2 years.
4. On February 2, 1992, at approximately 2:00 p.m., Petitioner was making her final rounds before the end of her shift. Petitioner checked on patient A.M.
5. Patient A.M. is an elderly woman who suffers from Alzheimer's Disease.
6. Patient A.M. is not completely ambulatory and often requires support restraints to keep her in bed or to keep her upright when she is placed in a wheelchair.
7. When Petitioner entered patient A.M.'s room, she observed that the patient had had a bowel movement in the bed.
8. Petitioner helped patient A.M. out of bed, took her to the bathroom and placed her on the commode.
9. Petitioner was not aware whether or not patient A.M. was required to be restrained while she was on the commode.
10. None of the witnesses could recall whether the commode was fitted with the apparatus necessary with hooks for a restraint vest.
11. A visitor who was at the nursing home visiting another patient entered the room and asked Petitioner if she would get a sweater for the patient she was visiting.
12. Petitioner left patient A.M. on the commode and went to get a sweater for the other patient.
13. When she returned to patient A.M.'s room, and prior to beginning the cleanup of the bed linens, Petitioner went into the bathroom to check on the patient.
14. Petitioner saw the patient on the floor and helped her back to her feet.
15. While Petitioner was away from the bathroom, she did not hear the patient fall, scream, or call out for help.
16. Petitioner lifted patient A.M. and placed her in a chair in the room while she changed the bed linens.
17. Later, when she placed patient A.M. in the bed, patient A.M. said, "Oh, that hurts."

18. Petitioner knew that she was responsible for the patient's fall and she was afraid that she would be blamed for any injury to the patient. Petitioner examined the patient's buttocks area but did not observe any damage.
19. Petitioner did not report the fall to her supervisors at that time.
20. Shortly after placing the patient back into bed, Petitioner's shift ended and she went home for the night.
21. In the morning, Petitioner returned to work 15 minutes before the beginning of her 7:00 a.m. shift to attend Report.
22. While Petitioner was at Report, she heard the information that patient A.M. had complained of pain during the night. Petitioner decided that she had to notify someone of the incident and she went to Registered Nurse Smith, and reported what had happened on the previous day.
23. Nurse Smith directed Petitioner to see Jean Kiker, the Director of Nursing. Petitioner told Ms. Kiker about the fall the previous day.
24. Petitioner testified that she was trained to report any accidents prior to moving a patient, but that she had not reported the incident because she was afraid of being blamed and losing her certification and her job.
25. It was subsequently discovered that patient A.M. had suffered a broken bone in her pelvic area.
26. The patient's chart reflects that on February 3, 1992:
- "8:00 a.m. - Patient noted to have some pain in right hip area - some bruising noted on right buttock firm hard golfball size knot noted on right buttock by area of bruising. Patient unable to bear weight or tolerate being turned. No noted falls or injuries to area. Call placed to FAHEC-awaiting return call."
27. The chart further reflects that on the same date at 10:15 a.m., Dr. Bussomano returned the call and new orders were entered in the chart as follows:
- "M.D. orders - telephone - Tylenol #3 every 4 hours prn pain x 10 days or Tylenol with codeine elixir 10ccs every 4 hours prn pain x 10 days."
28. The patient's record also reflects the following:
- "11:15 a.m. NA taking care of patient yesterday came forward and said that she had put patient on commode and when she returned patient was on floor. NA panicked and put patient back in chair and did not report fall to other nursing staff until this time."
29. The patient's record further reflects the following:
- "2:05 p.m. ambulance arrives to transport patient to CFVMC for evaluation. Ice remains on right buttock Respiration even and unlabored...10:00 p.m. patient returned to Highland via ambulance Reports of fractured pubic right ramsus...noted pain and grimace with movement and touch. Orders for rest until patient can sit or stand...Tylenol tablets given for pain. Continue to monitor. Dr. called for prescription Tylenol #3 order."
30. On February 7, 1992, the Director of Nursing reported the incident to the Respondent.

31. Valerie Raeford-Bard (Raeford) of the N. C. DHR/DFS, Licensure Section, was assigned to investigate the incident.

32. Ms. Raeford went to the Highland House Nursing Home and spoke with the Petitioner.

33. Petitioner reported, "In my heart, I knew I needed to tell someone but it just scared me. I just started working and it was just this fear. That next morning after Report I told Ms. Smith the supervisor what had happened. They were talking about her and I knew what the problem was."

