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The **NORTH CAROLINA REGISTER**

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Final Decision Letters**

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**Commerce
Electrolysis Examiners
Environment, Health, and Natural Resources
Human Resources
Practicing Psychologists
Transportation**

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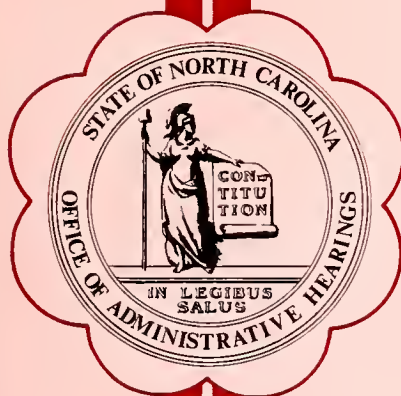
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ISSUE DATE: August 16, 1993

Volume 8 • Issue 10 • Pages 793 - 875



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



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NORTH CAROLINA REGISTER

Publication Schedule (July 1993 - May 1994)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
8:7	07/01/93	06/10/93	06/17/93	07/16/93	08/02/93	08/20/93	10/01/93
8:8	07/15/93	06/23/93	06/30/93	07/30/93	08/16/93	08/20/93	10/01/93
8:9	08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
8:10	08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
8:11	09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
8:12	09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
8:13	10/01/93	09/10/93	09/17/93	10/18/93	11/01/93	11/22/93	01/04/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/04/94
8:15	11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
8:16	11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
8:17	12/01/93	11/05/93	11/15/93	12/16/93	01/03/94	01/20/94	03/01/94
8:18	12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94
8:19	01/03/94	12/08/93	12/15/93	01/18/94	02/02/94	02/21/94	04/01/94
8:20	01/14/94	12/21/93	12/30/93	01/31/94	02/14/94	02/21/94	04/01/94
8:21	02/01/94	01/10/94	01/18/94	02/16/94	03/03/94	03/21/94	05/01/94
8:22	02/15/94	01/25/94	02/10/94	03/02/94	03/17/94	03/21/94	05/01/94
8:23	03/01/94	02/08/94	02/15/94	03/16/94	03/31/94	04/20/94	06/01/94
8:24	03/15/94	02/22/94	03/10/94	03/30/94	04/14/94	04/20/94	06/01/94
9:1	04/04/94	03/11/94	03/18/94	04/19/94	05/04/94	05/20/94	07/01/94
9:2	04/15/94	03/24/94	03/31/94	05/02/94	05/16/94	05/20/94	07/01/94
9:3	05/02/94	04/11/94	04/18/94	05/17/94	06/01/94	06/20/94	08/01/94
9:4	05/16/94	04/25/94	05/02/94	05/31/94	06/15/94	06/20/94	08/01/94

Note: Time is computed according to the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** 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 19
CENTER FOR THE PREVENTION
OF SCHOOL VIOLENCE**

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

Section 1. Establishment.

There is hereby established a Center for the Prevention of School Violence ("Center") within the Governor's Crime Commission Division of the Department of Crime Control and Public Safety ("DCCPS").

Section 2. Duties.

- A. To work with representatives from State agencies, local schools, law enforcement, and the juvenile justice system to identify problems and develop recommendations and procedures to stem the tide of school violence.
- B. To serve as a clearinghouse of information concerning school violence, possible including regional workshops on appropriate topics.
- C. To facilitate training, coordinating and focusing of resources at the local level.
- D. To advise the Secretary of DCCPS concerning grant awards to reduce school violence, which are administered by the Governor's Crime Commission Division.

Section 3. Administration.

The Center is authorized to accept funds from sources other than appropriations by the North Carolina General Assembly. Such funds will be administered by the DCCPS.

Section 4. Board of Directors.

The following ex officio members of the Governor's Crime Commission shall serve as the Center's Board of Directors:

- A) the Secretary of Crime Control and Public Safety;
- B) the Attorney General;
- C) the Superintendent of Public Instruction;
- D) the Secretary of the Department of Human Resources; and,
- E) the Juvenile Services Administrator of the Administrative Office of the Courts.

This Order is effective immediately.

Done in Raleigh, North Carolina, this the 30th

day of June, 1993.

**EXECUTIVE ORDER NUMBER 20
TO DESIGNATE 1994 AS THE YEAR OF
THE COAST AND TO CREATE A
COASTAL FUTURES COMMITTEE ON
COASTAL AREA MANAGEMENT**

WHEREAS, North Carolina's coastal ocean, lands, and waters are among the state's most valuable and productive resources; and

WHEREAS, the coastal area is a vital part of North Carolina's history, culture and economy; and

WHEREAS, its beauty and traditions draw people to visit and live in the coastal area; and

WHEREAS, the North Carolina Coastal Area Management Act of 1974 ("CAMA") was enacted because of an immediate and pressing need to establish a comprehensive plan for the protection, preservation, orderly development and management of the twenty coastal counties in North Carolina; and

WHEREAS, the Act was the nation's pioneering effort to establish a planning and regulatory program for managing coastal resources; and

WHEREAS, during the 1980's, the population of the coastal zone grew at a rate of almost twice that of the entire state; and

WHEREAS, the coastal area is experiencing greater pressures and more conflicting needs than ever before; and

WHEREAS, great care must be taken to continue to protect our estuaries, barrier islands, marshes, and maritime forests; and

WHEREAS, the year 1994 is the 20th anniversary of the enactment of CAMA, it is a fitting time to assess the our management of the coastal area, celebrate our coastal resources and chart a clear course of action for our coastal future.

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

Section 1. Year of the Coast.

Nineteen ninety-four is proclaimed the Year of

the Coast.

Section 2. Establishment.

The Coastal Futures Committee ("Committee") is hereby established.

Section 3. Membership and Terms.

The Governor shall appoint 15 persons to serve on the Committee and shall designate one of its members to serve as Chair and one to serve as Vice Chair. The Committee shall meet regularly to carry out its duties at the call of the Chair.

Section 4. Powers and Duties of the Committee.

A. To study the North Carolina coastal management program and similar programs in other states as it deems appropriate.

B. To identify major coastal management issues to be analyzed in depth.

C. To develop a set of recommendations to effectuate the purposes of this Order through such activities as meetings, fact-finding tours, educational events, and in-depth reports.

D. To submit a final report to the Governor, Coastal Resources Commission, and the Coastal Resources Advisory Council by September 1, 1994 which will include an assessment of appropriate future directions or options for the coastal management program, including recommendations for administrative and legislative action.

E. To arrange for such celebrations of the 20th anniversary of CAMA as it deems appropriate, including such activities as a national conference on coastal management.

F. To focus media and public attention on the results of CAMA and the value of citizen involvement in coastal planning.

G. To coordinate its efforts with local officials and events and to help promote coastal events.

H. To perform and exercise such other duties and powers as may be necessary to accomplish the purposes of this Executive Order.

Section 5. Administration.

The Governor shall designate a state employee to serve as Executive Secretary, provide professional assistance and background information to the

Committee, and coordinate its activities. The Secretary of the Department of Environment, Health, and Natural Resources ("DEHNR") shall maintain the official minutes and other records of the Committee, and shall work in partnership with universities and the private nonprofit sector to furnish staff assistance, educational and research materials, and administrative support which the Committee may require.

The Committee is authorized to accept donations of in-kind services and funds, subject to the Executive Budget Act. Donations from government agencies shall be administered by DEHNR. The North Carolina Coastal Federation, a 501(c)(3) nonprofit organization, has agreed to raise and administer donations from other than government entities. Members of the Committee shall receive necessary travel and subsistence expenses pursuant to General Statute 138-5.

The Committee shall be considered a "public body" and its meetings shall be open to the public pursuant to General Statutes Chapter 143, Article 33C. The Committee, for administrative purposes only, shall be located in DEHNR.

This Executive Order shall become effective immediately. The Committee shall cease to exist once the final report is issued.

Signed in Raleigh, North Carolina, this 15th day of July, 1993.

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

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:GLH:JBG:tlb

DJ 166-012-3

93-1103

93-1821

July 19, 1993

Robert C. Cogswell, Jr., Esq.

City Attorney

P. O. Box 1513

Fayetteville, North Carolina 28302-1513

Dear Mr. Cogswell:

This refers to nineteen annexations (Ordinance Nos. 91-11-348 through 93-8-366) and the designations of the annexed areas to election districts for the City of Fayetteville, in Cumberland County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your last submittal of information in response to our request for additional information concerning the city's 1991 annexation on May 26, 1993. Your related submission of subsequent annexations was received on May 19, 1993; supplemental information was received on May 26, July 13, 16, and 19, 1993.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Your submission indicates that the city has adopted a plan for a multi-phase involuntary annexation program for which no final annexation ordinances have been adopted. We note that the annexations and any other changes affecting voting will be subject to Section 5 review. See also 28 C.F.R. 51.15 and 51.22.

Sincerely,

James P. Turner

Acting Assistant Attorney General

Civil Rights Division

By:

Steven H. Rosenbaum

Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JPT:SHR:GS:EMP:mrj
DJ 166-012-3
93-1929

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

July 23, 1993

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

Dear Mr. Crowell:

This refers to Chapter 55 (1993), which consolidates the school districts of the City of Washington and Beaufort County, and provides for a nine-member board elected by the nonpartisan plurality method from single-member districts for four-year, staggered terms, the districting plan, the general election date, an implementation schedule, and procedures for filling vacancies for the Beaufort County School District in Beaufort County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on May 28, 1993; supplemental information was received on July 3, 1993.

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

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

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

ENVIRONMENTAL MANAGEMENT COMMISSION

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

The Division of Environmental Management will accept additional comments on the proposed reclassification of Sandy Run Creek and tributaries in Cleveland and Rutherford Counties until September 30, 1993. The initial notification of the proposed rule amendment 15A NCAC 2B .0306 (Broad River Basin) was published in Volume 7, Issue 24, pages 2667-2668 of the *North Carolina Register* on March 15, 1993. Written comments concerning the proposed rule amendment may be sent to:

Steve Zoufaly
EHNr DEM
P.O. Box 29535
Raleigh, NC 27626-0535

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Banking Commission intends to adopt rules cited as 4 NCAC 31 .0101, .0201 - .0204, .0301 - .0306, .0401 - .0406, .0501 - .0503, .0601 - .0605, .0701 - .0706.

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

The public hearing will be conducted at 8:30 a.m. on September 1, 1993 at the Dobbs Building, 430 N. Salisbury Street, Suite 6155, Raleigh, N. C. 27626.

Reason for Proposed Action: To effectuate the purpose of the Registration Requirements Act for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property, codified at N.C. General Statute 53-233 et seq., to provide for the protection of the borrowing public and to instruct mortgage lenders in interpreting said Act.

Comment Procedures: Comments may be made orally or in writing and must be submitted no later than September 16, 1993 at 5:30 p.m. Comments should be directed to: T. Mercedes Oglukian, Special Counsel, 430 N. Salisbury Street, P.O. Box 29512, Raleigh, NC 27625-0512, Tel. (919) 733-3016, Fax (919) 733-6919.

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 3I - MORTGAGE BANKER/BROKER

SECTION .0100 - ADMINISTRATIVE

.0101 DEFINITIONS; FILINGS

(a) As used in these Rules, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-234 shall have the same meaning as set forth therein;
- (2) "Accounting period" shall mean either a period of 12 months (or less in the first year of operations) ending December 31 or a fiscal year of not more than 12 months (or less in the first year of

operations) ending on the last day of any month except December;

- (3) "Advertisement" shall mean material used or intended to be used to induce the public to apply for a mortgage loan. The term shall include any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a registrant whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, billboard or similar display. The term advertisement shall not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded from any definition of advertisement for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures;
- (4) "Application fee" shall mean any fee accepted by a registrant in connection with an application for a mortgage loan including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include a commitment fee, lock-in fee, or third-party fee as such terms are defined in Subparagraphs (a)(12), (19) and (32) of this Rule;
- (5) "Application for a mortgage loan" shall have the same meaning as "Application for a federally-related mortgage loan" in Regulation X;
- (6) "Bonus" shall mean money, or an equivalent, given in addition to usual compensation;
- (7) "Branch manager" shall mean an employee of a registrant who is in charge of, and responsible for, the operations of a registrant's branch office located in this State;
- (8) "Branch office" shall mean any location, including a personal residence, but not the principal place of business, where the registrant holds itself out to the public as engaging in business as a mortgage banker or mortgage broker;
- (9) "Business day" shall have the same meaning as "business day" is defined in Regulation X;

- (10) "Commitment" shall mean an offer to make a mortgage loan, signed, authorized or made by a mortgage banker;
- (11) "Commitment agreement" shall mean a commitment accepted by an applicant for a mortgage loan;
- (12) "Commitment fee" shall mean a fee, exclusive of third-party charges, imposed by a mortgage banker as consideration for binding it to make a mortgage loan;
- (13) "Controlling person" shall mean any person, as defined herein, who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant;
- (14) "Employee" shall mean any individual performing a service for a registrant for whom the registrant would be liable for withholding taxes pursuant to Title 26 of the United States Code;
- (15) "First-tier subsidiary" shall mean a corporation of which 100% of the stock is directly owned by the parent company;
- (16) "Good faith estimate" shall have the same meaning as "good faith estimate" is defined in Regulation X;
- (17) "HUD" shall mean the United States Department of Housing and Urban Development;
- (18) "Lock-in agreement" shall mean an agreement between a mortgage banker and an applicant for a mortgage loan which, subject to the terms set forth therein, obligates the mortgage banker to make a mortgage loan at a specified rate and a specific number of points, if any;
- (19) "Lock-in fee" shall mean points or other fees or discounts accepted by a mortgage broker for transmittal to a mortgage banker or exempt organization or by a mortgage banker as consideration for the making of a lock-in agreement;
- (20) "Person" shall mean an individual, corporation, partnership, trust, association or other entity;
- (21) "Point" shall mean an origination fee or other fee or discount calculated as 1% of the principal amount of the loan or 1% of the amount financed, however such point may be denominated by the registrant. The term point shall include, but not be limited to, percentage based fees denominated as application fees, mortgage brokerage fees, origination fees, or warehousing fees;
- (22) "Premium" shall be synonymous with "bonus" as defined herein and shall mean money, or an equivalent, given in addition to usual compensation;
- (23) "Premium pricing" shall mean a loan delivered to a lender at an adjusted interest rate that will meet the lender's yield requirements and will enable the broker to receive as its fee the difference between the points delivered to the lender and the fee allotted to the customer;
- (24) "Prevailing rate" shall mean an interest rate on a mortgage loan that is set by a mortgage banker after the issuance of a commitment but prior to or on the closing date. Such rate may be fixed or variable;
- (25) "Principal officer" shall have the same meaning as "executive officer" as defined in Regulation O of the Board of Governors of the Federal Reserve System, codified at 12 CFR Part 215, et seq.;
- (26) "Registration of Mortgage Bankers and Brokers Act" shall mean the Registration Requirements Act for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property, codified at Chapter 53, Article 19 of the General Statutes of North Carolina (G.S. 53-233, et seq.);
- (27) "Regulation X" shall mean Regulation X as promulgated by HUD and codified at 24 CFR Part 3500, et seq.;
- (28) "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified at 12 CFR Part 226, et seq.;
- (29) "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, et seq.;
- (30) "Tablefunding" shall mean a transaction in which a registrant closes a loan in its own name with funds provided by others and such loan is assigned within 24 hours of the funding of the loan to the mortgage lender providing the

funding;

- (31) "Settlement cost" shall have the same meaning as "settlement cost" is defined in Regulation X;
- (32) "Third-party fee" shall mean the fees or charges paid by the applicant for a mortgage loan to the registrant for transmittal to third persons who provide services in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges;
- (33) "Truth In Lending Act" shall mean Title I of the Consumer Credit Protection Act, as amended, and codified at 15 USC 1601, *et seq.*

(b) For the purposes of this Subchapter, unless the context clearly requires otherwise, the terms mortgage banker and mortgage broker shall mean a registrant.

(c) Any application for registration or any report, annual statement, amendment to application, notice or other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:

Commissioner of Banks
Post Office Box 29512
Raleigh, North Carolina 27626-0512

Statutory Authority G.S. 53-233; 53-234; 53-241.

SECTION .0200 - MINIMUM NET WORTH, LIQUIDITY AND BONDING REQUIREMENTS

.0201 MINIMUM NET WORTH REQUIREMENT FOR MORTGAGE BANKERS

(a) A mortgage banker shall have at all times a net worth of at least two hundred and fifty thousand dollars (\$250,000).

(b) A mortgage banker that engages in table-funding, but does not engage in any other mortgage banking activity, shall have at all times the same net worth as required for mortgage brokers pursuant to Rule .0202(a) of this Section.

(c) Mortgage bankers which are approved for registration by the Commissioner on or after the effective date of this Rule shall have, at a minimum, the net worth set forth herein upon approval. Mortgage bankers which were approved for

registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.

(d) Mortgage bankers which were approved for registration by the Commissioner before the effective date of this Rule shall submit to the Commissioner an audited Statement of Financial Condition (balance sheet) on or before March 31, 1995 which shall verify their financial condition as of the most recently completed accounting period.

Statutory Authority G.S. 53-236(b); 53-241.

.0202 MINIMUM NET WORTH REQUIREMENT FOR MORTGAGE BROKERS

(a) A mortgage broker shall have at all times a net worth of at least twenty-five thousand dollars (\$25,000). However, mortgage brokers which must have a greater net worth to participate in mortgage lending programs sponsored by the federal government or any agency thereof shall at all times maintain the net worth required by the federal government or its agencies.

(b) Mortgage brokers which are approved for registration by the Commissioner on or after the effective date of this Rule shall have, at a minimum, the net worth set forth herein upon approval. Mortgage brokers which were approved for registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.

(c) Mortgage brokers which were approved for registration by the Commissioner before the effective date of this Rule shall submit to the Commissioner an audited Statement of Financial Condition (balance sheet) on or before March 31, 1995 which shall verify their financial condition as of the most recently completed accounting period.

Statutory Authority G.S. 53-236(b); 53-241.

.0203 LIQUIDITY OF MORTGAGE BANKERS AND BROKERS

(a) All mortgage bankers and brokers shall maintain liquid assets consisting of cash or its equivalent acceptable to the Commissioner in the amount of 20% of their net worth, up to a maximum liquidity of one hundred thousand dollars (\$100,000).

(b) All mortgage bankers and brokers which are approved for registration by the Commissioner on or after the effective date of this Rule shall meet the requirements of this Rule upon approval. Mortgage bankers and brokers which were ap-

proved for registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.

Statutory Authority G.S. 53-236(b); 53-241.

.0204 SURETY BOND

(a) All mortgage bankers and brokers shall post a surety bond in the amount of twenty-five thousand dollars (\$25,000) with the Commissioner which shall run to the benefit of the Commissioner. The bond shall be executed by a company authorized to do business in North Carolina and shall be conditioned upon the obligor's compliance with the provisions of the Registration of Mortgage Bankers and Brokers Act and all Rules adopted thereunder.

(b) Mortgage bankers and brokers which are approved for registration by the Commissioner on or after the effective date of this Rule shall meet the requirements of this Rule upon approval. Mortgage bankers and brokers which were approved for registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.

Statutory Authority G.S. 53-236(b); 53-241.

SECTION .0300 - REGISTRATION OF MORTGAGE BANKERS AND MORTGAGE BROKERS

.0301 APPLICATION FOR REGISTRATION AS A MORTGAGE BANKER OR BROKER

(a) Any person who would like to engage in business as a mortgage banker or mortgage broker pursuant to the Registration of Mortgage Bankers and Brokers Act shall first be registered with the Commissioner. An application shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(c) of this Subchapter.

(b) The application for registration as a mortgage banker or mortgage broker shall include the following:

- (1) An audited Statement of Financial Condition (balance sheet) of the applicant for the previous accounting period reflecting a minimum net worth and liquidity as required by Section .0200 of this Subchapter;
- (2) A surety bond as set forth in Rule .0204 of this Subchapter;
- (3) Copies of the following documents, where applicable:

- (A) The applicant's Articles of Incorporation, or General or Limited Partnership Agreement,
- (B) A Certificate of Existence or Certificate of Good Standing, not more than 90 days old, from the applicant's state of incorporation,
- (C) A Certificate of Authority to do business in this State,
- (D) A copy of the applicant's Certificate of Assumed Name;
- (4) Disclosure of any criminal proceedings pending against or criminal convictions entered against the applicant, its partners, directors, principal officers or controlling persons;
- (5) Disclosure of any civil proceedings pending against or civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons which involve fraud or dishonesty;
- (6) Disclosure of any civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons during the past 10 years which have remained partially or wholly unpaid;
- (7) Disclosure of the following proceedings involving the applicant: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship or similar proceeding;
- (8) Disclosure of enforcement proceedings by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, or any other federal or state agency against the applicant, its partners, directors, principal officers or controlling persons which involve licensure or business activities as a mortgage broker or mortgage banker;
- (9) A description of the applicant's business operations and organizational structure;
- (10) The addresses at which the applicant intends to engage in business as a mortgage banker or broker, including branch offices and the name of the branch manager at each branch office;
- (11) A description of the business experience, current business activities and education of the applicant, its partners, directors, principal officers and control-

ling persons:

- (12) Evidence of compliance with the experience requirements set forth in Rules .0303 and .0304 of this Section;
- (13) Three business references, including one bank reference;
- (14) Where applicable, the names and business addresses of all lenders whom the applicant is authorized to represent and whom the applicant may bind to loan terms. A copy of the agency agreement for each such lender shall be provided.

(c) The following fees shall be submitted with the application for registration as a mortgage banker or mortgage broker:

- (1) A nonrefundable application fee made payable to the Commissioner in the amount set forth in G.S. 53-236(b);
- (2) An annual registration fee made payable to the Commissioner in the amount set forth in G.S. 53-242.

(d) The application shall be in writing and shall be verified by the oath of the applicant.

(e) A person who wishes to engage in business as both a mortgage broker and a mortgage banker shall so state on the application and shall meet all standards for registration as both a mortgage banker and mortgage broker. Such applicant shall submit with its application only one nonrefundable fee as set forth in G.S. 53-236(b) and two annual registration fees as set forth in G.S. 53-242.

(f) In addition to the documents and information described in Paragraph (b) of this Rule, the Commissioner may require additional information as necessary to make the findings required by G.S. 53-236 and G.S. 53-237.

(g) In the event of denial of the application, the Commissioner shall refund in full any annual registration fees paid pursuant to G.S. 53-242.

(h) Incomplete application files may be closed and deemed denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of request.

Statutory Authority G.S. 53-235; 53-236; 53-237(a); 53-241; 53-242.

.0302 EXEMPT PERSONS OR ORGANIZATIONS

(a) For the purposes of G.S. 53-234(6)(a), the following shall apply:

- (1) "Regulatory body or agency of the United States" shall mean the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Cur-

rency, the Federal Reserve Board or the Office of Thrift Supervision, or their successor agencies;

- (2) Only a first-tier subsidiary of a lender shall be deemed to be a subsidiary which is subject to the general supervision or regulation of the lender;
- (3) Only a first-tier subsidiary of a holding company of which a lender is also a first-tier subsidiary shall be deemed to be an affiliate which is subject to the general supervision or regulation of the lender.

(b) For the purposes of G.S. 53-234(6)(b), the receipt of a computer loan origination fee pursuant to Regulation X shall be deemed to be compensation or income in connection with the placement of a mortgage loan. A licensed real estate agent or broker who wishes to receive such fees shall first be registered as a mortgage broker with the Commissioner.

Statutory Authority G.S. 53-234(6)(a); 53-241.

.0303 EXPERIENCE REQUIREMENTS FOR MORTGAGE BANKERS

(a) A mortgage banker shall, at all times, comply with the following experience requirements:

- (1) If the mortgage banker is a sole proprietor, he shall have at least three years of experience in residential mortgage lending;
- (2) If the mortgage banker is a general or limited partnership, at least one of its general partners shall have the experience set forth in Subparagraph (a)(1) of this Rule;
- (3) If the mortgage banker is a corporation, at least one of its principal officers shall have the experience set forth in Subparagraph (a)(1) of this Rule.

(b) Mortgage bankers which are registered with the Commissioner on the date this Rule becomes effective shall have until January 1, 1997 to meet the requirements of this Rule.

Statutory Authority G.S. 53-236(b); 53-237(a); 53-241.

.0304 EXPERIENCE REQUIREMENTS FOR MORTGAGE BROKERS

(a) A mortgage broker shall, at all times, comply with the following experience requirements:

- (1) If the mortgage broker is a sole proprietor, he must have at least three years

of experience in brokering residential mortgage loans or residential mortgage lending;

(2) If the mortgage broker is a general or limited partnership, at least one of its general partners shall have the experience set forth in Subparagraph (a)(1) of this Rule;

(3) If the mortgage broker is a corporation, at least one of its principal officers shall have the experience set forth in Subparagraph (a)(1) of this Rule.

(b) Mortgage brokers which are registered with the Commissioner on the date this Rule becomes effective shall have until January 1, 1997 to meet the experience requirements of this Rule.

Statutory Authority G.S. 53-236(b); 53-237(a); 53-241.

.0305 ISSUANCE OF CERTIFICATE OF REGISTRATION

(a) Upon receipt of a completed application and compliance with Section .0200 and Rules .0303 and .0304 of this Subchapter, and payment of the fees required by G.S. 53-236 and G.S. 53-242, the Commissioner shall investigate the applicant pursuant to G.S. 53-237. If the Commissioner finds the applicant has met the provisions of G.S. 53-237, the Commissioner shall register the applicant as either a mortgage broker or a mortgage banker.

(b) The Certificate of Registration shall become void if the registrant does not engage in business as a mortgage banker or mortgage broker within 60 days of receipt of the Certificate of Registration.

Statutory Authority G.S. 53-236; 53-237(a); 53-241; 53-242.

.0306 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION

(a) A Certificate of Registration shall be neither transferable nor assignable.

(b) The circumstances under which the Commissioner shall deem a change in the registrant's organizational structure to constitute a transfer or assignment of the Certificate of Registration shall include, but not be limited to, the following:

(1) If the registrant is a corporation:

(A) A change in ownership of 50% or more of the registrant's stock;

(B) The conversion of the corporation into a general or limited partnership or

sole proprietorship;

(2) If the registrant is a general or limited partnership:

(A) A change in one of the registrant's general partners;

(B) The conversion of the general partnership into a limited partnership, corporation or sole proprietorship;

(C) The conversion of the limited partnership into a general partnership, corporation or sole proprietorship;

(3) If the registrant is a sole proprietor:

(A) The conversion of the sole proprietorship into a general or limited partnership or corporation;

(B) The sale of all of the assets of the registrant's business to another person.

(c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the Certificate of Registration shall become void and the registrant shall surrender its Certificate of Registration to the Commissioner within 30 days of such change. If the entity which results from the change in the registrant's organizational structure would like to engage in business as a mortgage banker or mortgage broker in this State, it shall apply for a Certificate of Registration pursuant to Rule .0301 of this Section.

Statutory Authority G.S. 53-237(c); 53-241.

SECTION .0400 - OPERATIONS

.0401 ANNUAL REGISTRATION FEE

(a) On or before December 31 of each year, each registrant shall pay the annual fee set forth in G.S. 53-242.

(b) Failure of a registrant to pay the annual fee within 30 business days of the date specified in Paragraph (a) of this Rule shall be grounds for revocation of its registration pursuant to G.S. 53-239(c).

Statutory Authority G.S. 53-239(c); 53-241; 53-242.

.0402 ANNUAL STATEMENT

(a) No later than 90 days after the end of the registrant's accounting period, it shall file an annual statement which shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(c) of this Subchapter.

(b) The annual statement referenced in Paragraph (a) of this Rule shall include a Statement of

Financial Condition (balance sheet) for the previous accounting period reflecting a minimum net worth and liquidity as set forth in Rules .0201, .0202 and .0203 of this Subchapter.

(c) If there is any evidence that the Statement of Financial Condition (balance sheet) referenced in Paragraph (b) of this Rule is inaccurate, incomplete or misleading, the Commissioner shall require the registrant to submit an audited Statement of Financial Condition (balance sheet).

(d) The annual statement shall be in writing and be verified by the oath of the registrant.

(e) Failure of a registrant to submit an annual statement in the manner required by this Rule shall be grounds for revocation of its registration pursuant to G.S. 53-239(c).

Statutory Authority G.S. 53-239(c); 53-241.

.0403 SEGREGATION OF FEES

(a) A mortgage broker and a mortgage banker that engages in tablefunding but does not engage in any other mortgage banking activity shall immediately deposit all third-party fees and refundable fees in a segregated account in a federally insured financial institution. The account shall be in the name of the registrant. The account shall be used exclusively for third-party fees and refundable fees.

(b) For purposes of this Rule "immediately" means within seven business days of receipt of the funds.

Statutory Authority G.S. 53-238; 53-241.

.0404 REFUNDS

If refunds are due, such refunds shall be made no later than 30 business days after an application for a loan is terminated for any reason or no later than 30 business days after the closing of the loan.

Statutory Authority G.S. 53-238(5); 53-238(6); 53-241.

.0405 RECORD AND BOOKKEEPING REQUIREMENTS

(a) A registrant shall maintain books and records which shall include, at a minimum, the following:

(1) A record, such as a cash receipts journal, of all monies received in connection with each mortgage loan showing at least:

- (A) Identity of payor,
- (B) Date received,
- (C) Amount received,

(D) Description of the purpose of payment,

(E) Identification of the loan to which the receipt relates, if any;

(2) A sequential listing of checks written for each bank account relating to the registrant's business as a mortgage broker or mortgage banker, such as a cash disbursements journal, showing at least:

(A) Payee,

(B) Amount,

(C) Date,

(D) Purpose of payment, including identification of the loan to which it relates, if any;

(3) A file for each mortgage loan containing:

(A) Name of applicant,

(B) Date of application,

(C) Employee processing the application,

(D) Compensation received by registrant,

(E) Copies of all agreements or contracts with the applicant including commitment and lock in agreements, where applicable,

(F) All contracts, agreements and escrow instructions to or with any depository,

(G) Documents showing compliance with applicable State and Federal law, rules and regulations;

(4) Samples of each piece of advertising relating to the registrant's business of mortgage brokerage or mortgage banking in North Carolina;

(5) If the registrant is a corporation, general or limited partnership, copies of the following:

(A) Articles of Incorporation or General or Limited Partnership Agreement,

(B) Corporate or partnership minutes, if required by law,

(C) Annual reports, if required by law.

(b) All records required by Paragraph (a) of this Rule shall be kept for a period of at least three years, and shall be available upon 72 hours notice by the Commissioner. Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner. However, books and records kept in this manner shall be convertible into clearly legible, tangible documents within 72 hours of request

by the Commissioner. This time period shall be extended for an additional reasonable time by the Commissioner if the registrant demonstrates to the satisfaction of the Commissioner that it cannot provide the records requested within 72 hours of request.

(c) All records required by Paragraph (a) of this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.

(d) A registrant shall notify the Commissioner of any change in the location of its books and records.

Statutory Authority G.S. 53-238; 53-239; 53-241.

.0406 DISPLAY OF CERTIFICATE OF REGISTRATION

(a) A registrant shall post its Certificate of Registration in plain view of customers at its principal office, each of its branch offices in this State and any branch offices outside of this State at which mortgage loans are originated or made on residential real property as defined in G.S. 53-234(1) and (2).

(b) A registrant shall notify the Commissioner of a change in the name under which it operates or the address of its principal office and any branch office as set forth in Paragraph (a) of this Rule. The notification shall be made at least 30 business days prior to the effective date of such change, shall provide the new name or address and shall be accompanied by a certificate reissuance fee of twenty-five dollars (\$25.00) payable to the Commissioner. Upon receipt of a Certificate of Registration which contains the new address, a registrant shall surrender its former Certificate of Registration to the Commissioner.

Statutory Authority G.S. 53-122(3); 53-234(1); 53-234(2); 53-237(c); 53-241.

SECTION .0500 - REPORTING AND NOTIFICATION REQUIREMENTS

.0501 AMENDMENTS TO APPLICATION

A registrant shall maintain a current application with the Commissioner. If the information contained in the application changes in any material respect, the registrant shall notify the Commissioner within 30 business days of the effective date of such change. Notification to the Commissioner shall be accomplished either by letter or by revision of the applicable pages of the application filed pursuant to Rule .0301 of this Subchapter. If the

registrant elects to comply with this Rule by revising its application, it shall obtain the applicable pages of the application from the Commissioner. For the purposes of this Rule, the term "material" shall mean any information which would be likely to influence the granting of a Certificate of Registration. The term "material" shall include information concerning changes in the registrant's corporate officers, partners, or business structure. It shall also include changes in the address of the registrant's main or branch offices and any names under which the registrant operates.

Statutory Authority G.S. 53-241.

.0502 WITHDRAWAL/TERMINATION/REGISTRATION/MTGE BANKER/MTGE BROKER

(a) A registrant shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State within three business days of such decision.

(b) A registrant shall surrender its Certificate of Registration to the Commissioner no later than 30 business days after it has ceased operations in this State.

Statutory Authority G.S. 53-241.

.0503 IMPAIRMENT OF MINIMUM NET WORTH, LIQUIDITY OR SURETY BOND

(a) A registrant shall immediately notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth or liquidity requirements of Rules .0201, .0202 or .0203 of this Subchapter.

(b) A registrant shall immediately notify the Commissioner in writing of any cancellation or suspension of the surety bond required by Rule .0204 of this Subchapter.

(c) For the purposes of this Rule, immediately means within three business days of discovery of the failure to meet the minimum net worth, liquidity and bonding requirements of Rules .0201, .0202, .0203, .0204 of this Subchapter.

Statutory Authority G.S. 53-236(b); 53-241.

SECTION .0600 - PROHIBITED ACTS AND PRACTICES; INVESTIGATIONS

.0601 PROHIBITED CONDUCT AND PRACTICES

(a) For the purposes of G.S. 53-238(1) and (2),

the terms "material facts," and "material factors, terms or conditions" shall mean any term, fact, factor or condition which is likely to influence, persuade or induce an applicant for a mortgage loan to take a particular action.

(b) For the purposes of G.S. 53-238(6), acts and practices of a registrant which shall be deemed not in "good faith" or "fair dealing" shall include the following:

- (1) The failure to make a good faith effort to issue commitments and effect closing in a timely manner;
- (2) The failure to provide any of the disclosures in the manner and at the times required by this Subchapter;
- (3) The failure to disburse funds in accordance with a commitment to make a mortgage loan which is accepted by the applicant;
- (4) To conduct business with an entity which it knows is an unregistered mortgage broker or mortgage banker;
- (5) To accept any fees at closing which were not disclosed in accordance with this Subchapter.

Statutory Authority G.S. 53-238; 53-241.

.0602 SOLICITATION AND ADVERTISING

(a) A registrant shall not advertise mortgage loan products unless it will make such products available to a reasonable number of qualified applicants responding to the advertisement on the date that it appears or the registrant's next business day. Nothing in this Paragraph shall require a registrant to make a loan to an unqualified applicant.

(b) No registrant shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement. Conduct which shall be deemed fraudulent, deceitful or misleading shall include the following:

- (1) The advertisement of immediate approval of a loan application or immediate closing of a loan;
- (2) The advertisement of a no-point mortgage loan when points are a condition for commitment or closing;
- (3) The advertisement of an intentionally incorrect number of points;
- (4) The advertisement that an applicant will have unqualified access to credit without disclosing material limitations on the availability of credit, such as the

percentage of down payment required, that a higher interest rate or points may be required, or that restrictions as to the maximum principal amount of the loan offered may apply;

- (5) The advertisement of a specific time period within which a commitment will be issued unless a commitment will be issued to a qualified applicant within the time period specified;
- (6) The advertisement of a mortgage loan where a prevailing rate is indicated in the advertisement, unless the advertisement specifically states that the expressed rate may change or not be available at commitment or closing.

Statutory Authority G.S. 53-238; 53-241.

.0603 EXAMINATIONS, INVESTIGATION

The Commissioner or his designee may examine or investigate a registrant when the Commissioner has reasonable grounds to believe that a registrant has violated any law or regulation of this State, the Federal government or any agency thereof.

Statutory Authority G.S. 53-238; 53-239; 53-240; 53-241.

.0604 ENFORCEMENT ACTIONS

(a) The grounds upon which the Commissioner may either revoke or suspend a registrant's Certificate of Registration shall include the following:

- (1) The making of any false statement in an application for registration, if the false statement would have been grounds for the denial of the application; or
- (2) The making of any false statement on any form or document requested by the Commissioner; or
- (3) One or more violations of the Registration of Mortgage Bankers and Brokers Act or provisions of this Subchapter; or
- (4) The conviction of any crime which would have a bearing upon the fitness or ability of the registrant to conduct its business; or
- (5) The commission of any action which involves dishonesty, fraud or misrepresentation. This Subparagraph shall not be construed to apply to bonafide errors.

(b) The Commissioner shall not revoke or suspend the license of a registrant without first providing the registrant with notice and an oppor-

tunity to be heard pursuant to G.S. 150B and 4 NCAC 3B .0200, et seq.

Statutory Authority G.S. 53-238; 53-239; 53-241.

.0605 HEARINGS

All hearings conducted pursuant to this Subchapter and/or the Registration of Mortgage Bankers and Brokers Act shall proceed in accordance with G.S. 150B and 4 NCAC 3B .0200, et seq. The Commissioner may subpoena witnesses at all such hearings.

Statutory Authority G.S. 53-239; 53-241.

SECTION .0700 - DISCLOSURE REQUIREMENTS

.0701 CONFLICTS OF INTEREST

(a) A registrant has a conflict of interest if it provides the borrower with additional products or services under any of the following circumstances:

- (1) The registrant or its subsidiary or parent owns, controls or holds with the power to vote 10% or more of any class of equity securities or other beneficial interest of any person providing the additional products or services; or
- (2) The person providing the additional products or services owns, controls or holds with the power to vote 10% or more of any class of equity securities or other beneficial interest of the registrant, its subsidiary or parent; or
- (3) The same person owns, controls or holds with the power to vote 10% or more of any class of equity securities or other beneficial interest of both the registrant and the person providing the additional products or services; or
- (4) One or more persons is an officer or director of both the registrant and the person providing the additional products or services.

(b) A registrant which has a conflict of interest as specified in Paragraph (a) of this Rule shall disclose the conflict of interest to the borrower in writing at the time it offers additional products or services.

(c) The registrant shall inform the borrower in writing that it may receive a financial benefit as a result of the conflict of interest.

(d) The registrant shall inform the borrower in writing that he may choose alternative sources to provide the required services.

Statutory Authority G.S. 53-238; 53-241.

.0702 MORTGAGE BROKER APPLICATION DISCLOSURES

(a) This Rule shall apply to mortgage brokers and mortgage bankers that engage in tablefunding, but do not engage in any other mortgage banking activity.

(b) At or prior to acceptance of the application, application fee or third-party fee, whichever shall occur first, the registrant shall disclose the following information in writing:

- (1) That it does not fund mortgage loans;
- (2) That it cannot guarantee acceptance into any particular loan program, nor can it guarantee any specific loan terms or conditions;
- (3) The amount of the application fee, and the terms or conditions of refund, if any.

(c) Within three business days after the application is received or prepared, the registrant shall disclose the following information in writing by delivering it or placing it in the mail to the loan applicant:

- (1) A good faith estimate of all settlement costs;
- (2) The specific services which will be provided or performed for the application fee and a description of the costs of each service;
- (3) The maximum points or fees of any nature, however denominated, including premium pricing, payable to the registrant by the lender and any fees or points, however denominated, to be paid by the applicant directly to the registrant. In those instances where fees and points are paid from the loan proceeds and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included to the effect that such points and fees are costs for obtaining the loan which the borrower may be obligated to repay with interest over the term of the mortgage loan. Alternatively, in those instances where fees and points are paid directly to the registrant at or before closing and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included to the effect that such points and fees are costs for obtaining the loan and that they are an addition to the amount

which the borrower will actually receive from the loan;

- (4) Any premiums or bonuses to be paid to the registrant by the mortgage banker or exempt organization and/or the basis of its eligibility to receive premiums or bonuses.

(d) If applicable, the fact that fees are being divided between more than one mortgage broker and/or mortgage banker and/or exempt organization and the dollar amount or the percentage of such fees. If such fees cannot be determined precisely, a good faith estimate of such fees shall be provided.

(e) Any third-party fees collected in excess of the actual cost shall be returned at or prior to closing.

(f) Some or all of the disclosures required by Paragraphs (a) and (b) of this Rule may appear on forms used to comply with applicable State and Federal laws, rules or regulations or, at the option of the registrant, may be made as separate disclosures.

(g) The registrant shall provide each applicant with a copy of the application upon request. Where both a husband and wife apply jointly for a mortgage loan, the registrant may provide only one copy of the application to either spouse.

(h) Nothing in this Rule shall be construed to prohibit the acceptance of telephone applications provided that the applicant, upon request, is given the opportunity to review the information he orally submits within 10 business days of the telephone application and provided further that the applicant receives the appropriate disclosures as set forth in this Rule.

Statutory Authority G.S. 53-238; 53-241.

.0703 MORTGAGE BANKER APPLICATION DISCLOSURES

(a) This Rule shall not apply to mortgage bankers that engage in tablefunding, but do not engage in any other mortgage banking activity.

(b) Prior to the acceptance of an application, application fee or third-party fee, whichever shall occur first, a mortgage banker shall disclose the following in writing:

- (1) The amount of the application fee, if any;
- (2) Whether the application fee or any third-party fee is refundable. For all refundable fees, the mortgage banker shall disclose the terms and conditions of refund.

(c) Within three business days after the application is received or prepared, the mortgage banker shall disclose in writing the mortgage banker's good faith estimate of settlement costs by delivering it or placing it in the mail to the loan applicant.

(d) Any third-party fees collected in excess of their actual cost shall be returned at or prior to closing.

(e) Some or all of the disclosures required by Paragraph (a) of this Rule may appear on forms used to comply with applicable State or Federal laws, rules or regulations or, at the option of the mortgage banker, may be made as separate disclosures.

(f) A mortgage banker shall provide each applicant with a copy of his application upon request. Where a married couple applies jointly for a mortgage loan, the registrant may provide only one copy of the application to either spouse.

(g) Nothing in this Rule shall be construed to prohibit the acceptance of telephone applications provided that the applicant, upon request, is given the opportunity to review the information he orally submits within 10 business days of the telephone application and provided further that the applicant receives the appropriate disclosures as set forth in this Rule.

Statutory Authority G.S. 53-238; 53-241.

.0704 DISCLOSURE ARRANGEMENTS BETWEEN MORTGAGE BANKERS/MORTGAGE BROKERS

If a mortgage loan involves more than one registered mortgage banker or mortgage broker, the registrants shall agree among themselves as to which shall comply with the disclosure and other requirements imposed under Rules .0702 and .0703 of this Section consistent with applicable Federal and State law, rules and regulations. In the absence of agreement, all such registrants shall be liable therefor.

Statutory Authority G.S. 53-241.

.0705 COMMITMENT DISCLOSURES

(a) At the issuance of a commitment, or acceptance of a commitment fee, or within three days after the application has been received or prepared, whichever is later, a mortgage banker shall disclose the following information in writing by delivering it or placing it in the mail:

- (1) The following terms and conditions of the commitment:

- (A) The amount of the commitment fee, if any.
- (B) Whether the commitment fee is refundable and the terms and conditions of refund.
- (C) The time during which the commitment is irrevocable and may be accepted by the borrower.
- (D) The expiration date of the commitment.
- (E) The amount of fees and charges payable at the time of commitment, if applicable.
- (2) The following terms and conditions of the mortgage loan:
 - (A) Identification of the entity which will fund the loan.
 - (B) Identification of the borrower(s).
 - (C) Identification of the property securing the loan.
 - (D) Principal amount of the loan.
 - (E) Term of the loan.
 - (F) Interest rate of the loan expressed as an annual percentage rate as of the date of closing, with a disclaimer that, should the closing date not be met, the annual percentage rate may vary slightly. The annual percentage rate shall be calculated as provided in the Truth In Lending Act (15 USC 1606) and Regulation Z (12 CFR Part 226.22).
 - (G) Initial monthly payment of principal and interest and monthly payment of principal and interest where different from the initial monthly payment of principal and interest.
 - (H) Where applicable, a statement that a balloon payment will be required.
 - (I) If the loan is an adjustable rate loan, in addition to the foregoing, the mortgage banker shall disclose the frequency of change, the index, the margin and any relevant caps.
 - (J) Where the commitment is a prevailing rate commitment, the index and margin, if any, upon which the rate for the loan will be based.
 - (K) Where applicable, a statement that private mortgage insurance will be required.
 - (L) Where applicable, a statement that negative amortization may apply.
 - (M) Whether and under what conditions the loan is assumable.
 - (N) Where applicable, a statement that funds are to be escrowed.
 - (O) The total points to be accepted directly or indirectly by or on behalf of the mortgage banker at, prior to or after closing.
 - (P) The mortgage banker shall separately identify the points, including premium pricing, payable by the lender to a mortgage broker or a mortgage banker. Upon receipt of a copy of the separate fee agreement between the mortgage broker and the applicant, the mortgage banker shall disclose any fees or points to be paid by the applicant directly to the mortgage broker. In instances where mortgage brokerage fees and points are paid from the loan proceeds and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included which states that such points and fees are costs of obtaining the loan which the borrower may be obligated to repay with interest over the term of the loan. Alternatively, in instances where mortgage brokerage fees and points are paid directly to the mortgage broker in full at or before the closing and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included which states that such points and fees are costs of obtaining the loan and that they are an addition to the amount which the borrower will actually receive for the loan.
 - (Q) The mortgage banker shall separately identify any premiums or bonuses to be paid to the mortgage broker or mortgage banker that engages in tablefunding, but does not engage in any other mortgage banking activity.
 - (R) No points, however denominated by the mortgage banker, may be required by the mortgage banker as a condition for closing a mortgage loan if they have not been previously disclosed pursuant to this Rule.
- (3) All conditions precedent to closing, including the following, if applicable:
 - (A) Title report and title insurance.
 - (B) Property survey.
 - (C) Copy of certificate of occupancy for

use,

(D) Satisfactory final inspection (if new construction).