34. Ms. Raeford's investigation indicates that the physician's orders from February 19, 1992 to February 29, 1992 direct that the patient be handled with a vest restraint or geri-chair while sitting or in bed without supervision to prevent falling. The orders did not mention restraint on the commode.

35. Ms. Raeford's investigation indicates that these same orders were listed in January.

36. Ms. Raeford interviewed Ms. Jones again at approximately the end of March in 1992. Petitioner stated that she did not restrain the resident, that she had left the bathroom to get a sweater for a visitor, that she went to the hallway for just a few seconds.

37. Petitioner also reported that she does not remember being told to restrain patient A.M. on the commode but only that she had been instructed to keep her eye on her patients all the time.

38. At the end of March, 1992, Ms. Raeford interviewed the Director of Nursing, Jean Kiker. Ms. Kiker reported that both she and the Administrator counseled Petitioner after the incident and decided to put her on probation and watch her.

39. A few days later, Petitioner did not report to work. The Supervisor called Petitioner's house and her husband said she would be about 20 minutes late. Three hours later, Petitioner was still a "no show". Petitioner did not appear for work the next day. Petitioner did not report to work for three days. Petitioner then called in to the Nursing Home and was told that the Director of Nursing had terminated her.

40. After the investigation was complete, Ms. Raeford discussed it with her supervisors and they determined that a substantiation of neglect would be found against Petitioner.

41. Ms. Raeford testified that "it was a difficult call, very difficult."

42. Ms. Raeford testified that she doesn't remember any specific definition of "neglect" but that she believed it was "failure to respond as a reasonable person would."

43. Jayne Bunn, Ms. Raeford's supervisor, was also involved in the decision concerning the alleged incident of neglect, as was Jesse Goodman, Section Chief of the Licensure Section, who made the ultimate decision.

44. Ms. Bunn testified that there was a lot of discussion about this incident. She testified that she was concerned with the delay in reporting the fall and the patient subsequently going without treatment until the next day.

45. Ms. Bunn testified that she had no hesitation about substantiating neglect.

46. Ms. Bunn testified that if neglect is entered on the Nurse Aide Registry against Petitioner, Petitioner would not be allowed to work in a nursing home again.

47. N.C. Gen. Stat. 131E-111(a) provides that, pursuant to 42 USC Section 1395i-3(e) and 42 USC Section 1396 r(e), the Department shall establish and maintain a registry containing the names of all nurse aides working in nursing facilities in North Carolina. The Department shall include in the nurse aide

registry any findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of property.

48. Department is not defined in the Nursing Home Licensure Act, Article b, but is defined in Article 1, General Provisions, as the Department of Human Resources.

49. N.C. Gen. Stat. 131E-111(b) further provides that a nurse aide who wishes to contest a finding of neglect, abuse or misappropriation is entitled to an administrative hearing as provided by the Administrative Procedure Act (APA).

50. That Statute further provides that the Commission shall adopt, amend and repeal all rules necessary for the implementation of this Section.

51. N.C. Admin. Code, tit. 10, r. 3H .0513 provides that a licensed facility shall provide employees with a planned orientation and continuing education program emphasizing patient or resident assessment and other patient or resident care policies and procedures, patients rights and staff performance expectations. That rule further states that each employee shall have specific on the job training as necessary for the employee to properly to perform his individual job assignment.

52. N.C. Admin. Code, tit. 10, r. 3H .0315(b) provides that in matters of patient abuse, neglect or misappropriation, the definitions shall have the meanings as contained in North Carolina Protection of the Abused, Neglected or Exploited, Disabled Adult Act, G.S. 108A-99 et seq.

53. N.C. Gen. Stat., Section 108A-101(m) provides the following:

"The word "neglect" refers to a disabled adult who is either living alone and not able to provide for himself the services which are necessary to maintain his mental or physical health or is not receiving services from his caretaker. A person is not receiving services from his caretaker if, among other things and not by way of limitation, he is a resident of one of the state-owned hospitals for the mentally ill, centers for the mentally retarded or North Carolina Special Care Center he is, in the opinion of the professional staff of that hospital or center mentally incompetent to give his consent to medical treatment, he has no legal guardian appointed pursuant to Chapter 35A, or guardian as defined in G.S. 122C-3(15), and he needs medical treatment."