(E) Evidence of hazard insurance.

(b) A commitment fee and any points accepted by a mortgage banker prior to closing must be refunded in full if an applicant who has provided complete and correct credit information as required by the application form is rejected as not credit worthy.

(c) Every mortgage banker shall provide each applicant with a written commitment which incorporates the items listed in Paragraph (a) of this Rule. However, in cases where a mortgage broker which is an exclusive agent of the mortgage banker agrees to prepare the Good Faith Estimate of Settlement Costs pursuant to Regulation X, the mortgage banker need not disclose terms and provisions pursuant to Paragraph (a) of this Rule which have already been disclosed on the Good Faith Estimate of Settlement services.

(d) A mortgage banker shall provide each applicant with a copy of the commitment. If the applicant is a married couple, the mortgage banker may provide only one copy to either spouse.

(e) The items required to be disclosed by Paragraph (a) of this Rule may be incorporated into the commitment or into one or more forms required by State or Federal law, rules and regulations, or such items may be contained in a separate form.

(f) Any additional settlement costs, documents or other items required to close the loan which are found to be necessary after the commitment has been issued shall be disclosed to the applicant in writing within three business days of the discovery of the need for such items.

Statutory Authority G.S. 53-238; 53-241.

.0706 MORTGAGE LOCK-IN AGREEMENT

(a) If the applicant chooses to lock in an interest rate, prior to the acceptance of payment for any points or a lock-in fee, or within three business days after the application has been prepared or received, whichever is later, a mortgage banker shall provide the applicant with a written lock-in agreement signed by the mortgage banker and the applicant. The lock-in agreement shall contain the following information:

- (1) The term of the loan.
- (2) The interest rate and any points.
- (3) The expiration of the lock-in period.
- (4) The lock-in fee.
- (5) Where applicable, the commitment fee

locked in,

(6) Whether the lock-in or commitment fee is refundable and the terms and conditions of refund.

(7) The source of the funding of the loan.

(b) The length of the lock-in period shall be a time period within which the mortgage banker can reasonably expect to close the loan given the prevailing market conditions at the time of the lock in.

(c) Nothing contained herein shall be construed to prohibit a mortgage broker from accepting a lock-in fee for transmittal to a mortgage banker or exempt organization prior to the issuance by the mortgage banker or exempt organization of a commitment, provided that prior to acceptance of a lock-in fee:

(1) The mortgage broker provides the applicant with a lock-in agreement executed by the mortgage banker which conforms with the requirements of Paragraph (a) of this Rule;

(2) The lock-in fee is made payable by the applicant to the mortgage banker or exempt organization. A mortgage broker may only accept a lock-in fee for transmittal to the mortgage banker or exempt organization.

(d) The items required to be disclosed by Paragraph (a) of this Rule may be incorporated into the lock-in agreement or into one or more forms required by State and Federal law, rules and regulations.

(e) A lock-in fee, including any points accepted by the mortgage banker prior to closing, shall be refunded in full if an applicant who provides complete and correct information as required by an application is rejected as not credit worthy.

Statutory Authority G.S. 53-238; 53-241.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Cemetery Commission intends to adopt rule cited as 4 NCAC 5C .0308.

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

*Instructions on How to Demand a Public Hearing:
Send written notice demanding a hearing within 15 days of the publication date to the North Carolina*

*Cemetery Commission, 1100 Navaho Drive, GL-2,
Raleigh, NC 27609.*

R*Reason for Proposed Action: The proposed rule requiring the salesperson to put their sales license number on the sales contract would allow the Commission staff to better monitor salespeople.*

C*Comment Procedures: Written comments may be sent to the North Carolina Cemetery Commission, 1100 Navaho Driver, GL-2, Raleigh, NC 27609.*

CHAPTER 5 - CEMETERY COMMISSION

SUBCHAPTER 5C - LICENSING

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPEOPLE

.0308 CONTRACT IDENTIFICATION

Each contract for the sale of interment rights, merchandise and services shall contain the name and license number of the salesperson witnessing the signature of the purchaser on the contract.

Statutory Authority G.S. 65-49; 65-58.

* * * * *

N*otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Ports Authority intends to repeal rules cited as 4 NCAC 13A .0103 - .0104 and amend rule cited as 13E .0901.*

T*he proposed effective date of this action is November 1, 1993.*

I*nstructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice):
By mailing a request for public hearing to Thomas J. Green, Jr. at: Post Office Box 9002, 2202 Burnett Blvd.,
Wilmington, N.C. 28402 on or before August 31, 1993.*

R*Reason for Proposed Action:*

4 NCAC 13A .0103 - .0104 - Rules not required.

4 NCAC 13E .0901 - To update State Ports Authority traffic laws and reflect changes in State Ports Authority operations.

C*omment Procedures: Comments may be made in writing to Thomas J. Green, Jr., N.C. State Ports Authority, P. O. Box 9002, Wilmington, N.C. 28402 on or before September 15, 1993.*

CHAPTER 13 - STATE PORTS AUTHORITY

SUBCHAPTER 13A - DEPARTMENTAL RULES AND GENERAL PROVISIONS

SECTION .0100 - ORGANIZATION OF STATE PORTS AUTHORITY

.0103 BOARD OF STATE PORTS AUTHORITY AND SECRETARY OF ECD

(a) ~~The board of the State Ports Authority consists of the following members:~~

- ~~(1) seven members appointed by the Governor;~~
- ~~(2) two members appointed by the General Assembly upon the recommendation of the Speaker of the House;~~
- ~~(3) two members appointed by the General Assembly upon the recommendation of the President of the Senate;~~

~~(b) The board establishes policy for the accomplishment of the functions of the Ports Authority and performs any functions assigned by statute.~~

~~(c) The Secretary of Commerce with the approval of the Ports Authority appoints management personnel. The Secretary of Commerce or his designee appoints other employees, dismisses and fixes compensation of such other employees as he deems necessary to carry out the purposes of the Ports Authority.~~

Statutory Authority G.S. 143B-452; 143B-453; 143B-454.

.0104 EXECUTIVE DIRECTOR

~~The executive director is appointed by the Secretary of Commerce with the approval of the Ports Authority. The executive director operates and manages the ports in accordance with the directions and policies of the Board of the State Ports Authority. The executive director also recommends policies and actions to the board for its consideration.~~

Statutory Authority G.S. 143B-454(5).

SUBCHAPTER 13E - SECURITY AND SAFETY

SECTION .0900 - SCHEDULES

.0901 WILMINGTON ORDINANCE SCHEDULES

(a) ~~The following schedule lists maximum speed limits for specified streets in the Wilmington Terminal:~~

<u>NAME OF STREET</u>	<u>MAXIMUM SPEED LIMIT</u>
Myers Boulevard	20 MPH
Woodbine Street	20 MPH
Warehouse Road	20 MPH
Industrial Road	20 MPH
Commerce Street	20 MPH
Crescent Street	20 MPH
First Street	20 MPH
Second Street	20 MPH
Third Street	20 MPH
Fourth Street	20 MPH
Fifth Street	20 MPH
Maritime Boulevard	20 MPH
Sixth Street	20 MPH
Seventh Street	20 MPH
Eighth Street	20 MPH
Ninth Street	20 MPH
Tenth Street	20 MPH
Eleventh Street	20 MPH
Twelfth Street	20 MPH
Thirteenth Street	20 MPH
Fourteenth Street	20 MPH
<u>All Streets</u>	<u>15 MPH</u>

Inside all Transit and

Storage Buildings

10 MPH

All Open Berth Areas

15 MPH

(b) The following schedule lists the locations of stop signs in the Wilmington Terminal:

Myers Boulevard at North Gate House.

~~West side of Transit Road at intersection of Warehouse Road.~~

Northeast corner of Warehouse Road and First Street.

Northwest corner of Warehouse Road and Fourth Street.

~~Northwest corner of Fifth Street and Industrial Road.~~

~~Southeast corner of Fifth Street and Industrial Road.~~

~~Northwest corner of Maritime Boulevard and Industrial Road.~~

~~Southeast corner of Maritime Boulevard and Industrial Road.~~

Southeast corner of Maritime Boulevard and Transit Road.

Northwest corner of Maritime Boulevard and Fifth Street.

Southeast corner of Maritime Boulevard and Commerce Street.

Maritime Boulevard at Gate House.

Northeast corner of Industrial Road and Sixth Street.

Southwest corner of Commerce Street and Sixth Street.

Southwest corner of Industrial Road and Seventh Street.

Southeast corner of Warehouse Road and Seventh Street.

Northeast corner of Warehouse Road and Eighth Street.

Southwest corner of Industrial Road and Eighth Street.

Northeast corner of Industrial Road and Crescent Street.

Northeast corner of Warehouse Road and Ninth Street.

Southwest corner of Industrial Road and Ninth Street.

Northeast corner of Industrial Road and Tenth Street.

Northwest corner of Crescent Street and Tenth Street.

Southwest corner of Commerce Street and Tenth Street.

Northeast corner of Warehouse Road and Eleventh Street.

Southwest corner of Industrial Road and Eleventh Street.

Northeast corner of Sixth Street and Industrial Road.

Southeast corner of Eleventh Street and Industrial Road.

Northeast corner of Industrial Road and Commerce Street.

Northeast corner of Industrial Road and Maritime Blvd.

Southwest corner of Industrial Road and Maritime Blvd.

Northeast corner of Fourth Street and Industrial Road.

Southwest corner of Fourth Street and Industrial Road.

Northwest corner of South Warehouse Road and Maritime Blvd.

Southeast corner of South Warehouse Road and Fourth Street.

Northwest corner of Warehouse Road and Third Street.

Southeast corner of Warehouse Road and Third Street.

Northwest corner of Woodbine Street and Transit Road.

Northeast corner of Industrial Road and Fifth Street.

Southeast corner of Warehouse Road and Transit Road.

(c) The following schedule lists the locations of yield signs in the Wilmington Terminal:

~~Northwest corner of Transit Road and Woodbine Street.~~

Southeast corner of Transit Road and RR Scale Road.

Southwest corner of Transit Road and No. 1 Ramp.

Southwest corner of Transit Road and No. 2 Ramp.

Northeast corner of Transit Road and Second Street.

Southwest corner of Warehouse Road and Second Street.

Southwest corner of Transit Road and No. 3 Ramp.

Northeast corner of Transit Road and Third Street.

~~Southwest corner of Warehouse Road and Third Street.~~

Northwest corner of Industrial Road and Third Street.

Southwest corner of Transit Road and No. 4 Ramp.
 Northeast corner of Transit Road and Fourth Street.
~~Southwest corner of Industrial Road and Fourth Street.~~
~~Northeast corner of Industrial Road and Fourth Street.~~
 Southwest corner of Transit Road and No. 5 Ramp.
 Southwest corner of Transit Road and No. 6 Ramp.
 Northeast corner of Transit Road and Maritime Boulevard.
 West Exit of Parking Lot at Maritime Boulevard and Industrial Road.
 Southwest corner of Transit Road and No. 7 Ramp.
 Northeast corner of Transit Road and Seventh Street.
 Northwest corner of Warehouse Road and Commerce Street.
 Northwest corner of Industrial Road and Commerce Street.
 Southeast corner of Fifth Street and Industrial Road.
 Southeast corner of Industrial Road and Twelfth Street.

- (d) The following schedule lists the locations of railroad warning signs in the Wilmington Terminal:

North side of Transit Road and North Gate Crossing.
 South side of Transit Road at North Gate Crossing.
 North side of Transit Road at intersection of Warehouse Road.
 South side of Transit Road at intersection of Warehouse Road.
 East side of Warehouse Road at intersection of Transit Road.
 Northwest corner of Third Street and Industrial Road.
 Southeast corner of Third Street and Warehouse Road.
 Northwest corner of Fourth Street and Industrial Road.
 South side of Fourth Street south of Cargo Shelter No. 1.
 West side of Transit Road at Lumber Ramp Crossing.
 East side of Transit Road at Lumber Ramp Crossing.
 North side of Maritime Boulevard at East Lumber Yard Crossing.
 South side of Maritime Boulevard at East Lumber Yard Crossing.
 South side of Maritime Boulevard at Main Gate Crossing.
 North side of Maritime Boulevard at Main Gate Crossing.
 South side of Industrial Road at Twelfth Street Crossing.
 North side of Industrial Road at Twelfth Street Crossing.

- (e) The following schedule lists the locations of no thru traffic signs in the Wilmington Terminal:

Southwest corner of Warehouse Road and First Street.
 Northeast corner of Warehouse Road and Fourth Street.
 Warehouse Road.
 Inside all transit and storage buildings.

- (f) The following schedule lists the locations of do not enter signs in the Wilmington Terminal:

Southwest corner of Transit Road and RR Scale Road.

- (g) The following schedule lists parking ordinances in the Wilmington Terminal:

- (1) The following schedule lists the locations of no parking between signs areas:

Southwest corner of Transit Road and Ramp No. 1 to west side of Transit Road opposite loading door No. 6 of Transit Shed No. 1.
 West side of Transit Road opposite loading door No. 4 of Transit Shed No. 2, to Northwest corner of Transit Road and Ramp No. 2.
 East side of Transit Road from North end of Warehouse No. 3 to North side of Personnel Office.
 East side of Transit Road from South side of Personnel Office to Northeast corner of Transit Road and Second Street.
 Southeast corner of Transit Road and Second Street to East side of Transit Road opposite loading door No. 4 in Warehouse No. 1.
 Southeast corner of Transit Road and Third Street to Northeast corner of Transit Road and Fourth Street.
 Southeast corner of Transit Road and Maritime Boulevard to Northeast corner of Transit Road and Seventh Street.
 Southwest corner of Warehouse Road and Third Street to Northwest corner of Warehouse Road and

Fourth Street.

Southeast corner of Warehouse Road and Third Street to Northeast corner of Warehouse Road and Fourth Street.

- (2) The following schedule lists the areas in which parking is prohibited and no parking signs will be erected:

Northwest corner of Eleventh Street.

Northwest corner of Ninth Street.

South corner of Transit Shed Number 4.

Northwest corner of Maritime Boulevard.

- (h) The following schedule lists the areas in which smoking is prohibited in the Wilmington Terminal:

- (1) Smoking is prohibited in all areas west of the railroad tracks along Transit Road and on the South Open Berth. Smoking will be permitted only within designated smoking areas.

- (2) Smoking is also prohibited in Storage Warehouses 1, 2, 3, and 4 and Cargo Shelter 1 and signs are posted in the following locations:

North and South ends of East and West sides of Transit Shed 1.

North and South ends of East and West sides of Transit Shed 2.

North and South ends of East and West sides of Transit Shed 3.

North and South ends of East and West sides of Transit Shed 4.

North and South ends of East and West sides of Warehouse 1.

North and South ends of East and West sides of Warehouse 2.

North and South ends of East and West sides of Warehouse 3.

North and South ends of East and West sides of Warehouse 4.

North and South ends of Cargo Shelter 1.

- (i) The following schedule lists streets in the Wilmington Terminal which are one way:

Twelfth Street is limited to one-way traffic with such traffic moving from Industrial Road eastbound to Pennsylvania Avenue.

Tenth Street is limited to one-way traffic west bound from Commerce Street to Industrial Road.

Commerce Street is limited to one way traffic east bound from Industrial Road to Tenth Street.

Inbound traffic on the south gate access road is limited to one way traffic west bound from the south gate to Industrial Road.

The south gate exit road is limited to one-way traffic east bound from Industrial Road to the River Road.

- (j) The following schedule lists parking regulations in effect on the North Carolina Maritime Building -- Wilmington facility:

- (1) The three parking areas adjacent to the North Carolina Maritime Building, 2202 Burnett Boulevard, Wilmington, N.C., and identified as parking areas one, two and three are restricted as follows:

- (A) Parking area number one immediately north of the North Carolina Maritime Building shall be by assignment only. The executive director is hereby authorized to make assignments to individuals or companies for the parking of automobiles in this area.

- (B) Parking area number two paralleling the driveway immediately east of the North Carolina Maritime Building is restricted to visitors to the North Carolina Maritime Building.

- (C) Parking area number three to the south of the North Carolina Maritime Building is restricted to employees of the Ports Authority or employees of tenants on the Port Authority's premises or visitors and guests of the Ports Authority or its tenants.

- (2) Vehicles parked in violation of the foregoing regulations may be towed away at the owner's expense.

Statutory Authority G.S. 143B-461.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Aging intends to

amend rules cited as 10 NCAC 22G .0504 - .0506, .0509 - .0510; adopt rules cited as 10 NCAC 22G .0512 - .0515; 22S .0101 - .0102, .0201 - .0202, .0301 - .0303, .0401 - .0404, .0501 - .0503, .0601 - .0603, .0701 - .0706, .0801 - .0803; and repeal rules cited as 10 NCAC 22G .0508, .0511.

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

The public hearing will be conducted at 2:00 p.m. on August 31, 1993 at the Division of Aging, 693 Palmer Drive, Room 127, Raleigh, N.C. 27626-0531.

Reason for Proposed Action:

10 NCAC 22G .0504 - .0506, .0509 - .0510, .0512 - .0515, .0508, .0511 - Implementation of policy to provide nutrition services to older persons.

10 NCAC 22S .0101 - .0102, .0201 - .0202, .0301 - .0303, .0401 - .0404, .0501 - .0503, .0601 - .0603, .0701 - .0706, .0801 - .0803 - Implementation of policy for the designation of planning and service areas and area agencies on aging.

Comment Procedures: Written comments will be received by the Director of the Division of Aging through September 14, 1993. Verbal comments will be heard at the public hearing.

CHAPTER 22 - OFFICE FOR AGING

SUBCHAPTER 22G - PROGRAM OPERATIONS

SECTION .0500 - NUTRITION PROGRAM FOR THE ELDERLY

.0504 DEFINITION OF CONGREGATE AND HOME-DELIVERED MEALS

(a) A congregate meal is a hot or cold nutritionally balanced meal that meets one-third of the current daily recommended dietary allowance (as recommended by the Food and Nutrition Council) served in strategically located centers such as schools, churches, community centers, senior centers, and other public or private facilities where older persons can obtain other social and rehabilitative services. Besides promoting better health among the older segment of the population through improved nutrition, such a program is aimed at reducing the isolation of old age and offering older person the opportunity to live their remaining years in dignity.

(b) A home-delivered meal ~~is consists of~~ a hot, cold, frozen, dried, canned or supplemental food, ~~nutritionally sound meal~~ that meets one-third of the current NRC daily recommended dietary allowance

served in the home to a home-bound older person. Such a program is aimed at promoting better health among the older segment of the population through improved nutrition and at keeping the individual in his or her own home rather than in an institution by providing the opportunity to achieve greater independence in meal preparation and the activities of daily living.

Statutory Authority G.S. 143B-181.1(c).

.0505 STAFFING

In addition to federal requirements for staffing of nutrition services providers, the following state policies shall be adhered to:

- (1) Consideration shall be given to employing minority individuals at least in proportion to the numbers of minority older persons represented among the nutrition service participants; ~~and~~
- (2) Each nutrition service provider which receives ~~Title III Home and Community Care Block Grant~~ funds shall have a trained made arrangements for a licensed nutritionist or dietitian ~~on as a staff, paid consultant or on a volunteer basis to~~ certify the menu. A qualified dietitian or nutritionist is one who possesses, as a minimum, a Bachelor's Degree in dietetics, foods, nutrition or institutional management and is licensed or exempted by the State of North Carolina ~~a registered member of the American Dietetic Association, or has a Master's Degree in public health nutrition; plus one year experience in food service. Exceptions to these qualifications must be approved by the Division of Aging;~~
- (3) The nutrition service provider shall provide staff to operate the program including, at a minimum, a paid nutrition program director, and a paid site manager;
- (4) The nutrition program director must be employed by and be responsible to the nutrition service provider and shall be empowered with the necessary authority to conduct the day-to-day management and required administrative functions;
- (5) The site manager may be paid from Home and Community Care Block funds for no more than four hours per day;
- (6) Training Requirements:
 - (a) Within 12 months of employment all nutrition program directors without prior academic training in food service

- (b) management shall complete a minimum of 15 hours (one semester unit) of instruction in food service sanitation;
Within 12 months of employment the nutrition program director must participate in training on Congregate Nutrition Program Management arranged by the Division of Aging.

Statutory Authority G.S. 143B-181.1(c).

.0506 CONGREGATE SITE REQUIREMENTS

In addition to federal site requirements, all congregate nutrition sites shall meet the following site requirements:

- (1) have a paid site director who is responsible for activities at the site; ~~Where Title III-C funds are utilized, they can pay for a maximum of five hours per day; and~~
- (2) ~~serve an average of at least 25 meals per day; and~~
- (2) (3) make special provisions as necessary for the service of meals to eligible handicapped individuals with limited mobility; and
- (3) (4) be located in a facility where all eligible individuals will feel free to visit. Site selection shall take into consideration the type and location of the facility so as not to offend the cultural and ethnic preferences of the eligible individuals in the service area; and
- (4) (5) operate five days per week; ~~and 52 weeks per year, except designated holidays or emergency situations. Participants shall be notified at least two weeks in advance of designated holidays;~~
- (5) (6) meet all local and state fire codes and building code requirements; and
- (6) (7) meet all local and state sanitation codes adopted in accordance with ~~40 NCAC 10A .0400 15A NCAC 18A .2600; and~~
- (7) (8) be located in areas where there are high concentrations of older adults with greatest economic need; ;
- (8) do a reassessment of participants once per year and update client registration forms;
- (9) develop emergency plans for each site for medical emergencies and for evacuation in case of fire or explosion. Conduct fire drills at least quarterly during hours of site operation;

- (10) inform the participants of agency procedures governing provision of service, confidentiality, waiting lists, service priorities, complaint and grievance, and other matters germane to the participant's decision to accept service;
- (11) have a written plan which describes procedures to be followed in case a participant becomes ill or is injured shall be thoroughly explained to staff, volunteers, and participants and shall be posted in at least one visible location in each nutrition site; and
- (12) be able to recruit, train, and supervise volunteers. Supervision must be provided in portioning of food onto plates by volunteers.

Statutory Authority G.S. 143B-181.1(c).

.0508 CONTRIBUTIONS FOR NUTRITION SERVICES

(a) ~~Each area agency shall develop clear written policies for its area and subcontractors regarding contributions for services received through the program. These policies shall address, as a minimum, use of suggested contribution schedules, contribution policies for staff and guests, and provisions for protecting the confidentiality of individual client contribution amounts. Such policies shall be consistent with the federal regulations as reprinted in Section 406.10 of the Division's "Manual of Policies and Procedures."~~

(b) ~~Nutrition services providers shall use all contributions to increase the number of meals served.~~

Authority G.S. 143B-10; 143B-138; 45 C.F.R. Part 1321.141.

.0509 HOME-DELIVERED MEALS STANDARDS

The Division of Aging requires all nutrition services providers who provide home-delivered meals with Title III-assistancee Home and Community Care Block Grant funds to meet the following standards:

- (I) Standard of Participation
 - (a) Home-delivered meals shall be provided only to a person age 60 or over and the spouse of the person regardless of age if one or the other is homebound by reason of illness or incapacitating disability.
 - (b) Meals shall be delivered only to

persons residing in a home setting and who are not currently enrolled in any care-providing program or facility including day care except on days not enrolled in day care. A determination of need for a home delivered meal must be made by conducting an initial in-home assessment and subsequent periodic re-evaluation of need.

- (e) ~~The minimum criteria for determination of need are that the participant shall:~~
 - (i) ~~be unable to leave home except for medical or health related reasons; and~~
 - (ii) ~~have no one in the home able to prepare a nutritious meal on a regular basis.~~
- (2) Packaging and Packing Standards
 - (a) All meals packaged at nutrition sites shall be individually packaged first (before congregate meals are served) and packed in secondary insulated food carriers with tight fitting lids and transported immediately.
 - (b) All meals packaged at food preparation centers shall be individually packaged and packed in secondary insulated food carriers with tight fitting lids and transported immediately.
 - (c) Only aluminum foil or styrofoam divided containers shall be used for hot food. The lids shall provide an air tight seal. Bread shall not be placed on top of other food.
 - (d) Cold and hot food shall be packaged and packed separately.
 - (e) Appropriate individual containers with tight fitting lids shall be used for all cold food, "sandwich" type bags which can be sealed may be used for bread.
 - (f) Temperature checks shall be made at least ~~three times~~ one time per month on each route to document that food temperatures meet the RULES GOVERNING THE SANITATION OF RESTAURANTS AND OTHER FOOD HANDLING ESTABLISHMENTS, pursuant to ~~10 NCAC 10A .0487~~ 15A NCAC 18A .2600.
 - (g) All food delivery carriers ~~shall meet NSF standards~~ must be safe for food contact and must be sanitized daily by the food service provider.
- (3) Meal Standards
 - (a) All home-delivered meals shall meet one-third of the current daily

recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences - National Research Council and the Division of Aging meal pattern requirements.

- (b) All menus shall be written for a minimum of twenty days and shall be reviewed by a qualified licensed nutritionist/dietitian to assure the menus provide one-third RDA.
- (c) All regular menus ~~reviewed by the local dietitian~~ shall be submitted to the Division of Aging nutritionist/dietitian for review and approval at least ~~one month~~ two weeks prior to use.
- (d) The approved menus shall be on file, with any changes in writing, for at least one year ~~at the contract level by the service provider~~.
- (e) At least one hot; or cold nutritious meal shall be provided daily at least five days a week. Frozen, canned, dehydrated, or nutritional supplement products may also be used for emergency situations and additional or weekend meals. All frozen meals shall be dated with the delivery dates. Only one hot meal may be delivered per day. In emergency situations, such as under severe weather conditions, or for weekends when needed, it shall be permissible to leave special meals or food stuffs for a nutrition service participant, provided that proper storage and heating facilities are available in the home, and the participant is able to consume the meal either by himself or with available assistance.
- (4) Therapeutic Clinical Diet Standards
 - (a) Prior to serving a therapeutic clinical diet, a physician's written prescription using the current North Carolina Dietetic Association Diet Manual shall be on file with the nutrition service provider.
 - (b) Each therapeutic diet prescription shall be re-ordered in writing by the physician every six months. Menus for each type of therapeutic diet must be written by a registered licensed nutritionist/dietitian ~~for a four-week period and shall be completed at least one month prior to use.~~ Menus for the

~~therapeutic clinical~~ diets shall follow the standard set forth in the North Carolina Dietetic Association Diet Manual. These menus shall remain on file for at least one year at the ~~contract~~ level.

~~(e) The preparation of all therapeutic diet food shall be under the supervision of a registered dietitian.~~

(5) Delivery Standards

(a) Each delivery route shall be clearly established in writing.

~~(b) No more than 18 meals shall be delivered in one trip unless food carriers can be heated and refrigerated in the vehicle in which they are transported.~~

~~(b)~~ (e) No more than ~~one hour~~ two hours shall elapse between the time of delivery to the drop off points and the time of delivery of the last meal on the route.

~~(d) Meals shall be delivered in the order in which they are packed. (Volunteers must not open carrier and rearrange the meals.)~~

~~(c)~~ (e) Each meal shall be received at the participant's home by an individual.

~~(f) Title III will only pay for volunteer mileage at the applicable rate for home delivered meals.~~

Statutory Authority G.S. 143B-181.1(c).

.0510 FOOD PREPARATION REQUIREMENTS

The Division of Aging requires all congregate and home delivered meal nutrition services providers to meet the following requirements, in addition to those specified in the federal regulations;

(1) Food Preparation

(a) State and local regulations applicable to the particular types of food preparation and meal delivery systems used by the project shall be adhered to in all stages of food service operations.

(b) All staff working in the preparation of food shall be under the supervision of a person who shall insure the application of hygienic techniques and practices in food handling, preparation and service. This supervisory person shall consult with the nutrition service provider's dietitian for advice and consultation as

necessary.

(c) Tested quality recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable quality and quantity of meals.

(d) All foods shall be prepared and served in a manner to present optimum flavor and appearance, while retaining nutrients and food value.

(2) Food Safety

(a) Menus shall be:

(i) Planned in advance for a minimum of ~~four weeks~~ 20 days in a ~~clearly written~~ format ~~provided by the Division of Aging~~. Menus shall be identified as nutrition project menus;

(ii) Certified in writing as providing one-third of the current Recommended Dietary Allowance as established by the Food and Nutrition Board of the National Academy of Sciences, National Research Council, based on current food composition tables by the dietitian/nutritionist whose services are utilized by the project;

~~(iii) Reviewed by the Division of Aging at least two weeks prior to use for nutritional adequacy;~~

~~(iii)~~ (iv) Posted with serving dates indicated in a conspicuous location in each congregate meal site as well as each preparation area; and

~~(iv)~~ (v) Adhered to, subject to seasonable availability of food items as well as availability of USDA donated food.

~~(b) Each meal served by the nutrition services provider shall contain at least one-third of the current Recommended Dietary Allowance as established by the Food and Nutrition Board of the National Academy of Sciences National Research Council.~~

~~(b)~~ (e) Menu plans shall reflect the use of seasonal fresh fruits and vegetables.

~~(d) Service providers shall use the menu pattern prescribed by the Division of Aging.~~

~~(c)~~ All food shall be packaged and transported in a manner to protect against potential contamination including dust, insects, rodents, unclean equipment and utensils, and unnecessary handling. Packaging and transport equipment must maintain

- appropriate food temperatures. Records of all temperature checks shall be kept on file for audit by the service provider.
- (d) The holding time between the completion of cooking at the commissary or kitchen and delivery of food to the nutrition site shall not exceed three hours.
 - (e) Single service disposable items including plastic gloves, utensils, and tableware shall be used one time only and then discarded.
 - (f) Food left after everyone has been served may be served as seconds to congregate participants. Food served in this manner may not be reported as additional participant meals served.
 - (g) All food which has been served and not eaten shall be discarded.
 - (h) Nutrition service providers shall educate participants and all staff regarding the sources and prevention of foodborne illness.
 - (i) All food served must be prepared in a Grade A kitchen. All food used must meet standards of quality, sanitation, and safety applying to foods that are processed in a commercially licensed establishment.
 - (j) Food prepared, frozen, or canned in the home shall not be served at the site.
 - (k) Food from unlabeled, rusty, leaking, or broken containers or cans with side dents, rim dents, or swells shall not be used.
 - (l) All meat and poultry, fresh or frozen, used in the meals must be inspected by USDA or State officials, from Federally or State inspected plants, and must bear inspection stamps on the box or package. All foods used in the meals must be from approved sources; be in compliance with applicable state and local laws, ordinances, and regulations; and be clean, wholesome, free from spoilage, free from adulteration and mislabeling, and safe for human consumption. Fresh raw fish must bear the PUF (Packed Under Federal Inspection) Shield.
 - (m) Fresh fruits and vegetables of good quality may be donated and incorporated into their menu only when they can be used to serve all participants. Prior to use, all fruits and vegetables shall be washed to remove dirt or insecticide residues.
 - (n) Staff preparing and serving food must use good hygiene techniques and practices in all handling of the food.
 - (o) All hot food must be maintained at 140 degrees Fahrenheit or above throughout all processes from cooking to serving, and all cold food must be maintained at 45 degrees Fahrenheit or below during all processing through serving.
 - (p) Each congregate nutrition provider must abide by food safety and sanitation practices required in "Rules Governing the Sanitation of Restaurants and Other Food Handling Establishments" (15A NCAC 18A .2600) and other applicable state and local ordinances and regulations.
 - (q) All material used in food delivery carriers must be guaranteed to be safe for food contact. All carriers must be sanitized daily by the food service caterer.
 - (r) Food temperatures must be taken and recorded when food arrives at the nutrition site and again immediately before serving. Food temperatures shall be recorded by the name of each specific food item. All temperature records must be maintained until audited.
 - (s) The nutrition site must be left clean daily.
- Statutory Authority G.S. 143B-181.1(c).
- .0511 STAFFING REQUIREMENTS**
- The following staffing requirements shall apply to all nutrition service contracts for fiscal year 1981 and thereafter:
- (1) ~~Contracts serving 99 meals per day up to 2 hours per day for contract management;~~
 - (2) ~~Contracts with 100-225 meals per day and at least 3 sites up to 4 hours per day for contract management; and~~
 - (3) ~~Contracts with more than 225 meals or more than 4 sites up to 8 hours per day for contract management.~~
- Authority G.S. 143B-10; 143B-138; 45 C.F.R.,

.0512 MENU PLANNING REQUIREMENTS

(a) Each meal served shall contain at least one-third of the current daily Recommended Dietary Allowances as established by the Food and Nutrition Board, National Academy of Science -- National Research County (Tenth Edition).

(b) Agencies providing congregate nutrition services must use and follow the "Menu Pattern" in this Paragraph:

(1) Each day's menu must meet one-third of the daily Recommended Dietary Allowances.

(2) All foods must be identified on the menu in order to calculate nutrient value.

(c) All meals must meet the following specifications: Calorie content must be a minimum of 700 calories per day. The fat content should be no more than 40% of total calories. The sodium content of the meal should fall within the range of three grams of sodium chloride per day or 1,000 milligrams sodium. One meal per 20 day cycle may exceed 1,000 milligrams sodium.

(d) Each category of the "Menu Pattern" outlined in this Paragraph must be served to each participant.

(1) Protein Category

(A) The total protein content of each meal must be no less than 21 grams. Of this, 14 grams must be a "complete protein" in the form of 2 oz. edible meat, fish or poultry, exclusive of fat, bone, or gristle. One-half cup cooked drained dried beans, peas or lentils may be used as a substitute for 1 oz. of meat. One cup of dried beans may be used twice in one 20 day cycle as a substitute for 2 oz. meat; however, a "complementary" protein source must be served at the same meal with the one cup dried beans in order to serve a complete protein (i.e., rice, corn, or cornbread). Other protein sources such as one egg or two tablespoons peanut butter may also be substituted for 1 oz. meat.

(B) Ground meat may be used in entrees no more than twice in one week. Casseroles or other mixed dishes must have ingredients specified on the menu to facilitate nutrient analysis.

(2) Complex Carbohydrate Category. Each meal must contain two servings of a

whole grain or enriched grain product.

(3) Vegetable/Fruit Category

(A) Each meal must contain two servings of different fruits and/or vegetables. When salad is served, it must be placed in a separate compartment of a compartmental tray to avoid mixing with other foods or served in a separate salad bowl.

(B) One serving of vitamin C-rich cold food must be served twice per week.

(4) Fat Category. One teaspoon of butter or fortified margarine in an individual covered package chip or container may be used if it adds palatability to the menu. The menu must identify whether margarine or butter is used when served.

(5) Calcium-Rich Food Category. Each meal must contain a total of no less than 270 mg. calcium. This may be obtained by one serving of 8 oz. of whole, low fat, skim, buttermilk, chocolate (not chocolate drink), sweet acidophilus milk, or Ultra High Temperature (UHT) milk, fortified with vitamins A & D in an individually sealed carton, or other foods high in calcium.

(6) Special Requirements

(A) Recipes for all foods used in combination must be supplied to facilitate nutrient analysis to the person responsible for certifying the menu. When recipe ingredients are changed, the recipe must be re-submitted for approval.

(B) All prepared or breaded meat items or meat in combination must be specified on the menu. The bidder receiving the food bid must obtain and submit a Certificate of Compliance from the manufacturer for each item to be included on the meat category. Only approved brands may be used in the meat category.

(C) The form of vegetable or fruit used (fresh, frozen, dried, or canned) must be indicated on the menu for nutrient analysis.

(D) Vegetable protein products are allowed by the Food and Nutrition Service (FNS), USDA, to be used in meat mixtures up to a maximum of 30%. Seventy percent of the

ingredients in the meat mixture must be meat.

- (E) Vegetable protein extended products may be used one time per week and must be noted on the menu. A copy of the Certificate of Compliance shall be filed with the menus.

Statutory Authority G.S. 143B-181.1(c).

.0513 ELIGIBILITY FOR SERVICE

(a) Congregate Nutrition Program

(1) Target Population

- (A) Congregate nutrition services shall be available to persons 60 years of age and older and their spouses, regardless of age. Spouses under the age of 60 are eligible for services when the person 60 and over is receiving nutrition services.

- (B) Area Agencies on Aging shall establish clear, written procedures that will also allow congregate nutrition programs the option to offer a meal, on the same basis as meals are provided to persons 60 years of age and older, to individuals providing volunteer services during the meal hours and to individuals with handicaps or disabilities who have not attained 60 years of age but who reside with an eligible older adult or reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided. Disability status shall be verified by reviewing a notice of disability benefit award. Nutrition service providers are required to maintain a current copy of the notice of benefit award for each person served.

(2) Service Priority. Priority shall be given to serving:

- (A) Individuals who have been abused, neglected, and/or exploited as substantiated by the county department of social services and for whom the service is needed as part of the adult protective services plan;
- (B) Individuals who are at risk of abuse, neglect, or exploitation;
- (C) Individuals who are health impaired and who are in need of nutritional supports, or those older persons

whose independent living arrangements do not provide adequate facilities for meal preparation.

(3) Ineligible Persons

- (A) Eligibility for the service is restricted to those persons whose dietary needs can be met by the meals available through the program as outlined in Rule .0512 of this Section.

- (B) Persons residing in long term care facilities and persons enrolled in a care-providing program or a facility, including an adult day care or adult day health care program in which a meal is provided, are not eligible. Persons who meet eligibility criteria who are enrolled in care providing programs including adult day care or adult day health care programs are eligible to receive congregate meals on the days they do not participate in such programs.

(b) Home Delivered Meals

- (1) Target Population. The target population for home delivered meals is persons 60 years of age and older who are physically or mentally unable to obtain food or prepare meals, who have no responsible person who is able and willing to perform this needed service, and who are unable to participate in the congregate nutrition program because of physical or mental impairment. The spouse of an eligible older person is also eligible to receive a home delivered meal.

Area Agencies on Aging shall also establish procedures that will allow home delivered meals programs the option to offer a meal, on the same basis as meals are provided to persons 60 years of age and older, to individuals providing volunteer services during the meal hours and to individuals with disabilities who reside at home with an eligible older adult. Disability status should be verified by reviewing a notice of disability benefit award.

In those special instances where a family caregiver is caring for an eligible homebound older person, the family caregiver is also eligible to receive a meal.

- (2) Service Priority. Priority shall be

given to serving:

- (A) Individuals who have been abused, neglected, and/or exploited as substantiated by the county department of social services and for whom the service is needed as part of the adult protective service plan;
- (B) Individuals who are at risk of abuse, neglect, or exploitation;
- (C) Individuals who do not have a caregiver or another responsible party available to assist with care; and
- (D) Individuals who experience impairment in performance of activities of daily living (ADL) and instrumental activities of daily living (IADL).

- (3) Ineligible Persons. Eligibility for the service is restricted to those persons whose dietary needs can be met by home delivered meals available through the program as outlined in Rule .0512 of this Section.

Persons residing in long term care facilities and persons enrolled in a care-providing program or a facility, including an adult day care or adult day health care program in which a meal is provided, are not eligible. Persons who meet eligibility criteria who are enrolled in care providing programs or adult day care or adult day health care programs are eligible to receive home delivered meals on the days they do not participate in such programs.

Statutory Authority G.S. 143B-181.1(c).

.0514 ADMINISTRATION REQUIREMENTS

Agencies providing Congregate and Home Delivered Meal nutrition services shall:

- (1) Apply for authorization to accept food stamps as contributions at the nearest Field Office of the Food and Nutrition Service, USDA.
- (2) Assure that all provisions relating to the use and handling of USDA issued food stamps as prescribed by federal, state, and local agencies responsible for administering the food stamp program are met.
- (3) Develop a plan to recruit, orient, train, and recognize volunteers.
- (4) Provide orientation and training for staff which shall include at a minimum the

following:

- (a) Nutrition Program Directors: administration procedures, record keeping systems, reporting, food safety, food service.
- (b) Site Manager: (for Congregate Nutrition Sites) site operations, site records, community resources and methods of referrals, food safety, and food portioning.
- (c) Volunteers: site procedures, orientation, and training for specific volunteer activities.
- (d) All staff: aging process, fire/disaster evacuation, and training required for specific staff categories provided by the Division of Aging and/or Area Agency on Aging.
- (5) Provide all staff (both paid and volunteer) with written information on personnel policies which shall include: job descriptions; policies on fringe benefits, vacations, holiday and sick leave, outside employment; grievance procedures and termination; hours, compensation and travel allowance; probation and promotion; procedures and timetable for performance evaluations; and training requirements.
- (6) Maintain adequate records documenting service activities which shall include:
 - (a) Client registration forms.
 - (b) Unit of service records.
 - (c) Service cost sharing records.
 - (d) Diet prescriptions for each clinical diet served.
 - (e) Meal delivery tickets.
 - (f) Employment records including affirmative action efforts and results.
- (7) Maintain separate records to document USDA cash used to purchase:
 - (a) United States Department of Agricultural commodities and other foods used in the food service.
 - (b) Food in meals provided under contract arrangements with food management companies, caterers, restaurants, or schools. Each meal must contain United States produced commodities or other foods at least equal in value to the USDA per meal cash entitlement.
- (8) Submit required records and reports on a current and timely basis.
- (9) Conduct, at least once a year, a reassessment of each participant for

Congregate Nutrition program participants.

- (10) Conduct a written assessment of each participant every six months except those on temporary home delivered meal status for Home Delivered Meals program.
- (11) Maintain confidentiality of all participant records.
- (12) Use donated foods to the maximum extent feasible and comply with all USDA regulations related to donated food and cash reimbursement.
- (13) Prepare a participant in-home assessment in writing within seven working days of acceptance of referral.
- (14) Notify a participant in writing of his/her eligibility or ineligibility for home delivered meals within 10 working days of assessment.
- (15) Establish in writing the area to be served by the Home Delivered Meals program.
- (16) Ensure that each home delivered meal route is no longer than one hour, and ensure that no more than two hours elapse between the delivery of the food at the drop-off site and delivery of the meal to the home of home-bound older person.
- (17) Establish written agency procedures for reporting changes in participant eligibility.

Statutory Authority G.S. 143B-181.1(c).

.0515 PROHIBITED ACTIVITIES

(a) Funds shall not be used to:

- (1) Reimburse mileage for staff delivering home delivered meals to participants;
- (2) Purchase vehicles to deliver home delivered meals to participants;
- (3) Pay for staff or volunteer time to deliver home delivered meals to participants.

(b) Prohibited service activities:

- (1) Medical treatment or medication shall not be provided or administered by program staff or volunteers.
- (2) Financial transactions except those related to service cost sharing shall not be carried out by program staff or volunteers.
- (3) Unapproved meals may not be provided to participants.
- (4) Gifts from participants may not be accepted by program staff or volunteers.

- (5) Meals cannot be provided to residents of long term care facilities, guests, ineligible handicapped persons under age 60, adult day care or adult day health care participants, and paid staff under age 60 without reimbursement of the full unit cost. Participants in adult day care or adult day health care programs are eligible for nutrition services on the days they do not attend day care or day health care programs.
- (6) Special diets may not be served unless a physician's order is on file, there are sufficient numbers of special diets required so as to justify the meals, and the nutrition program has the capability to provide the service.
- (7) Except on an emergency basis, nutrition site(s) shall not be closed or combined on a temporary or permanent basis without the prior written approval of the Area Agency on Aging Administrator.