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Petitioner's neglect was not substantiated for failure to employ a restraint vest for patient A.M. while she was on the commode. The neglect was substantiated, rather, for failing to report that patient A.M. had fallen.

Thus, regardless of the doctor's orders which did not specifically require a restraint vest on the commode, and regardless of the provisions of 10 NCAC 3H .0513 requiring on the job training as necessary, the Petitioner testified that she did know that the fall, having occurred, should have been reported immediately.

2. In order to review an incident such as this it is necessary that one review the definition of neglect to see if the substantiation was appropriately found. The definition of neglect in Article 6 part A, the Nursing Home Licensure Act, is the definition which appears in N.C. Gen. Stat. 108A-101(m).

In breaking that definition down into its elements, it appears that the following provisions must be met:

- a. The patient is a disabled adult;
- b. The patient is a resident of a nursing home;
- c. The patient is incompetent in the opinion of the professional staff;
- d. The patient has no legal guardian;
- e. The patient needs medical treatment;
- f. The patient is not receiving services from the caretaker.

Given, arguendo, that the first five of these elements can be met by the evidence presented, there remains the final element. That element is the only one which might be designated as an attempt to define "neglect"; that the patient was not receiving services from the caretaker.

It is essential that a definition be clear and unambiguous and that, upon review, it may be determined on an objective basis whether there was neglect as opposed to accident, mistake, unavoidable incident, or error in judgment amounting to something less than neglect.

While a clear definition of neglect might well have included the failure to report a patient's fall immediately, the definition of neglect currently adopted provides no such clear definition.

In applying the definition of neglect as it is currently adopted, the vagueness of the definition precludes a clear determination that a substantiation of neglect was valid and accurate in this case.

3. Respondent's rule N.C. Admin. Code, tit. 10, r. 3H .0315(b) which purports to define, in pertinent part, "neglect" is found to be unclear and ambiguous to persons it is intended to direct, guide or assist and, therefore, pursuant to the authority found in G.S. 150B-33(9), it is declared void as applied in this contested case.

4. The Respondent erred in substantiating neglect against Petitioner.

5. The Respondent, therefore, erred in reporting that substantiation to the Nurse Aide Registry.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDED DECISION

That the Respondent withdraw the substantiation of neglect against the Petitioner and that the Respondent not enter any notification of substantiation of neglect against Petitioner in the Nurse Aide Registry.

ORDER

Rule 10 NCAC 3H .0315(b) is declared void as applied in this contested case pursuant to G.S. 150B-33(a).

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 Department of Human Resources.

This the 2nd day of April, 1993.

Dolores O. Nesnow
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 DOA 1662

MCLAURIN PARKING COMPANY,
Petitioner,

v.

N.C. DEPARTMENT OF ADMINISTRATION,
DIVISION OF PURCHASE AND CONTRACT,
Respondent,

and

CENTRAL PARKING SYSTEM, INC.
Intervenor-Respondent.

RECOMMENDED DECISION

This matter was heard by Fred Gilbert Morrison Jr., Senior Administrative Law Judge, Office of Administrative Hearings, on February 3, 1993, in Raleigh, North Carolina. Following the hearing, the parties submitted proposed findings of fact and conclusions of law. The record closed on March 2, 1993.

APPEARANCES

Petitioner was represented by attorney George G. Hearn of Raleigh. Assistant Attorney General D. David Steinbock appeared for Respondent Department of Administration. The Respondent-Intervenor was represented by attorney Donald R. Teeter of Raleigh.

ISSUE

Whether the Respondent Department of Administration erred or acted arbitrarily and capriciously in not allowing the award to Petitioner of a parking management services contract at the University of North Carolina at Chapel Hill.

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Based on competent evidence admitted at the hearing and later submitted by the parties, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. McLaurin Parking Company is a corporation headquartered in Raleigh, NC whose primary business is vehicular parking and traffic transportation management.
2. On or about July 15, 1992, the University of North Carolina at Chapel Hill (hereafter "UNC") issued a request for proposal (hereafter "RFP") seeking proposals leading to a contract for parking management services. UNC submitted a draft of the RFP to the Division of Purchase and Contract (hereafter "Division") of the N.C. Department of Administration prior to its being issued for review and approval.
3. The contract period for the parking management services was to be September 1, 1992, through August 31, 1993.

4. At the time the RFP was issued, McLaurin was rendering services to UNC under a then-existing contract for parking management, and had provided similar services to UNC in the general nature of parking and traffic management consultation for approximately six years. During this time period, McLaurin successfully managed parking at 332 UNC events at a cost of \$902,185.00.
5. The RFP contained a section entitled "III. Scope of Services Required", and paragraph D within that section provided: "Number of Events. There will be approximately six (6) football games, fourteen (14) basketball games, and twenty-five (25) concerts and other events (i.e. Commencement, registration, etc.) each year." McLaurin had satisfactorily managed many such events at UNC during the past six years.
6. Proposals in response to the RFP were submitted by only two firms, McLaurin and Central.
7. Paragraph VII, entitled "Evaluation of Proposals," provided in part that designated UNC Department of Transportation and Material Support staff members would evaluate the proposals received and would consider a listed number of seven (7) criteria in selecting a parking management firm.
8. Under paragraph IX, "Required Proposal Content", the RFP required in part:
 - "A. Each offeror must demonstrate in their proposal the ability to perform in accordance with the requirements contained herein. Therefore, in addition to information required in other parts of this RFP, offeror shall furnish the following information:

* * *
 7. Cost for services in a lump sum figure with a breakdown of, but not limited to, such items as management fee, supervisory staff, personnel, operation, etc. The University is willing to consider alternative cost structures. For example, a percentage of revenues, provided said alternative cost structure does not yield a greater net cost to the University."
9. Central submitted a figure designated lump sum as part of its financial proposal, but also qualified that by stating it would negotiate other events. McLaurin submitted as its financial proposal an alternative cost structure stating fees expressed on a per event attendants requested basis "in an effort to pinpoint costs for each event."
10. Mr. LaBron Reid was UNC's special events parking administrator who developed the RFP and who initially evaluated the proposals from McLaurin and Central.
11. By letter dated August 13, 1992, to UNC Assistant Purchasing Director John Boone, Mr. Reid recommended that the UNC parking management services contract be awarded to McLaurin. Mr. Reid stated his reasons in this letter, including that he developed a model in order to make a comparison of the different financial proposals submitted by Central and McLaurin. Using this model, Mr. Reid determined that the difference between the financial bids was "negligible". He concluded that McLaurin through its technical proposal and references demonstrated greater experience in the type of operations described in the RFP and other factors that indicated that McLaurin would be best suited for the needs of the Department of Transportation and Parking Services.
12. John A. Leaston is and was in 1992 an employee of the Division of Purchase and Contract. John Boone transmitted to Mr. Leaston on or about August 17 a copy of Mr. Reid's letter of August 13, 1992.
13. LaBron Reid concluded that the proposal by McLaurin, including the length and detail of the technical proposal, made McLaurin's proposal more advantageous to UNC than Central's proposal.
14. The Division, through the decision and review of John A. Leaston, rejected Mr. Reid's recommendation in his letter of August 13, 1992.