Statutory Authority G.S. 143B-181.1(c).

SUBCHAPTER 22S - PLANNING AND SERVICE AREA AND AREA AGENCY DESIGNATION

SECTION .0100 - DIVISION OF AGING DESIGNATION AUTHORITY

.0101 PLANNING AND SERVICE AREA AND AREA AGENCIES ON AGING

The Division of Aging shall divide the state into distinct planning and service areas and designate an area agency on aging within each planning and service area.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

.0102 WITHDRAWAL OF AREA ON AGING DESIGNATION

Area agency designation may be withdrawn whenever, after reasonable notice and opportunity for a hearing, it is determined that:

- (1) An area agency fails to perform mandated functions; or
- (2) An area plan or plan amendment is not approved; or
- (3) There is substantial failure in the provisions or administration of an approved

area plan to comply with any provision of the Older Americans Act, federal regulations, or policies and procedures outlined by the Division; or

- (4) Activities of the area agency are inconsistent with the statutory mission prescribed in the Act or conflict with the requirement in the Act that it function only as an area agency on aging.

Authority G.S. 143B-181.1(c); 45 C.F.R. Part 132.

SECTION .0200 - PLANNING AND SERVICE AREA AND AREA AGENCY ON AGING REQUIREMENTS

.0201 PLANNING AND SERVICE AREA REQUIREMENTS

(a) A PSA designated after March 1, 1993 shall have a general population of at least 100,000.

(b) PSAs shall contain more than one county and shall be inclusive of all municipalities within the proposed PSA boundary.

(c) PSA designation shall be effective on July 1.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

.0202 AREA AGENCY ON AGING REQUIREMENTS

(a) A public or private nonprofit agency or organization shall be designated as an area agency on aging by the Division of Aging to serve each planning and service area in the state.

(b) Area agencies on aging shall provide a regional ombudsman program.

(c) Area agency on aging designation shall be effective July 1.

Authority G.S. 143B-181.1(c); 143B, Article 3, Part 14D; 45 C.F.R. Part 1321; 42 U.S.C. 3001.

SECTION .0300 - APPLICATION FOR PLANNING SERVICE AREA DESIGNATION AND PRE-HEARING REVIEW

.0301 APPLICATION FOR PLANNING AND SERVICE AREA DESIGNATION DUE DATE

The application for planning and service area designation shall be received by the Division of Aging no later than August 1.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

.0302 APPLICATION FOR PLANNING AND SERVICE AREA DESIGNATION CONTENT

The application shall provide the following:

- (1) Listing of proposed PSA counties and a signed resolution from the Chairman of the Board of Commissioners in each county endorsing the proposed PSA, supporting the proposed area agency on aging arrangement and certifying the availability of local match for AAA federal/state funding.
- (2) Identification of the unit of local government, regional planning authority, or Indian reservations responsible for developing the application and individual responsible for coordinating application with the Division.
- (3) Narrative discussion which states the necessity of the designation and describes benefits to identified counties.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

.0303 PRE-HEARING REVIEW ON PLANNING AND SERVICE AREA DESIGNATION

(a) The Division shall provide a copy of the designation application, relevant demographic and funding data and other pertinent information to area agencies whose PSA boundaries would be affected within 10 working days of receipt of the application. Area agencies shall have the opportunity to comment on the application prior to public hearings on PSA designation.

(b) Prior to conducting public hearings on PSA designation the Division shall provide aging interests in each county of PSAs affected by the application with a copy of the application, other information, and data deemed appropriate by the Division. Local aging interests shall have the opportunity to provide written comments to the Division prior to public hearings. Local aging interests shall include the following:

- (1) boards of county commissioners;
- (2) county managers;
- (3) area agency advisory councils;
- (4) funded and non-funded aging service providers;
- (5) long term care providers and advocacy groups;

- (6) senior centers;
- (7) local Alzheimer's support organizations and other advocates for older persons and caregivers;
- (8) Lead Regional Organization directors;
- (9) Joint Regional Forum.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

SECTION .0400 - DIVISION OF AGING PUBLIC HEARINGS ON PLANING AND SERVICE AREA DESIGNATION

.0401 SCHEDULING OF PUBLIC HEARINGS ON PLANNING/ SERVICE AREA DESIGNATION

Prior to designating PSAs, public hearings shall be held for affected parties. The Division shall schedule hearings in locations which are convenient to each county in affected PSAs so as to encourage full participation by county and regional aging interests. Within no less than 15 days prior to the scheduled hearing, the aging interests, as specified in Rule .0303 of this Subchapter, shall be notified in writing with regards to the date, time and location of the public hearing.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order Number 25, February 21, 1986.

.0402 PRE-HEARING REVIEW COMMENTS

The Division shall provide a written summary of comments received through the pre-hearing review at the public hearing.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

.0403 NOTIFICATION OF DECISION ON PLANNING AND SERVICE AREA DESIGNATION

Comments received through the pre-hearing review and public hearings shall be considered in reaching a PSA designation decision. Upon consultation with the Department of Human Resources and others, as deemed appropriate, the Division will issue a decision and notify affected area agencies and aging interests specified in Rule .0303 of this Subchapter in writing. The Division will provide the Administration on Aging with written notification of designation decisions.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

.0404 PLANNING/SERVICE AREA DESIGNATION INITIATED BY THE DIVISION OF AGING

If PSA designation is initiated by the Division, the Division shall provide for pre-hearing reviews and public hearings by distributing a plan for proposed PSA designation and other pertinent information and data to affected area agencies and local aging interests specified in Rule .0303 of this Subchapter and scheduling public hearings as specified in Rule .0401 of this Subchapter. PSA designation will be initiated by the Division if:

- (1) With input from the Department of Human Resources and others, the Division determines that reconfiguration of PSAs is necessary for the State and area agencies to effectively carry out responsibilities mandated through the Older Americans Act.
- (2) A county or counties in a PSA affected by withdrawal of AAA designation propose to join another PSA, as discussed in Rule .0706 of this Subchapter.

Authority G.S. 143B-181.1(c); 42 U.S.C. 3001; Ex. Order 25, February 21, 1986.

SECTION .0500 - APPLICATION FOR AREA AGENCY ON AGING DESIGNATION AND PRE-HEARING REVIEW

.0501 AREA AGENCY ON AGING DESIGNATION CRITERIA

(a) Area agency on aging designation shall occur after the Division has issued a decision on PSA designation, as specified in Rule .0403 of this Subchapter.

(b) The unit of general purpose local government, regional planning authority or Indian reservation responsible for development of the PSA designation application shall be responsible for completing the application for area agency on aging structure and submitting it to the Division within a specified timeframe.

(c) If PSA designation is initiated by the Division of Aging, the Division shall receive input from the chairman of the board of commissioners in each county of the PSA prior to designating an area agency on aging.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

.0502 APPLICATION FOR AREA AGENCY ON AGING DESIGNATION CONTENT

The Division of Aging will provide a format which addresses the following:

- (1) Name of proposed area agency organization, if possible.
- (2) Description of area agency methodology, including staffing responsibilities, to meet federal and state requirements which include the following:
 - (a) Working with elected officials to establish one or more focal points on aging in each county.
 - (b) Establishing an area agency advisory council for the purpose of carrying out advisory functions which further the area agency's mission of developing and coordinating a community-based services system for all older adults in the PSA.
 - (c) Developing an area plan following procedures specified by the Division of Aging and conducting a public hearing(s) on the plan prior to submission to the Division.
 - (d) Serving as a public advocate for the development or enhancement of community based service systems through the coordination of plans and activities with public and private agencies and organizations and providing leadership in assisting counties in the targeting of resources to meet the needs of older adults with the greatest economic or social needs, with particular attention to low income minorities.
 - (e) Monitoring community service providers as specified in the Home and Community Care Block Grant County agreement assessment format.
 - (f) Providing Home and Community Care Block Grant management information system and services reimbursement functions as specified in the Home and Community Care Block Grant Manual for Community Service Providers.
 - (g) Administering a regional ombudsman program, as required in G.S. 143B, Part 14D. The proposal shall describe how functions specified in G.S. 143B-181.19 will be carried out.
- (3) Organization chart indicating that the area agency shall function only to administer

programs for older persons.

- (4) Proposed line item or total project budget for the area agency which includes identification of funding sources to support the budget.

Authority G.S. 143B-181.1(c); 45 C.F.R. Part 1321; 42 U.S.C. 3001.

.0503 PRE-HEARING REVIEW ON AREA AGENCY ON AGING DESIGNATION

Within no less than 15 days prior to conducting public hearing on AAA designation, the Division shall provide area agencies on aging and local aging interests who are affected by the PSA designation decision with a copy of the proposed area agency structure format. These area agencies and local aging interests shall have the opportunity to comment on the proposed structure prior to public hearings. Local aging interests are identified in Rule .0303 of this Subchapter.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

SECTION .0600 - DIVISION OF AGING PUBLIC HEARINGS ON AREA AGENCY ON AGING DESIGNATION

.0601 SCHEDULING OF PUBLIC HEARINGS ON AREA AGENCY ON AGING DESIGNATION

Prior to designating AAAs, the Division shall conduct public hearings. The Division shall schedule hearings which are convenient to each county in affected PSAs. Within no less than 15 days prior to the scheduled hearing, the aging interests, as specified in Rule .0303 of this Subchapter, shall be notified in writing with regards to the date, time and location of the public hearing.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

.0602 PRES/COMMENTS RECVD/AREA AGENCY/AGING DESIGNATION/ PRE-HEARING REVIEW

The Division shall provide a written summary of comments received through the pre-hearing review at the public hearings.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0603 NOTIFICATION OF DECISION
ON AREA AGENCY ON AGING
DESIGNATION**

Comments received through the pre-hearing review and public hearings shall be considered in reaching an AAA designation decision. Upon consultation with the Department of Human Resources and others, as deemed appropriate, the Division will issue a decision and notify affected area agencies and aging interests listed in Rule .0303 of this Subchapter.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**SECTION .0700 - WITHHOLDING AREA
FUNDS OR WITHDRAWING AREA
AGENCY ON AGING DESIGNATION**

**.0701 NOTIFICATION OF IMPENDING
ACTION TO WITHHOLD AREA
FUNDS**

Within no less than 15 days prior to withholding funds the Division of Aging shall provide the area agency notification of the impending action via certified mail. The notification shall contain the following:

- (1) Reasons for initiating the withholding of funds.
- (2) Date that funds will be withheld, pending request for public hearing.
- (3) Opportunity for requesting, in writing, a public hearing concerning the impending action. Such request shall be within five days of receiving the notice.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0702 PUBLIC HEARING/WITHHOLDING
AREA FUNDS**

If the area agency requests a hearing, the Division shall, within 10 days of receipt of the request, schedule a public hearing in the affected PSA and notify the area agency on aging and local aging interests specified in Rule .0303 of this Subchapter.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0703 NOTIFICATION OF DECISION
ON WITHHOLDING AREA FUNDS**

Comments received through any public hearing shall be considered by the Division in reaching a

final decision. An area agency may appeal the Division's decision to withhold funding as specified in Rule .0801 of this Subchapter.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0704 NOTICE/IMPENDING ACTION/
WITHDRAWING AREA AGENCY
DESIGNATION**

An area agency shall be notified no less than 30 days prior to withdrawing area agency designation via certified mail.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0705 PUBLIC HEARING/WITHDRAWAL
OF AREA AGENCY ON AGING
DESIGNATION**

Upon determination of cause for withdrawing area agency on aging designation, a public hearing shall be scheduled and conducted within the planning and service area of the area agency on aging. Within no less than 15 days prior to the scheduled hearing, the aging interests, as specified in Rule .0303 of this Subchapter, shall be notified in writing with regards to the date, time, and place of the public hearing.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0706 NOTIFICATION OF DECISION
TO WITHDRAW AREA AGENCY
DESIGNATION**

(a) Comments received through the public hearing shall be considered in reaching a decision. Upon consultation with the Department of Human Resources and others, as deemed appropriate, the Division will issue a decision as to whether or not to withdraw AAA designation. The area agency on aging and local aging interests, as specified in Rule .0303 in this Subchapter, shall be notified in writing of the Division's decision. An area agency may appeal the Division's decision to withdraw area agency on aging designation, as specified in Rule .0801 of this Subchapter.

(b) If AAA designation is withdrawn, the Division shall meet with the chairman of the board of commissioners in each county of the PSA. Based upon the decision of the counties, the Division will initiate the designation of one or more PSAs or initiate the designation of an area agency on aging.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**SECTION .0800 - APPEAL OF
DIVISION OF AGING DECISION**

.0801 CONTESTED CASE

Area agencies whose funding has been withheld; area agencies whose designation has been withdrawn; area agencies whose PSA is affected by a designation decision; or the unit of general purpose local government whose application for PSA designation is disapproved by the Division of Aging may petition the Office of Administrative Hearings for a contested case hearing. Provisions for contested case hearings are specified in G.S. 150B, Article 3.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

**.0802 APPEAL TO COMMISSIONER
ON AGING**

The party whose application for PSA designation is disapproved and who is aggrieved by the final decision in a contested case may appeal the decision to the Commissioner on Aging within 30 days following the receipt of the state's decision in lieu of filing a petition for judicial review in state superior court.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

.0803 JUDICIAL REVIEW

Area agencies whose funding has been withheld; whose designation has been withdrawn; or whose PSA is affected by a designation decision and are aggrieved by the final decision in a contested case may file a petition for judicial review, as provided in G.S. 150B, Article 4.

Statutory Authority G.S. 143B-181.1(c); 42 U.S.C. 3001.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources, Mining Commission intends to amend rule cited as 15A NCAC 5B .0003.

The proposed effective date of this action is January 1, 1994.

The public hearing will be conducted at 9:00 a.m. on September 10, 1993 at the Ground Floor Hearing Room, Archdale Building, Raleigh, NC.

Reason for Proposed Action: To replace the existing Rule (5B .0003) to increase the amount of reclamation bonds for mining permits.

Comment Procedures: Any person requiring information may contact Mr. Tracy E. Davis at Land Quality Section, P.O. Box 27687, Raleigh, NC 27611-7687, telephone (919) 733-4574. Written comments must be submitted to the above address no later than September 16, 1993. Notice of an oral presentation should be given to the above address and telephone number. Persons who call in advance of the hearing will be given priority on the speaker's list.

CHAPTER 5 - MINING: MINERAL RESOURCES

SUBCHAPTER 5B - PERMITTING AND REPORTING

.0003 BONDING REQUIREMENTS

Any operator desiring to engage in mining may request an application form from the Land Quality Section, Division of Land Resources, Department of Environment, Health, and Natural Resources and shall submit the completed application to the Land Quality Section.

Upon approval of the application, the department will set the amount of the performance bond and issue a bond form to be used in securing the bond. The amount of the bond will be based upon the area of affected land and set according to the following requirements:

TYPE MINE	AFFECTED AREA/BOND AMOUNT
I. Quarry (Excavation in rock)	1-10 acres: \$5,000; 10-25 acres: \$12,500; 25+ acres: \$25,000 with good operating record otherwise \$50,000.
II. Clay	1-5 acres: \$5,000; 5-10 acres: \$12,500; 10-25 acres: \$25,000; 25+ acres: \$25,000 with good operating record otherwise \$50,000.
III. Sand and Gravel	1-5 acres: \$2,500; 5-10 acres: \$5,000; 10-25 acres: \$12,500; 25+ acres: \$25,000 with good operating record otherwise \$50,000.
IV. Peat	\$150 per acre for the maximum acreage to be affected at any one time. The maximum acreage shall include all stockpiles, waste piles, onsite processing areas, all areas disturbed by any phase of mining activities, including lands being cleared and drained in preparation for mining and not reclaimed and released by the department. The operator shall provide accurately scaled site plans or surveys documenting the maximum acreage to be affected at any one time. This bonding requirement is based on the condition that all major water control structures shall be installed prior to the commencement of mining.
V. Phosphate	1-10 acres: \$12,500; 10-25 acres: \$25,000; 25+ acres: \$25,000 with good operating record otherwise \$50,000.
VI. Others	To be set on individual basis.

PROPOSED RULES

For the purposes of these Rules, a good operating record is defined as two consecutive years without being assessed a civil penalty or subject to other enforcement action pursuant to G.S. 74-64 or having a permit suspended or revoked under G.S. 74-58 or bond or other surety forfeited under G.S. 74-59. Upon timely receipt of the bond or acceptable security in the required amount, the mining permit will be issued.

(a) After an application for a new mining permit or permit renewal, modification, or transfer has been approved, an applicant or permittee must file a bond with the Department in an amount to be determined by the Director.

(b) If the applicant or permittee disagrees with the bond amount determined by the Director, the applicant or permittee may submit to the Director for his consideration, an estimate of reclamation costs from a third party contractor to be used as the bond amount. The estimate shall be provided to the Director within 30 days following the receipt of the Director's initial bond determination. After considering the estimate and recommendations provided by his staff, the Director shall notify the applicant or permittee of his bond determination.

(c) The Director may invite the applicant or permittee to submit to the Department an estimate of reclamation costs from a third party contractor for the Director's use in determining the required bond amount. After considering the estimate and the recommendations provided by his staff, the Director shall notify the applicant or permittee of his bond determination.

(d) The bond amount shall be based on a range of five hundred dollars (\$500.00) to five thousand dollars (\$5,000) per acre of land approved by the Department to be affected. If the mining permit is modified to increase the total affected land, the bond shall be increased accordingly. The Director shall consider the method and extent of the required reclamation for a particular site in determining the bond amount. As areas at a site are reclaimed and formally released by the Department, the permittee may substitute a bond in an amount covering the remaining affected land at the site for the bond previously filed with the Department; otherwise, without such bond substitution, the Department shall retain the previously filed bond until all reclamation has been completed and approved by the Department.

(e) If an applicant or permittee has multiple sites, the applicant or permittee may file a separate bond with the Department for each site or the applicant or permittee may submit one blanket bond covering all sites in the aggregate amount of all bond totals. Once the total amount of all bonds for separate sites or the blanket bond for all sites, reaches five hundred thousand dollars (\$500,000):

- (1) the applicant or permittee with separate bonds may submit a five hundred thousand dollar (\$500,000) blanket bond to be used for all future sites, or
- (2) the applicant or permittee with the five hundred thousand dollar (\$500,000) blanket bond covering all sites may use that blanket bond for all future sites.

If the Director finds that the applicant or permittee, in either case, has a good operating record, that the five hundred thousand dollars (\$500,000) is sufficient to reclaim all sites and that no additional reclamation bond money is needed. If the Director finds that the applicant or permittee does not have a good operating record, that the five hundred thousand dollars (\$500,000) is not sufficient to reclaim all sites, or that additional reclamation money is needed, the Director shall require per acreage bonding for future sites as provided in Paragraph (d) of this Rule.

(f) For the purposes of this Rule, a good operating record is defined as two consecutive years of operation within the State of North Carolina without final assessment of a civil penalty or other enforcement action pursuant to G.S. 74-64, or having a permit suspended or revoked under G.S. 74-58, or having a bond or other surety forfeited under G.S. 74-59.

Statutory Authority G.S. 74-51; 74-54; 143B-290.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0117; 10H .0109 and adopt rule cited as 15A NCAC 10C .0215.

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

The public hearing will be conducted at 10:00 a.m. on September 2, 1993 at the Archdale Building, Room 332, 512 North Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Actions:

15A NCAC 10B .0117 - To specify that replacement costs are for wild animals and wild birds.

15A NCAC 10C .0215 - To establish replacement costs for fishes.

15A NCAC 10H .0109 - To allow use of quail call pen traps on or after September 1st by properly licensed controlled hunting preserves.

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 16, 1993 to September 15, 1993. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 North Salisbury Street, Raleigh, NC 27604-1188.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0117 REPLACEMENT COSTS OF WILDLIFE RESOURCES - WILD ANIMALS AND WILD BIRDS

(a) Replacement Costs Distinguished. As it applies to wildlife resources, the term "replacement costs" must be distinguished from the "value" of the wildlife concerned. Except in cases where ~~wildlife specimens~~ wild animals and wild birds may lawfully be sold on the open market, as with the carcasses or pelts of furbearing animals, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only hunters and trappers, but conservationists and those to whom the value of wildlife resources is primarily aesthetic, cannot be measured in dollar amounts. The average cost per animal or bird legally taken by hunters, including travel and lodging, weapons and ammunition, excise taxes on equipment, licenses, and hunting club fees, may fairly be estimated. This too, however, is a reflection of the value of existing wildlife resources rather than a measure of the cost of its replacement. Thus, the relative values of wildlife species should be considered only as they may bear on the necessity or desirability of actual replacement.

(b) Factors to Be Considered. The factors which should be considered in determining the replacement costs of resident species of wildlife resources that have been taken, injured, removed, harmfully altered, damaged, or destroyed include the following:

- (1) whether the species is classified as endangered or threatened;
- (2) the relative frequency of occurrence of the species in the state;
- (3) the extent of existing habitat suitable for the species within the state;
- (4) the dependency of the species on unique habitat requirements;
- (5) the cost of acquiring, by purchase or long-term lease, lands and waters for habitat development;
- (6) the cost of improving and maintaining suitable habitat for the species on lands and waters owned or acquired;
- (7) the cost of live-trapping the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
- (8) the availability of the species and the cost of acquisition for restocking purposes;
- (9) the cost of rearing in captivity those species which, when released, have a probability of survival in the wild;
- (10) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in captivity, it is released to the wild;
- (11) the change in the value of money as reflected by the consumer price index.