15. LaBron Reid and John Boone jointly placed a telephone call from Mr. Boone's office to Mr. Leaston to discuss the reasons why the recommendation of Mr. Reid had been rejected by Mr. Leaston. This telephone call was placed after Mr. Reid's letter of August 13 was transmitted to Mr. Leaston.
16. In that telephone conversation, Mr. Leaston stated to Mr. Reid and Boone that his (Leaston's) evaluation was that based on the RFP, Central was the lowest bidder and from that point the award would have to be to the lowest bidder. Mr. Leaston said nothing in that conversation about McLaurin not submitting a lump sum price in its proposal.
17. LaBron Reid prepared a second letter in draft form dated August 25 but which was prepared August 23 or August 24 and transmitted by facsimile to Mr. Leaston. The draft letter contained additional sentences and changes by Mr. Gerald Elefante, head of the UNC Purchasing and Material Support Department.
18. In Mr. Reid's letter of August 25, as edited, he again recommended that McLaurin be awarded the UNC Parking Management Contract, but in this letter he expanded his evaluation and reasons. Mr. Reid's letter noted McLaurin's fifteen years of experience with event operations and seven years of experience with comparable events as well as the fact that McLaurin's proposal gave detailed information on personnel who would be assigned as event managers, including their experience with event operations.
19. In addition, Mr. Reid's letter of August 25, 1992, stated that actual activity in terms of parking events can and often does vary widely, and as such, this renders a direct dollar-for-dollar comparison inadequate without a risk evaluation. Reid noted that Central's proposal did not state how pricing additional events would be calculated. McLaurin's financial proposal provided an exact fee schedule, Reid concluded, to show how the pricing for each event would be calculated, even beyond those listed in the RFP.
20. Mr. Reid set forth in his August 25 letter that the prices listed in the proposals by Central and McLaurin were not "fixed" prices in that, should UNC deviate from the proposed scenario, as UNC routinely has done each year, the actual cost to the University under the contract would be actual allowable expenses. Reid concluded a dollar-to-dollar comparison, without risk evaluation and other source selection factors, would be an incorrect method of choosing the lowest bidder, cost and other factors considered.
21. In addition, Reid found the McLaurin proposal to be superior from a technical point of view in terms of stating how the services would be provided, as compared to Central's and stated that Central's proposal was "simply an iteration of the RFP requirements". McLaurin's proposal, Reid noted, expressed a complete understanding of the services required under the contract as described in the RFP and an outstanding, efficient plan to provide those services." Reid again recommended that McLaurin receive the contract award as the lowest bidder, price and other factors considered.
22. The Division rejected Mr. Reid's recommendation and the Division directed that the contract be awarded to Central. Mr. Leaston did not consider the reasons given by Reid for awarding the contract to McLaurin.
23. LaBron Reid first became aware that the Division maintained that McLaurin's financial proposal was allegedly deficient because it did not contain a lump sum when Mr. Reid received information from McLaurin's petition prior to his being subpoenaed to the hearing February 3, 1993. Because the Division would not accept Mr. Reid's recommendation to award the contract to McLaurin, he wrote John Boone by letter dated August 28, 1992, that UNC Department of Transportation and Parking would accept Central's proposal.
24. John Leaston requested additional information as to why UNC was recommending McLaurin, and this

request was made to John Boone, who faxed additional information to Mr. Leaston prepared by Mr. Reid. Leaston did not consider this information in making his decision.

25. In the afternoon of August 31, 1992, John Leaston requested additional financial information regarding the McLaurin and Central proposals. Mr. Reid presented this information in a memorandum dated September 1, 1992, from him to Mr. Boone. Leaston did not consider this information.
26. LaBron Reid's financial evaluation of the proposals in his memorandum of September 1, 1992, "averaged the man-hours for the actual concerts/events performed by McLaurin and compared them to the averages for the events that I projected to equal the 25 events mentioned in the RFP." Mr. Reid's results indicated a total financial figure for McLaurin to be \$175,071.00, which was \$5,067.00 less than the McLaurin figure model attached to his letter to Mr. Boone of August 13, 1992.
27. John Leaston informed John Boone two or three days following transmittal of the August 13 letter from LaBron Reid that UNC would have to accept Central because it was the low bid and McLaurin was not the low bid. Mr. Leaston indicated to Mr. Boone that the failure of McLaurin to put a figure (lump sum) in its proposal presented a problem, too.
28. The Division makes the final decision on UNC's award of contracts regardless of whether UNC recommends that a particular proponent receive the contract.
29. On August 31, 1992, Stephen B. McLaurin and Kristy M. Eubanks, officers of McLaurin, went to the Division to obtain a copy of the file relating to the UNC transportation contract. While there, they were taken to John Leaston's office and introduced to him. They did not previously know him.
30. In conversations in the morning of August 31, 1992, John Leaston told Stephen B. McLaurin and Kristy M. Eubanks that the UNC contract had not officially been made and showed it to them on his desk, although he did state that he had made his decision. Mr. Leaston stated that Central was going to receive the contract because they were the lower bidder, and cited to the McLaurin officers that the difference in bids was less than \$200.00. Mr. Leaston did not mention that McLaurin's proposal was rejected on the basis of not containing a lump sum. When they told him that their proposal was superior, Leaston stated that the State was not looking for a "Cadillac."
31. Mary N. Clayton, transportation programs manager for Charlotte, NC Uptown Development, is an expert in the area of transportation and special events planning.
32. Ms. Clayton reviewed the RFP and proposals submitted. In the opinion of Ms. Clayton, the RFP did not require a proposer to submit a lump sum. She based that opinion on the language in the RFP, Page 11, Item VII that "the University is willing to consider alternative cost structures."
33. Ms. Clayton previously was employed at UNC from 1985 until 1988 as Director of Transportation and Parking Services and was employed from 1981 until 1983 in the North Carolina Department of Transportation. Ms. Clayton had prepared an RFP while employed at UNC.
34. From her review of the RFP and the technical and financial proposals submitted by McLaurin and Central, Ms. Clayton's opinion at the hearing was that the McLaurin technical proposal is superior to the technical proposal of Central. The basis for her opinion was that the McLaurin proposal was able to define areas of placement of people, equipment, how they would be applied and very specific details related to their activity. The proposal referenced specific events, including what McLaurin would do for football, basketball and concerts. By contrast, Central's proposal would say "we intend to, we are willing to, we would." She initially hired McLaurin at UNC.
35. In the opinion of Ms. Clayton from a review of the financial proposals submitted by McLaurin and Central, the alternative cost structure option allows the most flexibility for UNC because it would be