(c) **Costs of Replacement.** Based on the factors listed in Paragraph (b) of this Rule, including the June, 1980, consumer price index of 247.6 percent of the 1967 base, the following wild animals and wild birds are listed with the estimated replacement cost of each individual specimen:

Species	Replacement Cost
Any endangered species	\$2,300.00
Any threatened species	2,000.00
Any other species with no open season	25.00
Beaver	48.00
Black Bear	1,035.00
Crow	2.00
Deer	279.00
Dove	6.00
Duck	19.00
Fox	41.00
Goose	58.00
Grouse	17.00
Mink	35.00
Muskrat	9.00
Nutria	7.00
Opossum	3.00
Otter	300.00
Pheasant	17.00
Quail	14.00
Rabbit	6.00
Raccoon	27.00
Rail	17.00
Skunk	9.00
Snipe	12.00
Squirrel, fox	25.00
Squirrel, gray and red	8.00
Tundra swan	500.00
Weasel	5.00
Wild boar	350.00
Wildcat	300.00
Wild turkey	750.00
Woodcock	12.00

(d) **Costs of Investigations**

- (1) **Factors to Be Considered.** Upon any investigation required as provided by G.S. 143-215.3(a)(7) or by court order for the purpose of determining the cost of replacement of wildlife resources which have been killed, taken, injured, removed, harmfully altered, damaged, or destroyed, the factors to be considered in determining the cost of the investigation are as follows:
 - (A) the time expended by the employee or employees making the investigation, including travel time between the place of usual employment and the site of the investigation, and the time required in formulating and rendering the report;
 - (B) the cost of service to the state of each employee concerned, including annual salary, hospitalization insurance, and the state's contribution to social security taxes and to the applicable retirement system;
 - (C) subsistence of the investigating personnel, including meals, reasonable gratuities, and lodging away from home, when required;
 - (D) the cost of all necessary transportation;
 - (E) the use or rental of boats and motors, when required;
 - (F) the cost of cleaning or repairing any uniform or clothing that may be damaged, soiled or

- contaminated by reason of completing the investigation;
- (G) the cost of necessary telephonic communications;
- (H) any other expense directly related to and necessitated by the investigation.
- (2) Computation of Costs. In assessing the cost of time expended in completing the investigation, the time expended by each person required to take part in the investigation shall be recorded in hours, the value of which shall be computed according to the ratio between the annual costs of service of the employee and his total annual working hours (2087 hours reduced by holidays, annual leave entitlement, and earned sick leave). Other costs shall be assessed as follows:
 - (A) subsistence: the actual cost of meals, reasonable gratuities, and lodging away from home, not to exceed the then current maximum per diem for state employees;
 - (B) transportation: total mileage by motor vehicle multiplied by:
 - (i) the then current rate per mile for travel by state-owned vehicle; or
 - (ii) the then current rate per mile for travel by privately owned vehicle, as applicable;
 - (C) boat and motor: \$5.00 per hour;
 - (D) uniform and clothing cleaning and repair: actual cost;
 - (E) telephonic communications: actual cost;
 - (F) other expenses: actual cost.

Statutory Authority G.S. 113-134; 113-267.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 - GENERAL REGULATIONS

.0215 REPLACEMENT COSTS OF WILDLIFE RESOURCES - FISH

(a) Replacement Costs Distinguished. As it applies to fishes the term "replacement costs" must be distinguished from the "value" of the fish concerned. Except in cases where fish may lawfully be sold on the open market, as with commercially reared species, the monetary value of the specimens cannot be determined easily. The degree of special interest or concern in a particular species by the public, including not only anglers, but conservationists and those to whom the value of fishes is primarily aesthetic, cannot be measured in dollar amounts. The average cost per fish legally taken by anglers including travel and lodging, fishing equipment and bait, excise taxes on equipment, licenses and other fees, may fairly be estimated. This too, however, is a reflection of the value of existing fishery resources rather than a measure of the cost of their replacement. Thus, the relative value of fish species should be considered only as they may bear on the necessity or desirability of actual replacement.

(b) Factors to be Considered. The factors which should be considered in determining the replacement costs of resident species of fishes that have been taken, injured, removed, harmfully altered, damaged, or destroyed include the following:

- (1) whether the species is classified as endangered or threatened;
- (2) the relative frequency of occurrence of the species in the state;
- (3) the extent of existing habitat suitable for the species within the state;
- (4) the dependency of the species on unique habitat requirements;
- (5) the cost of improving and maintaining suitable habitat for the species;
- (6) the cost of capturing the species in areas of adequate populations and transplanting them to areas of suitable habitat with low populations;
- (7) the cost of propagating and rearing the species in a hatchery and the cost of transporting them to areas of suitable habitat with low populations;
- (8) the availability of the species and the cost of acquisition for restocking purposes;
- (9) the cost of those species which, when released, have a probability of survival in the wild;
- (10) the ratio between the natural life expectancy of the species and the period of its probable survival when, having been reared in a hatchery, it is released to the wild;
- (11) the change in the value of money as reflected by the consumer price index.

(c) Costs of Replacement. Based on the factors listed in Paragraph (b) of this Rule, including the June, 1980, consumer price index of 247.6 percent of the 1967 base, the following fishes are listed with the estimated replacement cost:

PROPOSED RULES

<u>Species</u>	<u>Weight</u>	<u>Replacement Cost</u>
<u>Striped bass and Bodie bass</u>	<u>up to 5 lbs.</u> <u>5 lbs. to 10 lbs.</u> <u>10 lbs. to 20 lbs.</u> <u>Over 20 lbs.</u>	<u>\$25/fish</u> <u>\$20/lb.</u> <u>\$25/lb.</u> <u>\$30/lb.</u>
<u>White bass</u>	<u>up to 2 lbs.</u> <u>Over 2 lbs.</u>	<u>\$10/fish</u> <u>\$10/lb.</u>
<u>Largemouth bass</u>	<u>Up to 2 lbs.</u> <u>2 lbs. to 7 lbs.</u> <u>Over 7 lbs.</u>	<u>\$10/fish</u> <u>\$10/lb.</u> <u>\$20/lb.</u>
<u>Smallmouth bass and other black bass</u>	<u>Up to 2 lbs.</u> <u>2 lbs. to 4 lbs.</u> <u>Over 4 lbs.</u>	<u>\$10/fish</u> <u>\$10/lb.</u> <u>\$20/lb.</u>
<u>Walleye</u>	<u>Up to 2 lbs.</u> <u>2 lbs. to 5 lbs.</u> <u>Over 5 lbs.</u>	<u>\$10/fish</u> <u>\$10/lb.</u> <u>\$20/lb.</u>
<u>Muskellunge</u>	<u>Up to 1 lb.</u> <u>Over 1 lb.</u>	<u>\$30/fish</u> <u>\$30/lb.</u>
<u>Sunfish</u>	<u>All Sizes</u>	<u>\$5/fish</u>
<u>Crappie</u>	<u>All Sizes</u>	<u>\$10/fish</u>
<u>Catfish (Channel, Blue and Flathead)</u>	<u>Up to 1 lb.</u> <u>1 lb. to 20 lbs.</u> <u>Over 20 lbs.</u>	<u>\$5/fish</u> <u>\$5/lb.</u> <u>\$10/lb.</u>
<u>Trout (Wild)</u>	<u>Up to 7 in.</u> <u>7 in. to 13 in.</u> <u>Over 13 in.</u>	<u>\$10/fish</u> <u>\$15/fish</u> <u>\$30/lb.</u>
<u>Trout (Hatchery)</u>	<u>7 in. to 13 in.</u> <u>Over 13 in.</u>	<u>\$5/fish</u> <u>\$10/lb.</u>
<u>All Other Game Fish</u>	<u>All Sizes</u>	<u>\$5/fish</u>
<u>All Other Non-Game Fish</u>	<u>All Sizes</u>	<u>\$2.50/fish</u>

(d) Cost of Investigations. The factors to be considered and the computation of costs are as specified in 15A NCAC 10B .0117.

Statutory Authority G.S. 113-134; 113-267.

SUBCHAPTER 10H - REGULATED ACTIVITIES

**SECTION .0100 - CONTROLLED HUNTING PRESERVES FOR DOMESTICALLY
RAISED GAME BIRDS**

.0109 QUAIL CALL-PEN TRAPS

(a) Permit Required. A licensed controlled hunting preserve operator who releases pen-raised quail for hunting or dog training purposes may apply to the Wildlife Resources Commission for a permit to operate one or more quail call-pen traps in accordance with the requirements of this Rule for the purpose of recovering any such quail that are not killed. Such application shall be made on a form supplied by the Commission which shall contain such information as may be required by the Executive Director and which shall be accompanied by a reasonably accurate map delineating the boundaries of the controlled hunting preserve and indicating the proposed location of each call-pen trap to be located thereon.

(b) Term of Permit. The permit required by Subsection (a) of this Rule shall become valid upon registration of a call-pen trap as required by this Rule and shall expire coincident with the expiration of the license of the controlled hunting preserve. No call-pen trap shall be utilized before ~~the open hunting preserve season~~ September 1 or until it has been registered.

(c) Location of Traps. No quail call-pen trap shall be located within 100 yards of any external boundary of the hunting preserve, and no such trap shall be relocated after registration during the term of the current hunting preserve license.

(d) Number of Traps. The number of quail call-pen traps shall be limited to one for any controlled hunting preserve containing less than 300 acres, two for any preserve containing 300 or more acres but less than 600 acres, and three for any preserve containing 600 acres or more.

(e) Registration. After construction and prior to use, each call-pen trap shall be provided with a registration card which must be securely attached and visibly displayed on the trap.

Statutory Authority G.S. 113-134; 113-291.1.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rules cited as 19A NCAC 2D .0602 and .0607.

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

The public hearing will be conducted at 10:00 a.m. on August 31, 1993 at the Highway Building, Room 150, 1 South Wilmington Street, Raleigh, NC 27611.

Reason for Proposed Action:

19A NCAC 2D .0602 - States responsibility for injury and damage for oversize permit vehicles.

19A NCAC 2D .0607 - Clarifies conditions of oversize/overweight vehicles and adds additional weight and axle information.

Comment Procedures: *Any interested person may present comments at the hearing for a maximum of 10 minutes or by submitting a written statement. Any person wishing to make a presentation at the hearing should contact: Emily Lee, NCDOT, P. O. Box 25201, Raleigh, NC 27611 by August 31, 1993. The hearing record will remain open for written comments until September 16, 1993. Written comments must be sent to the address above and must state the proposed rule to which the comments are addressed.*

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0600 - OVERSIZE-OVERWEIGHT PERMITS

.0602 PERMITS-ISSUANCE AND FEES

(a) Permits may be issued ~~or~~ for movements of loads which cannot be reasonably divided, dismantled or

disassembled, or so loaded to meet legal requirements. Permits are issued on authorized forms with appropriate designation for qualifying moves. To be valid, a permit must be signed by the permittee and carried in the towing unit while permitted load is in transit. A permit issued by the Department is not valid for travel over municipal streets (Defined as streets or highways not maintained by the State of North Carolina). Permitted vehicles will not travel in convoy. The permittee for any oversize/overweight movement assumes all responsibility for injury to persons or damage to property of any kind and agrees to hold the Department harmless for any claims arising out of his conduct or actions.

Single trip permits may include a return trip to origin if requested at the time of original issuance and the return trip can be made within the validation of such permit. No single trip permit request will be issued for a time period to exceed 30 days. Annual permits (blanket) are valid 12 months from the date of issuance.

City Passenger Buses which exceed the weight limits in G.S. 20-118(f) may be issued permits for operation on the highways of the state in the vicinity of the municipality and to qualify the vehicle for license.

(1) ~~Single trip permits may include a return trip to origin if requested at the time of original issuance and the return trip can be made within the validation of such permit. No single trip permit request will be issued for a time period to exceed 30 days.~~

(2) ~~Annual permits (blanket) are valid 12 months from the date of issuance. They may be issued for:~~

(A) ~~Permitted loads up to 10' wide authorizing travel on all roads;~~

(B) ~~Up to but not to exceed a width of a 12' authorizing travel on North Carolina, Interstate and US highways. Provided, mobile/modular homes not to exceed a width of a 14' unit with an allowable roof overhang not to exceed 12" may also be authorized to travel on designated North Carolina, Interstate and US highways.~~

(3) ~~City Passenger Buses which exceed the weight limits in GS 20-118(f) may be issued permits for operation on the highways of the state in the vicinity of the municipality and to qualify the vehicle for license.~~

(b) A fee will be collected as specified in G.S. 20-119(b). Only cash, certified check, money order or company check will be accepted. No personal checks will be accepted. Permittees with established credit accounts will be billed monthly for permits issued for the previous month. ~~All fees collected are to be processed in accordance with DOT Field Policy Procedure Manual, Chapter 6, Section 22. Provided, the following exemptions of fees shall apply to permits issued:~~

(1) ~~For house moves;~~

(2) ~~For movement of farm equipment by the farmer for agricultural purposes;~~

(3) ~~To any agency of the United State Government;~~

(4) ~~The State of North Carolina or its agencies, institutions, or municipalities, provided the vehicle/vehicle combination is registered in the name of such government body.~~

Statutory Authority G.S. 20-119; 136-18(5).

.0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) ~~Width is limited to 15' for all movements except Qualifying vehicle/vehicle combinations are limited to a maximum width of 15' with exceptions for certain construction machinery, buildings, structures, manufacturing machinery for moves authorized by the Central Permit Office or Head of the Maintenance Unit. If blades of bulldozers, graders construction equipment or front end loader buckets cannot be angled to extend no more than 12' across the roadway, they must shall be removed. A blade or bucket or other attachment which has been removed for safety reasons, or if in the best interests to the Department has been removed, may be moved hauled with the equipment without being considered a divisible load. Moves exceeding 12' for a commodity essential to national health, safety or defense may be permitted upon receipt of proof of necessity submitted by the agency directly concerned, however, if considered to be detrimental or unsafe to the other traveling public or if the highway cannot accommodate the move due to width or weight, such move will be denied. Moves exceeding 12' in width may be denied if considered by the issuing agent to be unsafe to the traveling public or if the highway cannot accommodate the move due to width. Loads must be so placed on vehicle/vehicle combination so as to present least over dimension to traffic.~~

(1) Single trip - width not to exceed 15' for all movements unless authorized by the Central Permit Office. Exception: "Housemoves" shall be approved by Division and District field offices.

(2) Annual permits - not to exceed a maximum width of 12' authorizing travel on all highways in North Carolina. Provided: Mobile/modular homes may not exceed a width of a 14' unit with an

allowable roof overhang not to exceed a total of 12" may be authorized to travel on designated North Carolina, Interstate and US Highways.

(b) The maximum weight permitted on a designated route is determined by the bridge capacity of bridges to be crossed during movement. Moves exceeding weight limits for highways or bridge structures may be denied if considered by the issuing agent unsafe and may cause damage to such highway or structure. A surety bond may be required to cover the cost of damage to pavement, bridges or other damages incurred during the permitted move.

- (1) The maximum single trip and annual permit weight allowed for vehicle or vehicle combinations not ~~to include~~ including off highway construction equipment without an engineering study is:

Single axle	25,000 lbs.
2 axle tandem	50,000 lbs.
3 or more axle group	60,000 lbs.
3 axle vehicle	60,000 lbs.
4 axle vehicle	75,000 lbs.
5 axle vehicle	94,500 lbs.
6 axle vehicle	103,000 lbs.
<u>6 axle vehicle</u>	<u>108,000 lbs.</u>
7 or more axle vehicle	122,000 lbs.

- (2) The maximum permit weight allowed for off highway construction equipment is:

- (A) Self-propelled scrapers with low pressure tires:

Single axle	37,000 lbs.
2 axle vehicle	55,000 lbs.
3 axle vehicle	70,000 lbs.
4 axle vehicle	90,000 lbs.
<u>Tandem axle</u>	<u>50,000 lbs.</u>

2 AXLE VEHICLE

<u>extreme wheelbase less than 10'</u>	<u>65,000 lbs.</u>
<u>10' or greater</u>	<u>70,000 lbs.</u>

3 AXLE VEHICLE

<u>single/tandem axle configuration</u>	
<u>extreme wheelbase less than 16'</u>	<u>75,000 lbs.</u>
<u>16' or greater</u>	<u>80,000 lbs.</u>
<u>single/single/single axle configuration</u>	<u>engineering study</u>

4 AXLE VEHICLE

<u>extreme wheelbase 28' or greater</u>	<u>90,000 lbs.</u>
<u>single axle</u>	<u>37,000 lbs.</u>

- (B) Self-propelled truck cranes with counterweights and boom removed (if practical):

3 axles not to exceed 25,000 lbs. per axle maximum gross weight	70,000 lbs.
4 axles not to exceed 25,000 lbs. per axle maximum gross weight	78,000 lbs.
5 axles wheel base less than 244 inches:	
front 2 axles	35,000 lbs.
rear 3 axles	56,500 lbs.
Gross	91,500 lbs.
5 axles wheel base more than 244 inches:	
front 2 axles	37,500 lbs.
rear 3 axles	57,000 lbs.
Gross	94,500 lbs.
6 axles wheel base more than 296 inches:	
2 axle tandem	50,000 lbs.
3 axle group	57,000 lbs.
Gross	103,000 lbs.

PROPOSED RULES

* ~~7 axles — extreme wheel base of 44 feet:~~

2 axle tandem	40,000 lbs.
3 axle group	57,000 lbs.
4 axle group	71,000 lbs.
Gross	122,000 lbs.

*~~Seven axle equipment subject to individual review for approval. Speed restricted to 45 m.p.h.~~

2 AXLE VEHICLE

single/single axle configuration

<u>more than 8'</u>	<u>50,000 lbs.</u>
<u>single axle</u>	<u>25,000 lbs.</u>

3 AXLE VEHICLE

single/tandem axle configuration

<u>extreme wheelbase greater than 15'</u>	<u>70,000 lbs.</u>
<u>single axle</u>	<u>25,000 lbs.</u>
<u>tandem axle</u>	<u>50,000 lbs.</u>

4 AXLE VEHICLE

quad grouping (less than 8' between
any two consecutive axles)

<u>extreme wheelbase greater than 18'</u>	<u>78,000 lbs.</u>
<u>single axle</u>	<u>20,000 lbs.</u>

tandem/tandem

<u>extreme wheelbase greater than 16' but less than 22'</u>	<u>78,000 lbs.</u>
<u>tandem axle</u>	<u>50,000 lbs.</u>
<u>extreme wheelbase 22' or greater</u>	<u>90,000 lbs.</u>
<u>tandem axle</u>	<u>50,000 lbs.</u>

5 AXLE VEHICLE

tandem/tri axle configuration

<u>extreme wheelbase greater than 24' but less than 28'</u>	<u>86,000 lbs.</u>
<u>tandem axle</u>	<u>37,500 lbs.</u>
<u>tri axle</u>	<u>60,000 lbs.</u>
<u>extreme wheelbase 28' or greater</u>	<u>94,500 lbs.</u>
<u>tandem axle</u>	<u>37,500 lbs.</u>
<u>tri axle</u>	<u>60,000 lbs.</u>

tandem/tandem/single axle configuration

<u>extreme wheelbase 31' or greater</u>	<u>94,500 lbs.</u>
<u>single axle</u>	<u>15,000 lbs.</u>
<u>tandem axle</u>	<u>50,000 lbs.</u>

6 AXLE VEHICLE

tri/tri axle configuration

<u>extreme wheelbase greater than 29' but less than 34'</u>	<u>100,000 lbs.</u>
<u>tri axle</u>	<u>60,000 lbs.</u>
<u>extreme wheelbase 34' or greater</u>	<u>108,000 lbs.</u>
<u>tri axle</u>	<u>60,000 lbs.</u>

tandem/tandem/tandem axle configuration

<u>extreme wheelbase greater than 37' but less than 39'</u>	<u>100,000 lbs.</u>
<u>tandem axle</u>	<u>50,000 lbs.</u>

(no two consecutive set of tandems to exceed 90,000 lbs.)

<u>extreme wheelbase 39' or greater</u>	<u>108,000 lbs.</u>
<u>tandem axle</u>	<u>50,000 lbs.</u>

(no two consecutive set of tandems to exceed 90,000 lbs.)

7 AXLE VEHICLE

engineering study

ALL VARIATIONS OF AXLE CONFIGURATIONS OTHER THAN THOSE LISTED WILL REQUIRE INDIVIDUAL ENGINEERING STUDY.

- (3) ~~Sealed Ship Containers~~ Vehicles hauling sealed ship containers may qualify for an overweight permit provided:
- (A) Going to or from a designated seaport (to include in state and out of state) and has been or will be transported by marine shipment;
 - (B) Licensed for maximum allowable weight allowed in G.S. 20-118;
 - (C) Vehicle/vehicle combination has at least five axles;
 - (D) To have proper documentation (shippers bill of lading and/or trucking bill of lading) of sealed commodity being transported available for enforcement inspection.

The Department of Transportation shall issue a permit for 80,000 lbs. but not to exceed 94,500 lbs. with up to ten designated routes of permitted travel provided all qualifying requirements have been met.

(c) Overlength permits will be limited as follows:

- (1) Single trip permits are limited to 85' to include towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 85' after review of route of travel. Provided, mobile/modular Mobile/modular homes may be issued permits not to exceed 95'.
- (2) Annual (blanket) permits will not be issued for lengths to exceed 65'. Front overhang may not exceed 3' unless if transported otherwise would create a safety hazard. Provided, mobile/modular home permits may be issued for a length not to exceed 91'.

(d) There are not set limits for permitted height as it is controlled by clearances on designated route. Permit will indicate "Check Height on Structures". The issuance of the permit does not imply nor guarantee the clearance for the permitted load and all vertical clearances ~~should~~ shall be checked by the permittee prior to movement underneath.

(e) ~~Time of The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday, or approved state holidays. Mobile/modular homes are restricted to travel between sunrise and sunset Monday through 12 noon on Saturday. Time restrictions may be determined by the issuing office if in the best interest for safety and/or expedite traffic. No movement of permitted vehicle/vehicle combination after noon on the day preceding the six holidays of New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and no movement until noon on the day following the holiday. Continuous travel (24 hr/7 day/365 days a year) is would be authorized for any vehicle/vehicle combination up to but not to exceed 94,500 lbs., provided:~~

- (1) no other over legal dimension of width, height or length is to be included in the permitted move; and Exception: self-propelled equipment may be authorized for continuous travel with properly marked overhang (front and/or rear) not to exceed a total of 10'; and
- (2) the vehicle is licensed for the maximum allowable weight determined by extreme axle measurements. ~~If the holiday falls on Sunday, the following Monday will be considered the holiday. Time restrictions may be determined by the issuing office if in the best interest for safety and/or to expedite traffic. Provided, mobile/modular homes are restricted to travel Monday through 12 noon on Saturday.~~

(f) The speed of permitted moves shall be that which is reasonable and prudent for the load, considering weight and bulk, under conditions existing at the time; however, the maximum speed shall not exceed the posted speed limit. The driver will maintain a safe speed consistent with ~~maintaining proper interval and temporarily the traveling public and avoid creating traffic congestion by periodically~~ relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs. Provided, seven axle self-propelled truck cranes with extreme wheel base of 44 feet shall not exceed a maximum speed of 45 mph.

(g) Additional safety measures ~~will be required~~ are as follows:

- (1) A yellow (or a color of equal effectiveness) banner measuring 7' x 18" bearing the legend "Oversize Load" in 10" black letters ~~will~~ shall be displayed on the towing unit for all loads in excess of 10' wide;
- (2) Red flags measuring 18" square will be displayed on all sides at the widest point of load for all loads in excess of 10' wide but the flags shall be so mounted as to not increase the overall width of the load;
- (3) A flagman may be required for vehicle/vehicle combinations of loads in excess of 12' in width when a speed of 20 ~~miles per hour~~ mph cannot be maintained on level terrain;
- (4) Rear view mirrors and other safety devices on towing units attached for movement of overwidth loads shall be removed or retracted to conform with legal width when unit is not towing/hauling such vehicle or load;

(5) Flashing amber lights will be used as determined by the issuing permit office.

(h) The object to be transported ~~will~~ shall not be loaded or parked, day or night, on the highway right of way without specific permission from the office issuing the permit.

(i) No move ~~will~~ shall be made when weather conditions render visibility less than 500' for a person or vehicle. Moves ~~will~~ shall not be made when highway is covered with snow or ice or at any time travel conditions are considered unsafe by the Division of Highways, State Highway Patrol or other Law Enforcement Officers having jurisdiction. Movement of a mobile/modular 14' unit with an allowable roof overhang not to exceed 12" ~~will~~ shall be prohibited when wind velocities exceed 25 ~~miles per hour~~ mph in gusts.

(j) All obstructions, including traffic signals, signs, utility lines ~~will~~ shall be removed immediately prior to and replaced immediately after the move at the expense of the mover, provided arrangements for and approval from the owner is obtained. In no event are trees, shrubs, or official signs to be cut, trimmed or removed without personal approval from the district engineer having jurisdiction over the area involved.

(k) ~~Requirement for~~ The requirement of escort vehicles(s) ~~will~~ for permitted loads shall be determined by the issuing office and/or the Central Permit Office.

Authority G.S. 20-119; 136-18(5); Board of Transportation Minutes for February 16, 1977 and November 10, 1978.

only if time permits.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Electrolysis Examiners intends to adopt rules cited as 21 NCAC 19 .0602 - .0621.

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

The public hearing will be conducted at 10:00 a.m. on September 15, 1993 at the State Employees' Credit Union Building, Fourth Floor Conference Room, 801 Hillsborough Street, Raleigh, North Carolina.

Reason for Proposed Action: To set minimum requirements for certification of electrolysis schools.

Comment Procedures: The record of hearing will be open for receipt of written comments from August 16, 1993 through September 15, 1993. Written comments may either be submitted at the hearing or delivered to the Board at its mailing address (c/o Patricia Holland, 205 Westview Place, High Point, N.C. 27260). Anyone wishing to speak at the hearing should notify Patricia Holland in writing at the Board's mailing address no later than 5:00 p.m. the day before the meeting. Anyone whose written request to speak is not received by this deadline will be able to speak

CHAPTER 19 - BOARD OF ELECTROLYSIS EXAMINERS

SECTION .0600 - SCHOOLS

.0602 APPLICATION FOR CERTIFICATION

Each person applying for a school certification shall submit to the Board the information required by G.S. 88A-19 and:

- (1) A copy of the student contract required by Rule .0605 of this Section; and
- (2) A copy of the form for student authorization to receive electrolysis treatment required by Rule .0605 of this Section.

Statutory Authority G.S. 88A-6; 88A-19.

.0603 CERTIFICATIONS NOT TRANSFERABLE

Consistent with G.S. 88A-19, school certifications are valid only for the location named in the certification and are not transferable either to a new owner or to a new location. A school shall within 10 business days notify the Board in writing of a sale, transfer, change in management or change in ownership. Each school shall display its certification in a conspicuous place near the main entrance.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0604 PROGRAM DIRECTORS

Each school shall at all times be under the direction and supervision of a program director.

The program director shall be a licensed practicing electrologist who is certified as an instructor pursuant to G.S. 88A-17. The program director of each school shall be responsible for the organization, administration, development and general effectiveness of the school's electrolysis training program.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0605 ENROLLMENT PROCEDURES

(a) Every school shall furnish to each student upon enrollment a signed copy of the school contract with the student and a copy of the school handbook which shall include the school curriculum as approved by the Board. The school shall also furnish to each student upon enrollment a copy of the statutes and rules governing electrologists and the sanitation standards issued by the Board.

(b) Every school shall obtain from each student on enrollment a signed copy of the student's permission to receive electrolysis treatment. Any limitations on treatment shall be listed on the permission form.

(c) Within 10 business days after each student's enrollment, every school shall furnish the Board with the following:

- (1) The name, address, date of enrollment, telephone number and specification of day or evening classes of each student, recorded on the school's stationery;
- (2) A statement signed by the student stating that he or she has received a copy of the statutes and the rules governing electrologists and the sanitation standards issued by the Board and is cognizant of the fact that in order to qualify for an electrologist license the student must meet the requirements of G.S. 88A-10.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0606 SCHOOL LOCKERS

Every school shall provide each student with a separate locker for the student's clothes and effects.

Statutory Authority G.S. 88A-6; 88A-19.

.0607 SCHOOL BUILDINGS

Each school shall contain at least one classroom, at least one area for practical demonstrations, and at least one private treatment room. In addition,

the school shall contain at least 40 square feet per student.

Statutory Authority G.S. 88A-6; 88A-19.

.0608 SCHOOL EQUIPMENT

(a) Every school shall provide and maintain at least the following equipment:

- (1) one high frequency or thermolysis (short wave) machine;
- (2) one galvanic/thermolysis (blend) machine;
- (3) stainless steel, insulated, and disposable epilation probes (or needles) of sizes 002, 003, 004, and 005;
- (4) at least one circuline-type lamp, halogen lamp, or other type of magnifying lamp;
- (5) two treatment tables and chairs for clients and adjustable chairs or stools for students;
- (6) a cabinet for towels and utilities for each table;
- (7) a covered trash container for each table;
- (8) covered containers for all lotions, soaps, cotton balls, tissues and other supplies and sterilizing solutions;
- (9) six dozen fine pointed epilation forceps (or tweezers);
- (10) one plastic puncture-resistant container (for used sharps) for each table;
- (11) one autoclave sterilizer, dry heat sterilizer and ultrasonic cleaner;
- (12) audio-visual teaching materials and equipment.

(b) Only F.C.C. approved types of epilators registered by the federal Food and Drug Administration shall be used by each school in training students.

(c) All epilators, autoclaves, and dry heat sterilizers shall be state-of-the-art and shall be monitored monthly to ascertain effectiveness. Any changes from the list of equipment provided to the Board pursuant to this Rule shall be reported to the Board.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0609 SCHOOL LIBRARY

Every school shall maintain a library containing at least one copy of each textbook used and shall make the books in the library available for use by the students. These books must be approved by the Board.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0610 RECORD OF ATTENDANCE

Every school shall:

- (1) keep a daily record of the attendance of each student and a record of the time devoted by the student to practical and theoretical work;
- (2) establish credits;
- (3) and hold examinations before issuing diplomas.

These records or any part of the information contained in the records shall be made available on request to any inspector or member of the Board assigned by the Board to inspect records.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0611 IDENTIFICATION OF STUDENTS

(a) All students must wear identification which clearly indicates the student's name and whether the student is a primary, junior, or senior student. A student shall be classified as a primary student until the completion of 200 hours of the curriculum. A student shall be classified as a junior student during the time the student is completing between 200 and 400 hours of the curriculum. A student shall be classified as a senior student after completion of 400 hours of the curriculum.

(b) Every school shall notify the Board of the type of insignia issued by the school to be used by its students.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0612 STUDENT PRACTICAL WORK; CREDIT FOR OBSERVING AND SERVING AS A CLIENT

(a) No practical work may be done by students except within the school premises and under the direct supervision of a licensed instructor.

(b) Hours of credit shall be given to a student for time spent as a client in the ratio of one hour of practical credit for every three hours as a client. The maximum hours of practical credit to be given a student for time spent as a client or observing will be 30 credit hours. Any student observing, or as a client, may receive either theory or clinical practice hours but not both for the same unit of time.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0613 STUDENT/TEACHER RATIO AND

EQUIPMENT

Each group of 12 students or less engaged in practical work simultaneously shall have at least one licensed instructor in attendance at all times and necessary equipment shall be provided for each student and client.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0614 SCHOOL HOURS AND SCHEDULE

Every school shall maintain regular class hours with a daily schedule which shall be submitted to the Board for its approval every six months.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0615 NOTICE TO PUBLIC

Every school shall display in a conspicuous place adjacent to each treatment room a sign with display lettering at least two inches in height, which shall read as follows:

ALL WORK DONE IN THIS SCHOOL IS PERFORMED BY STUDENTS.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0616 REMUNERATION PROHIBITED

No school shall, directly or indirectly, accept remuneration or make any charge for services rendered by its students for practice work.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0617 SCHOOL ADVERTISEMENTS

A school may advertise as such, but shall not in any way hold itself out as an electrolysis office.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0618 PRIVATE PRACTICE IN A SCHOOL BUILDING

No private electrolysis practice shall be maintained in any room or enclosure where a school's activities are conducted. Any private practice in a school building must have a separate entrance for the working quarters and a separate name and sign.

Statutory Authority G.S. 88A-6; 88A-16; 88A-19; 88A-20.

.0619 EQUIPMENT ENDORSEMENTS AND SALES PROHIBITED

No school may endorse, recommend, advertise,

promote, or sell any type of epilator or other electrolysis equipment to the students in the school or permit any other person to do so.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0620 REPORT OF STUDENT LEAVING

The Board is to be notified within 10 days in writing by the school of any student that leaves the school for any reason.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

.0621 TRANSFER CREDIT

Schools may allow a student credit towards the 600-hour requirement for:

- (1) theoretical and practical hours taken in a basic electrolysis training course at another school within the five years preceding the student's enrollment; and
- (2) hours taken in a continuing education course within the three years preceding the student's enrollment.

The school shall submit a request for approval of transfer credit, accompanied by proof satisfactory to the Board, and this request must be approved by the Board before the school may allow any transfer credit.

Statutory Authority G.S. 88A-6; 88A-19; 88A-20.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Examiners of Practicing Psychologists intends to amend rule cited as 21 NCAC 54 .1605.

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

The public hearing will be conducted at 1:00 p.m. on August 31, 1993 at the Center for Appalachian Studies Conference Room, University Hall (2nd Floor), Appalachian State University, Boone, N.C.

Reason for Proposed Action: To set the fee for taking the national examination.

Comment Procedures: Comments may be submit-

ted in writing or in person at the public hearing or in writing prior to September 16, 1993 to Martha Storie, N.C. Psychology Board, University Hall, Appalachian State University, Boone, N.C. 28608.

Editor's Note: This Rule was filed as a temporary rule effective September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

SECTION .1600 - GENERAL PROVISIONS

.1605 FEES

In addition to fees specified in Article 18A, Chapter 90 of the North Carolina General Statutes, the following charges will be assessed for the indicated services:

- (1) eight dollars (\$8.00) - copy of annual directory of licensed psychologists;
- (2) five dollars (\$5.00) - copy of 21 NCAC 54;
- (3) fifty dollars (\$50.00) - renewal of license;
- (4) ten dollars (\$10.00) - late renewal of license;
- (5) fifteen dollars (\$15.00) - duplicate license;
- (6) ~~one hundred dollars (\$100.00) - national examination taken prior to October 6, 1989;~~ one hundred fifty dollars (\$150.00) - national examination taken ~~on or after October 6, 1989;~~ prior to October 13, 1993; two hundred seventy-five dollars (\$275.00) - national examination taken on or after October 13, 1993;
- (7) ten dollars (\$10.00) - state examination; and
- (8) twenty-five cents (\$0.25) per page - copy of minutes of Board meetings or transcript of hearing.

Statutory Authority G.S. 12-3.1(c); 90-270.9; 90-270.11(a); 90-270.11(b); 90-270.14; 90-270.18(b); 90-270.20.

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

JULY 93

TITLE	DEPARTMENT	TITLE	DEPARTMENT
1	Administration	21	Occupational Licensing Boards
2	Agriculture	26 -	Landscape Architects
10	Human Resources	34 -	Mortuary Science
12	Justice	37 -	Nursing Home Administrators
13	Labor	54 -	Practicing Psychologists
15A	Environment, Health, and Natural Resources	58 -	Real Estate Commission
17	Revenue	25	State Personnel
19A	Transportation	26	Office of Administrative Hearings

Citation	AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
1 NCAC 37 .0102 - .0103		✓		✓		08/02/93	
.0201		✓				08/02/93	
.0208	✓					08/02/93	
2 NCAC 43L .0402					✓		
10 NCAC 3R .3001		✓		✓		09/01/93	
.3020		✓				09/01/93	
26H .0301 - .0304		✓				07/08/93	180 DAYS
.0305 - .0309	✓					07/08/93	180 DAYS
41P .0008		✓		✓		08/01/93	
42H .0906		✓		✓		09/01/93	
10 NCAC 42H .0907		✓				09/01/93	
.0910		✓		✓		09/01/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
12	NCAC	2I	.0101		✓		✓		08/02/93	
			.0102 - .0103		✓				08/02/93	
			.0104	✓			✓		08/02/93	
			.0202		✓		✓		08/02/93	
			.0203	✓			✓		08/02/93	
12	NCAC	2I	.0203 - .0207						08/02/93	
Recodified to 12	NCAC	2I	.0204 - .0208							
			.0204 - .0205		✓		✓		08/02/93	
			.0206		✓				08/02/93	
			.0208		✓				08/02/93	
			.0210	✓					08/02/93	
			.0211 - .0213	✓			✓		08/02/93	
			.0214	✓					08/02/93	
			.0301		✓				08/02/93	
			.0304		✓				08/02/93	
			.0305		✓		✓		08/02/93	
			.0306	✓					08/02/93	
	7D		.0100					✓		
13	NCAC	7A	.0101		✓				08/02/93	
			.0103		✓				08/02/93	
			.0301 - .0302	✓			✓		08/02/93	
			.0401	✓			✓		08/02/93	
			.0601 - .0607	✓			✓		08/02/93	
			.0703		✓				08/02/93	
	7B		.0101 - .0110			✓			08/02/93	
			.0112 - .0118			✓			08/02/93	
			.0120 - .0121			✓			08/02/93	
			.0201 - .0202			✓			08/02/93	
			.0301 - .0317			✓			08/02/93	
13	NCAC	7B	.0401 - .0418						08/02/93	
Recodified to 13	NCAC	7A	.0701 - .0718							
13	NCAC	7B	.0501 - .0509			✓			08/02/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
13	NCAC	7B	.0701 - .0713						08/02/93	
Recodified to 13	NCAC	7A	.0501 - .0513							
		7B	.0801 - .0804			✓			08/02/93	
			.0901 - .0905			✓			08/02/93	
			.1001		✓		✓		08/02/93	
13	NCAC	7B	.1001						08/02/93	
Recodified to 13	NCAC	7A	.0303							
		7B	.1002 - .1003			✓			08/02/93	
			.1101 - .1111			✓			08/02/93	
			.1113			✓			08/02/93	
			.1115 - .1120			✓			08/02/93	
			.1201 - .1208			✓			08/02/93	
		7C	.0101 - .0104			✓			08/02/93	
13	NCAC	7C	.0107						08/02/93	
Recodified to 13	NCAC	7F	.0102							
13	NCAC	7C	.0201 - .0226						08/02/93	
Recodified to 13	NCAC	7F	.0401 - .0426							
		7C	.0304 - .0309			✓			08/02/93	
		7D	.0101 - .0104			✓			08/02/93	
			.0201 - .0203			✓			08/02/93	
			.0301 - .0302			✓			08/02/93	
			.0401 - .0408			✓			08/02/93	
			.0501 - .0506			✓			08/02/93	
			.0601 - .0606			✓			08/02/93	
			.0701 - .0704			✓			08/02/93	
			.0801 - .0803			✓			08/02/93	
			.0901 - .0902			✓			08/02/93	
			.1001 - .1002			✓			08/02/93	
			.1101 - .1105			✓			08/02/93	
13	NCAC	7D	.1201 - .1206			✓			08/02/93	
			.1301 - .1302			✓			08/02/93	
13	NCAC	7D	.1401 - .1403			✓			08/02/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.1501 - .1509						✓			08/02/93	
.1601 - .1604						✓			08/02/93	
.1701 - .1702						✓			08/02/93	
.1801 - .1805						✓			08/02/93	
.1901 - .1904						✓			08/02/93	
.2001 - .2004						✓			08/02/93	
7E	.0101 - .0102					✓			08/02/93	
	.0201 - .0202					✓			08/02/93	
	.0301 - .0303					✓			08/02/93	
	.0401 - .0403					✓			08/02/93	
	.0501 - .0502					✓			08/02/93	
	.0601 - .0602					✓			08/02/93	
	.0701 - .0702					✓			08/02/93	
	.0801 - .0802					✓			08/02/93	
	.0901 - .0903					✓			08/02/93	
	.1001 - .1004					✓			08/02/93	
	.1101 - .1103					✓			08/02/93	
	.1201 - .1203					✓			08/02/93	
	.1301 - .1302					✓			08/02/93	
	.1401 - .1402					✓			08/02/93	
	.1501 - .1503					✓			08/02/93	
	.1601 - .1604					✓			08/02/93	
	.1701 - .1702					✓			08/02/93	
	.1801 - .1802					✓			08/02/93	
	.1901 - .1903					✓			08/02/93	
	.2001 - .2002					✓			08/02/93	
	.2101 - .2102					✓			08/02/93	
7F	.0101			✓			✓		08/02/93	
	.0201			✓			✓		08/02/93	
	.0301			✓			✓		08/02/93	
15A	NCAC	2B	.0506		✓				08/02/93	
7J	.0107							✓		
15A	NCAC	10B	.0203					✓		

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
11			.0101					✓		
			.0303					✓		
			.0335					✓		
			.0603 - .0604					✓		
			.1200					✓		
			.1314					✓		
			.1500					✓		
	22A		.0001		✓				08/02/93	
	22B		.0503		✓		✓		08/02/93	
17	NCAC	10	.0506		✓				08/01/93	
			.0508		✓				08/01/93	
19A	NCAC	2B	.0301 - .0302			✓			07/26/93	
			.0303 - .0306		✓				07/26/93	
			.0307 - .0308			✓			07/26/93	
			.0310 - .0312		✓				07/26/93	
			.0313 - .0314					✓		
21	NCAC	26	.0205		✓		✓		08/01/93	
			.0207 - .0208		✓		✓		08/01/93	
			.0209 - .0210	✓			✓		08/01/93	
			.0211	✓					08/01/93	
			.0301		✓		✓		08/01/93	
	34A		.0125	✓					08/02/93	
			.0201		✓				08/02/93	
	34D		.0104 - .0105	✓					08/02/93	
			.0301		✓				08/02/93	
37			.0211		✓				08/02/93	
			.0303		✓		✓		08/02/93	
			.0308		✓				08/02/93	
			.0404		✓		✓		08/02/93	
			.0501 - .0502		✓				08/02/93	
			.0504 - .0505		✓				08/02/93	
			.0508		✓		✓		08/02/93	
21	NCAC	37	.0509			✓			08/02/93	

LIST OF RULES CODIFIED

Citation				AD	AM	RP	With Chgs	Corr	Eff. Date	Temp. Expires
.0512					✓				08/02/93	
.0514					✓				08/02/93	
.0517					✓				08/02/93	
.0519					✓		✓		08/02/93	
.0603					✓				08/02/93	
.0701 - .0707					✓				08/02/93	
.0708 - .0709						✓			08/02/93	
.0901					✓		✓		08/02/93	
.0903					✓				08/02/93	
.0912					✓		✓		08/02/93	
54	.1605				✓				09/01/93	180 DAYS
58A	.0110							✓		
58B	.0101				✓				08/02/93	
.0201					✓				08/02/93	
.0301					✓				08/02/93	
25	NCAC	1E	.1401 - .1402	✓			✓		08/02/93	
.1403				✓					08/02/93	
.1404 - .1406				✓			✓		08/02/93	
.1407				✓					08/02/93	
.1408 - .1409				✓			✓		08/02/93	
1I	.2301				✓		✓		08/02/93	
1J	.0604				✓		✓		08/02/93	
.0802					✓		✓		08/02/93	
26	NCAC	1	.0103		✓		✓		08/02/93	
.0202					✓				08/02/93	
2A	.0102				✓				08/02/93	
.0401					✓		✓		08/02/93	
.0701						✓			08/02/93	
2B	.0103 - .0104				✓		✓		08/02/93	
.0401					✓				08/02/93	
4	.0008				✓		✓		08/02/93	

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).