very difficult to apply a lump sum to the operation of special events. In her opinion, the McLaurin proposal was the lower cost proposal.

36. Ms. Clayton performed her own financial analysis of the financial proposals submitted by Central and McLaurin. Her analysis showed that the McLaurin proposal was lower than the Central proposal, with McLaurin's proposal being \$172,656.00 and Central's being \$179,968.00.
37. Separate from her own analysis, Ms. Clayton stated at the hearing her belief that LaBron Reid's analysis of both proposals, as set forth in his letters and memorandum to John Boone, was reasonable.
38. McLaurin's proposal was superior to that of Central's, in Ms. Clayton's opinion, with respect to substantial conformity with the specifications of the RFP.
39. In Ms. Clayton's opinion, the RFP did not require the submission of a lump sum by a proponent as a precondition of alternative pricing.
40. John Leaston in his capacity as Assistant Purchasing Administrator for the Division, reviewed the RFP and the proposals submitted in response thereto. From his evaluation, he concluded that the contract should be awarded to Central "because they were in substantial compliance with the requirements" of the RFP.
41. Mr. Leaston stated that McLaurin was not in compliance with the RFP because McLaurin's proposal did not contain a lump sum fee.
42. Based on a request from then Secretary of Administration James Lofton, the award of the contract was held on August 31 or September 1 pending further review by his staff.
43. John Leaston did not consider the risk evaluation factors contained in the letters from LaBron Reid to John Boone, which were transmitted to Mr. Leaston, because in Mr. Leaston's view, the McLaurin proposal was unacceptable because it did not submit a lump sum.
44. John Leaston did not make a matter of record the fact that Central was the only single acceptable bid received as required by Respondent's rules.
45. The unwritten policy of the Division, as Mr. Leaston understood and applied it, was not to consider alternative price proposals when the RFP called for a base bid unless a base bid was also given.
46. Mr. Leaston testified at the hearing that the award process had not been completed at the time Stephen B. McLaurin and Kristy M. Eubanks met with him on the morning of August 31, 1992.
47. John Leaston told Stephen B. McLaurin and Kristy M. Eubanks on August 31 that Central would be awarded the contract because it was the lowest qualified bidder.
48. John Leaston did not do a review of the financial portion of McLaurin's proposal. Mr. Leaston did not consider the memorandum prepared by LaBron Reid to John Boone which was faxed to the Division at 9:25 a.m. on September 1, 1992.
49. John A. Leaston did not consider the analyses by the University in determining which was the lower price proposal because the figures were not submitted by a contractor (McLaurin).
50. John Leaston stated at the hearing that he would have considered himself derelict if he had considered the University's financial analysis because in his opinion that would have been allowing "the University to manufacture some information to further support their position and qualify a contractor of their choice."

51. John A. Leaston never considered McLaurin as being a qualified bidder for the contract because McLaurin did not submit a lump sum figure in its financial proposal.
52. McLaurin estimates that it would have realized profit under the contract with UNC, had it received it, of approximately \$25,000.00 between September 1, 1992, and August 31, 1993.
53. McLaurin has spent approximately \$18,000.00 in attorney fees in contesting the denial of this award.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings and the Office has jurisdiction to hear this matter and issue a recommended decision to the Secretary of Administration.
2. Respondent failed to act as required by rule when it did not make a matter of record its contention that only a single acceptable bid was received.
3. Respondent acted arbitrarily and capriciously by not giving careful consideration to the recommendations given by UNC on behalf of McLaurin. This would have been fair to the company which had satisfactorily served UNC for six years.
4. Petitioner's financial proposal substantially complied with the RFP because McLaurin had managed and been paid by UNC for 332 similar events during the preceding six years. UNC was fully aware of the costs involved.

Based on the foregoing Findings of Fact and Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

1. That Respondent authorize UNC to award a contract for parking management services to Petitioner for the period September 1, 1993, through August 31, 1994, pursuant to the financial proposal submitted by McLaurin in July of 1992.
2. That competitive bids be solicited at an appropriate time for the period beginning September 1, 1994.
3. That those submitting proposals for the 1994-95 contract be specifically required to submit a lump sum amount before making any alternative proposal.

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 Secretary of the North Carolina Department of Administration.

This the 2nd day of April, 1993.

Fred G. Morrison Jr.
Senior Administrative Law Judge

D. "...other than in the course and scope of his employment, business, or profession."

The issue in dispute appears to be whether the word "his" in this element refers back to "a third person" or to "the victim".

1. If the word "his" refers back to the word "victim", then a reading of subsection (c) would be "a third person claimant is anyone who provided benefit to the victim other than in the course and scope of the victim's employment, business or profession."

2. If the word "his" refers back to "a third person", then a reading of subsection (c) would be "a third person claimant is anyone who provided benefit to the victim other than in the course and scope of the third person's employment, business or profession."

The first interpretation noted above would provide that claimants include third persons who provide benefit to the victim except if that benefit relates to the victim's employment. This interpretation appears strained and without discernable logic.

The second interpretation would provide that a third person claimant is that person who provides benefit to the victim other than in the course and scope of the third person's employment. This interpretation would include the "good samaritan" and would exclude such third person professionals as police officers, social workers, emergency rescue personnel and medical care providers.

It is the opinion of the undersigned that subsection (c) was intended to refer to such people as the "good samaritan" who provides assistance to the victim of a crime and that the word "his" refers back to "a third person."

It is further the opinion of the undersigned that the Petitioner is not a claimant as that term is defined in N.C. Gen. Stat. 15B-2(2) because they provided their services in the course and scope of their employment, business or profession.

ORDER

It is therefore concluded, that the Office of Administrative Hearings does not have jurisdiction to hear this matter because the Petitioner has no right of appeal as a third person claimant and that this Petition must be, and hereby is, **DISMISSED**.

This matter is dismissed pursuant to N.C. 150B-36(c)(1) and this is a Final Decision.

NOTICE

In order to appeal a Final Decision, the person seeking review must file a Petition in the Superior Court of Wake County or in the superior court of the county where the person resides. The Petition for Judicial Review must be filed within thirty (30) days after the person is served with a copy of the Final Decision. G.S. 150B-46 describes the contents of the Petition and requires service of the Petition on all parties.

This the 2nd day of April, 1993.

Dolores O. Nesnow
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.

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3	Auditor	Barber Examiners	6
4	Economic & Community Development	Certified Public Accountant Examiners	8
5	Correction	Chiropractic Examiners	10
6	Council of State	General Contractors	12
7	Cultural Resources	Cosmetic Art Examiners	14
8	Elections	Dental Examiners	16
9	Governor	Dietetics/Nutrition	17
10	Human Resources	Electrical Contractors	18
11	Insurance	Electrolysis	19
12	Justice	Foresters	20
13	Labor	Geologists	21
14A	Crime Control & Public Safety	Hearing Aid Dealers and Fitters	22
15A	Environment, Health, and Natural Resources	Landscape Architects	26
		Landscape Contractors	28
16	Public Education	Marital and Family Therapy	31
17	Revenue	Medical Examiners	32
18	Secretary of State	Midwifery Joint Committee	33
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20	Treasurer	Nursing	36
*21	Occupational Licensing Boards	Nursing Home Administrators	37
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