ADMINISTRATION

Department of Administration's Minimum Criteria

<i>1 NCAC 39 .0101 - Purpose</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>07/15/93</i>
<i>1 NCAC 39 .0301 - Exceptions to Minimum Criteria</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>No Response from Agency</i>	<i>Obj. Cont'd</i>	<i>07/15/93</i>

N.C. Low-Level Radioactive Waste Management Authority

<i>1 NCAC 37 .0103 - Mailing List</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/15/93</i>
<i>1 NCAC 37 .0306 - Preferred Site</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Revised Rule</i>	<i>RRC Objection</i>	<i>07/15/93</i>

ADMINISTRATIVE HEARINGS

Civil Rights Division

<i>26 NCAC 4 .0008 - Contested Case Hearing</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/15/93</i>

Rules Division

<i>26 NCAC 2A .0401 - General Typing Instructions</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/15/93</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

<i>15A NCAC 7H .1205 - Specific Conditions</i>	<i>RRC Objection</i>	<i>03/18/93</i>
<i>Rule Returned to Agency</i>		<i>04/15/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>04/23/93</i>

Environmental Health

<i>15A NCAC 18A .0911 - Marinas: Docking Facilities: Other Mooring Areas</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 18A .1601 - Definitions</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 18A .1725 - Water Quality</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 18A .2618 - Cleaning of Equipment and Utensils</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>

Environmental Management

<i>15A NCAC 2D .0903 - Recordkeeping: Reporting: Monitoring</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 2H .1110 - Implementation</i>	<i>RRC Objection</i>	<i>02/18/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>03/18/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>05/19/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>06/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>07/15/93</i>

North Carolina Zoological Park Regulations

<i>15A NCAC 22B .0503 - Intoxicating Liquors: Controlled Substance/Beverages</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/15/93</i>

WTP Operators Certification Commission

<i>15A NCAC 8A .0102 - Creation</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8A .0202 - Duties and Requirements</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0102 - Applying for Examination</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0109 - Requirement for Notification of Change in Address</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0201 - Grade I Wastewater Treatment Plant Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0205 - Definitions</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0207 - Grade II Collection System Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0208 - Grade III Collection System Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0209 - Grade IV Collection System Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0210 - Subsurface System Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0211 - Land Application/Residuals Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0212 - Spray Irrigation Operator</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8B .0502 - Refunding of Fees</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>
<i>15A NCAC 8C .0002 - Rating Scale/Classification/Wastewater Trtmt Facilities</i>	<i>RRC Objection</i>	<i>06/17/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>06/17/93</i>

HUMAN RESOURCES

Children's Services

<i>10 NCAC 41P .0008 - Adoptive Study</i>	<i>RRC Objection</i>	<i>07/15/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/15/93</i>
<i>10 NCAC 41Q .0201 - Personnel</i>	<i>RRC Objection</i>	<i>04/15/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>05/19/93</i>
<i>Rule Returned to Agency</i>		<i>06/17/93</i>
<i>Agency Filed Rule for Codification Over RRC Objection</i>	<i>Eff.</i>	<i>07/02/93</i>
<i>10 NCAC 41R .0002 - Administration and Organization</i>	<i>RRC Objection</i>	<i>07/15/93</i>

Agency Revised Rule

RRC Objection 07/15/93

Individual and Family Support

*10 NCAC 42H .0906 - Assessment and Reassessment
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

Mental Health: General

*10 NCAC 14K .0315 - Treatment/Habilitation Planning and Documentation
Agency Revised Rule*

*RRC Objection 06/17/93
Obj. Removed 06/17/93*

JUSTICE

Office of the Attorney General

*12 NCAC 21 .0104 - Definitions
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

*12 NCAC 21 .0202 - Minimum Standards for Company Police Officers
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

*12 NCAC 21 .0203 - Application for Company Police Agency
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

*12 NCAC 21 .0205 - Background Investigation
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

*12 NCAC 21 .0212 - Suspension, Revocation, or Denial of Officer Commission
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

*12 NCAC 21 .0213 - Period of Suspension, Revocation or Denial
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

LABOR

OSHA

*13 NCAC 7A .0401 - Carolina Star Program
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

*13 NCAC 7A .0604 - Selection of Safety Committees
Agency Revised Rule*

*RRC Objection 07/15/93
Obj. Removed 07/15/93*

LICENSING BOARDS AND COMMISSIONS

Landscape Architects

*21 NCAC 26 .0203 - General Obligations of Practice: Mandatory Standards
Agency Repealed Rule*

*RRC Objection 06/17/93
Obj. Removed 06/17/93*

*21 NCAC 26 .0205 - Forms of Practice
Rule Returned to Agency*

*RRC Objection 06/17/93
07/15/93*

*21 NCAC 26 .0207 - Application of Professional Seal
Rule Returned to Agency*

*RRC Objection 06/17/93
07/15/93*

*21 NCAC 26 .0208 - Improper Conduct
Rule Returned to Agency*

*RRC Objection 06/17/93
07/15/93*

*21 NCAC 26 .0209 - Unprofessional Conduct
Agency Revised Rule*

*RRC Objection 06/17/93
Obj. Removed 07/15/93*

*21 NCAC 26 .0210 - Dishonest Practice
Agency Revised Rule*

*RRC Objection 06/17/93
Obj. Removed 07/15/93*

21 NCAC 26 .0211 - Incompetence

RRC Objection 06/17/93

Agency Revised Rule
21 NCAC 26 .0301 - Examination
Agency Revised Rule

Obj. Removed 07/15/93
RRC Objection 06/17/93
Obj. Removed 07/15/93

Medical Examiners

21 NCAC 32B .0315 - Ten Year Qualification
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 06/17/93

Real Estate Commission

21 NCAC 58A .0110 - Broker-in-Charge
Agency Revised Rule
21 NCAC 58A .0506 - Salesman to be Supervised by Broker
Agency Revised Rule
21 NCAC 58C .0305 - Course Scheduling
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 06/17/93
RRC Objection 06/17/93
Obj. Removed 06/17/93
RRC Objection 06/17/93
Obj. Removed 06/17/93

REVENUE

Ad Valorem Tax Division

17 NCAC 10 .0506 - Certification Requirements for County Appraisers
Agency Revised Rule
17 NCAC 10 .0508 - Certification Requirements for Private Firm Appraisers
Agency Revised Rule

RRC Objection 06/17/93
Obj. Removed 07/15/93
RRC Objection 06/17/93
Obj. Removed 07/15/93

STATE PERSONNEL

Office of State Personnel

25 NCAC 1E .1401 - Purpose and Scope
Agency Revised Rule
25 NCAC 1E .1406 - Employee Responsibility
Agency Revised Rule

RRC Objection 07/15/93
Obj. Removed 07/15/93
RRC Objection 07/15/93
Obj. Removed 07/15/93

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).

10 NCAC 3R .1124(f) - ACCESSIBILITY TO SERVICES

Beecher R. Gray, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 3R .1124(f) void as applied in *Britthaven, Inc. d/b/a Britthaven of Morganton, Petitioner v. N.C. Department of Human Resources, Division of Facility Services, Certificate of Need Section, Respondent and Valdesse Nursing Home, Inc., Respondent-Intervenor* (92 DHR 1785).

15A NCAC 3O .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 3O .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				
LMS Express, Inc. v. Administration, Div of Purchase & Contract	92 DOA 0735	Morgan	06/04/93	
Stauffer Information Systems v. Community Colleges & Administration	92 DOA 0803	West	06/10/93	8:7 NCR 613
McLaurin Parking Co. v. Administration	92 DOA 1662	Morrison	04/02/93	8:3 NCR 320
Warren H. Arrington Jr. v. Division of Purchase & Contract	93 DOA 0132	West	07/21/93	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Ann Oldham McDowell	92 ABC 0260	Morgan	04/01/93	
Curtis Ray Lynch v. Alcoholic Beverage Control Comm.	92 ABC 0255	Gray	05/18/93	
Alcoholic Beverage Control Comm. v. Ezra Everett Rigsbee	92 ABC 0702	West	07/30/93	
Alcoholic Beverage Control Comm. v. Partnership, Phillip Owen Edward	92 ABC 0978	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Gary Morgan Neugent	92 ABC 1086	Becton	03/22/93	
Alcoholic Beverage Control Comm. v. Kirby Ronald Eldridge	92 ABC 1153	Chess	04/26/93	
Alcoholic Beverage Control Comm. v. Gloria Black McDuffie	92 ABC 1476	West	05/26/93	
Alcoholic Beverage Control Comm. v. Larry Isaac Hailstock	92 ABC 1453	Reilly	04/07/93	
Alcoholic Beverage Control Comm. v. Anthony Ralph Cecchini Jr.	92 ABC 1690	Morgan	06/29/93	
Johnnie L. Baker v. Alcoholic Beverage Control Commission	92 ABC 1735	Chess	05/07/93	
RAMSAC Enterprises, Inc. v. Alcoholic Beverage Control Comm.	93 ABC 0002	Morrison	07/02/93	
Alcoholic Beverage Control Comm. v. Aubrey Rudolph Wallace	93 ABC 0047	Gray	05/28/93	
Alcoholic Beverage Control Comm. v. Majdi Khalid Wahdan	93 ABC 0087	Becton	07/06/93	8:9 NCR 785
Alcoholic Beverage Control Comm. v. Homer Patrick Godwin Jr.	93 ABC 0125	Reilly	05/13/93	
Alcoholic Beverage Control Comm. v. Wanda Lou Ball	93 ABC 0182	Nesnow	07/29/93	
Charles Anthonious Morant v. Alcoholic Beverage Control Comm.	93 ABC 0232	Chess	07/20/93	
ABC Comm. v. Partnership/T/A Corrothers Comty Ctr & Private Club	93 ABC 0318	Reilly	07/22/93	
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				
George W. Paylor v. Crime Victims Compensation Comm.	91 CPS 1286	Morgan	04/27/93	
Steven A. Barner v. Crime Victims Compensation Comm.	92 CPS 0453	Nesnow	06/01/93	
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	
Isabelle Hyman v. Crime Victims Compensation Comm.	92 CPS 1807	Morrison	05/24/93	
James G. Pellom v. Crime Control & Public Safety	93 CPS 0034	Gray	05/05/93	
Norman E. Brown v. Victims Compensation Commission	93 CPS 0141	West	07/07/93	
Moses H. Cone Mem Hosp v. Victims Compensation Comm.	93 CPS 0152	Nesnow	04/02/93	8:3 NCR 327
David & Jane Spano v. Crime Control & Public Safety	93 CPS 0160	Nesnow	07/30/93	8:10 NCR 862
Phillip Edward Moore v. Crime Control & Public Safety	93 CPS 0169	Nesnow	05/20/93	
John Willie Leach v. Crime Victims Compensation Comm.	93 CPS 0263	Morrison	05/20/93	
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J. Bruce Mulligan v. Environment, Health, & Natrual Resources	91 EHR 0773	West	07/13/93	
Michael D. Barnes v. Onslow Cty Hlth & Environment and EHR	91 EHR 0825	Morgan	06/21/93	
William E. Finck v. Environment, Health, & Natural Resources	92 EHR 0040	Gray	06/14/93	

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Uitley 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. EHNR	92 EHR 1140	Gray	04/13/93	
Service Oil Company v. Environment, Health, & Natural Resources	92 EHR 1205	Reilly	05/27/93	
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Willie M. Watford v. Hertford Gates District Health Department	92 EHR 1600	Chess	03/24/93	
Standard Speciality Contractors, Inc. v. EHNR	92 EHR 1660	Reilly	05/21/93	
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Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	06/21/93	
Mustafa E. Essa v. Environment, Health, & Natural Resources	93 EHR 0146	Gray	03/29/93	
Charlie Garfield McPherson Swine Farm v. Env., Health, & Nat. Res.	93 EHR 0181	Reilly	07/23/93	8:10 NCR 870
Rosetta Brimage, Vanessa Pack v. Env. Health of Craven County	93 EHR 0206	Nesnow	05/20/93	
O.C. Stafford/Larry Hancy v. Montgomery Cty. Health Dept.	93 EHR 0224	Gray	06/07/93	
Bobby Anderson v. Environment, Health, & Natural Resources	93 EHR 0299	Reilly	06/07/93	
Shell Bros. Dist., Inc. v. Environment, Health, & Natural Resources	93 EHR 0308	Becton	05/18/93	
Hamilton Beach/Proctor-Silex, Inc. v. Environment, Health, & Natrl Res	93 EHR 0477	Reilly	06/29/93	

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O.C. Williams v. Human Resources	91 CSE 0036*	Morgan	03/30/93	
Ronald Terry Brown v. Human Resources	91 CSE 0249	Morgan	05/17/93	
Dennis K. King v. Human Resources	91 CSE 1122	Morgan	07/28/93	
O.C. Williams v. Human Resources	91 CSE 1158*	Morgan	03/30/93	
Michael L. Ray v. Human Resources	91 CSE 1173	Morgan	05/17/93	
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Samuel E. Massenberg Jr. v. Human Resources	91 CSE 1249	Morgan	05/17/93	
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	
Edwin Clarke v. Human Resources	92 CSE 0129	Morgan	05/17/93	
Dwayne Allen v. Human Resources	92 CSE 0196	Morgan	03/31/93	
Edwin Ivester v. Human Resources	92 CSE 0268	Nesnow	03/30/93	
Connie F. Epps, Otis Junior Epps v. Human Resources	92 CSE 1182	Reilly	07/22/93	
Tyrone Aiken v. Human Resources	92 CSE 1217	Gray	06/17/93	
Everett M. Eaton v. Human Resources	92 CSE 1221	Reilly	07/27/93	
Edward E. Brandon v. Human Resources	92 CSE 1237	Gray	04/16/93	
Darrell W. Russell v. Human Resources	92 CSE 1249	Becton	04/20/93	
John Henry Byrd v. Human Resources	92 CSE 1250	Reilly	06/04/93	
Michelle D. Mobley v. Human Resources	92 CSE 1256	Nesnow	04/15/93	
Robert E. Watson v. Human Resources	92 CSE 1265	Reilly	05/06/93	
Byron Christopher Williams v. Human Resources	92 CSE 1270	Nesnow	04/26/93	
James W. Bell v. Human Resources	92 CSE 1311	Nesnow	05/10/93	
Charles W. Stall Jr. v. Human Resources	92 CSE 1313	Mann	07/06/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1316*	Reilly	03/25/93	
David Rollins v. Human Resources	92 CSE 1334	Morrison	05/06/93	
Lyndell Greene v. Human Resources	92 CSE 1346	Nesnow	04/16/93	
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Terrance Freeman v. Human Resources	92 CSE 1411	Mann	06/07/93	
Timothy Brian Eller v. Human Resources	92 CSE 1414	Reilly	04/20/93	
Charles S. Ferrer v. Human Resources	92 CSE 1416	Mann	04/15/93	
Ronald H. Lockley v. Human Resources	92 CSE 1418	Nesnow	04/20/93	
Rene Thomas Rittenhouse v. Human Resources	92 CSE 1421	Nesnow	04/20/93	
Thomas Edward Williamson v. Human Resources	92 CSE 1422	Reilly	04/20/93	

* Consolidated cases.

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Michael W. Bentley v. Human Resources	92 CSE 1512	Nesnow	06/09/93	
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Wallace M. Cooper v. Human Resources	92 CSE 1527	Reilly	05/11/93	
Jarvis N. Price v. Human Resources	92 CSE 1531	Morrison	05/12/93	
Thomas L. Yates v. Human Resources	92 CSE 1535	Gray	05/10/93	
Robert E. Tarlton Sr. v. Human Resources	92 CSE 1536	Gray	05/17/93	
Rodney Devard Clemons v. Human Resources	92 CSE 1539	Gray	05/10/93	
James A. Coleman v. Human Resources	92 CSE 1540	Reilly	05/11/93	
Romeo F. Skapple v. Human Resources	92 CSE 1545	Gray	04/26/93	
Jeffrey L. Garrett v. Human Resources	92 CSE 1557	Gray	04/22/93	
Edward Kirk v. Human Resources	92 CSE 1560	Gray	06/29/93	
William C. Hubbard v. Human Resources	92 CSE 1562	Mann	05/12/93	
William Michael Przybysz v. Human Resources	92 CSE 1565	Becton	07/23/93	
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David Robinette v. Human Resources	92 CSE 1573	Mann	07/14/93	
Kit C. Elmore v. Human Resources	92 CSE 1575	Gray	07/16/93	
Brian C. Gilmore v. Human Resources	92 CSE 1576	Gray	04/26/93	
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Tony Thorpe v. Human Resources	92 CSE 1625	Chess	07/15/93	
Jeffery D. Williams v. Human Resources	92 CSE 1626	Mann	05/19/93	
Ronald Sowell v. Human Resources	92 CSE 1627	Reilly	07/19/93	
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	
William J. Carter v. Human Resources	92 CSE 1637	Nesnow	05/19/93	
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Tyrone Thomas v. Human Resources	92 CSE 1640	Mann	07/22/93	
Rilton E. May v. Human Resources	92 CSE 1642	Morgan	07/29/93	
Eric Stanley Stokes v. Human Resources	92 CSE 1652 ^{*3}	Reilly	03/25/93	
Larry Thompson v. Human Resources	92 CSE 1655	Reilly	07/22/93	
Billie J. Smith v. Human Resources	92 CSE 1656	Gray	07/23/93	
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Eric L. Garland v. Human Resources	92 CSE 1671	Mann	07/22/93	
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Ronald G. Bolden v. Human Resources	92 CSE 1706	Mann	06/25/93	
Marvin Holley v. Human Resources	92 CSE 1713	Mann	06/08/93	
Eddie Short v. Human Resources	92 CSE 1714	West	07/15/93	
Michael Tywan Marsh v. Human Resources	92 CSE 1716	Gray	06/17/93	
Leroy Jones v. Human Resources	92 CSE 1718	Gray	06/17/93	
Ronald Dean Lowery v. Human Resources	92 CSE 1771	West	07/15/93	
James E. Blakney v. Human Resources	92 CSE 1779	Nesnow	05/13/93	
Barbara W. Catlett v. Human Resources	92 DCS 0577	West	03/15/93	
Laurel Langford v. Human Resources	92 DCS 1181	Gray	05/04/93	8:5 NCR 441
Ida Diane Davis v. Human Resources	92 DCS 1200	Gray	03/29/93	
Hatsuko Klein v. Human Resources	92 DCS 1271	Reilly	05/05/93	
Leon Barbee v. Human Resources	92 DHR 0658	Morrison	04/30/93	8:4 NCR 392
Carrolton of Dunn, Inc. v. Human Resources	92 DHR 1101	Morgan	07/26/93	
Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center,	92 DHR 1109 ^{*6}	Morgan	06/22/93	8:8 NCR 687

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Dialysis Care of North Carolina, Inc., d/b/a Dialysis Care of Cumberland County v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of Fayetteville d/b/a Fayetteville Kidney Center, Webb-Lohavichan-Melton Rentals, Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Raeford and Webb-Lohavichan Rentals	92 DHR 1110*	Morgan	06/22/93	8:8 NCR 687
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Renal Care of Rocky Mount, Inc. v. Human Resources, Division of Facility Services, Certificate of Need Section, and Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Tarboro, Rocky Mount Nephrology Associates, Inc., Bio-Medical Applications of North Carolina, Inc., d/b/a BMA of Rocky Mount d/b/a Rocky Mount Kidney Center, and Rocky Mount Kidney Center Associates	92 DHR 1120	Gray	06/18/93	8:8 NCR 687
James H. Hunt Jr. v. Division of Medical Assistance	92 DHR 1145	Becton	05/13/93	8:5 NCR 443
Barbara Jones v. Human Resources	92 DHR 1192	Nesnow	04/02/93	8:3 NCR 313
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Snoopy Day Care, Diane Hamby v. Child Day Care Licensing	92 DHR 1320	Morgan	05/21/93	
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Helm's Rest Home, Ron J. Schimpf/Edith H. Wilson v. Human Resources	92 DHR 1604	Reilly	05/10/93	
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	
Wayne Sanders and Brenda Sanders v. Human Resources	92 DHR 1699	Reilly	06/07/93	8:7 NCR 632
Samuel Benson v. Office of Admin. Hearings for Medicaid	93 DHR 0010	Becton	03/11/93	
Cabarrus Cty Dept. of Social Svcs. v. Human Resources	93 DHR 0373	Morgan	07/20/93	
Fannie Lewis v. Human Resources	93 DHR 0379	Gray	06/28/93	
Katie Kelly v. Human Resources	93 DHR 0441	Chess	07/26/93	
INSURANCE				
Carolyn M. Hair v. St Employees Comprehensive Major Medical	92 INS 1464	Chess	03/10/93	
Phyllis C. Harris v. Teachers' & St. Emp. Comp. Major Med. Plan	93 INS 0197	Nesnow	07/29/93	
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Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0656*	West	06/22/93	
Colin Carlisle Mayers v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0761	Morrison	05/10/93	
Jennings Michael Bostic v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 0829*	West	06/22/93	
George Wilton Hawkins v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1081*	Morgan	07/09/93	
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	
Richard Zander Frink v. Criminal Justice Ed. & Training Stds. Comm.	92 DOJ 1465	Nesnow	05/28/93	
Sherri Ferguson Revis v. Sheriffs' Ed. & Training Stds. Comm.	92 DOJ 1756	Gray	03/23/93	
Mark Thomas v. Sheriffs' Ed. & Training Standards Commission	93 DOJ 0151	West	04/21/93	
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William B. Lipscomb v. Private Protective Services Board	93 DOJ 0458	Morrison	06/01/93	
Private Protective Svcs. Bd. v. Alan D. Simpson	93 DOJ 0480	West	07/21/93	
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Greensboro Golf Center, Inc. v. Labor	92 DOL 0204	Nesnow	04/15/93	
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Board of Mortuary Science v. Triangle Funeral Chapel, Inc.	92 BMS 1169	Reilly	04/29/93	8:4 NCR 396
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Frances F. Davis, Parent of Joseph E. Davis v. Public Instruction	93 EDC 0628	Mann	07/29/93	
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Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1065 ^{*4}	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1066 ^{*4}	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1067 ^{*4}	Mann	05/04/93	
Lawrence D. Wilkie, Jerry R. Evans, Jules R. Hancart, James H. Johnson, James D. Fishel v. Justice	90 OSP 1068 ^{*4}	Mann	05/04/93	
Bernie B. Kelly v. Correction	91 OSP 0344	Morrison	05/27/93	
Brenda G. Mitchell v. Correction	91 OSP 0625	West	03/08/93	8:1 NCR 75
Adolph Alexander Justice Jr. v. Motor Vehicles, Transportation	91 OSP 0860	Chess	07/19/93	
Clayton Brewer v. North Carolina State University	91 OSP 0941	West	04/02/93	8:3 NCR 306
Sherman Daye v. Transportation	91 OSP 0951	West	05/07/93	
Donnie M. White v. Correction	91 OSP 1236	Morgan	04/05/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	91 OSP 1344 ^{*5}	Chess	05/20/93	
Rence E. Shepherd v. Winston-Salem State University	91 OSP 1391	Morgan	04/28/93	
Eva Dockery v. Human Resources	92 OSP 0010	Chess	05/03/93	
Lee P. Crosby v. Michael Kelly, William Meyer and EHR	92 OSP 0056	Gray	06/07/93	
Gregory Samuel Parker v. Environment, Health, & Natural Resources	92 OSP 0188 ^{*5}	Chess	05/20/93	
Willie Granville Bailey v. Winston-Salem State University	92 OSP 0285	Morrison	03/10/93	
Julia Spinks v. Environment, Health, & Natural Resources	92 OSP 0313	Becton	04/12/93	8:4 NCR 382
James B. Price v. Transportation	92 OSP 0375	Gray	04/13/93	
I. Cary Nailling v. UNC-CH	92 OSP 0394	Becton	04/20/93	
Deborah Barber v. Correction	92 OSP 0396	Chess	03/04/93	
Laverne B. Hill v. Transportation	92 OSP 0431 ^{*4}	West	03/08/93	
Jimmy D. Wilkins v. Transportation	92 OSP 0432 ^{*4}	West	03/08/93	
Sarah W. Britt v. Human Resources, C.A. Dillon School, CPS	92 OSP 0455	West	05/26/93	8:6 NCR 484
Charles Robinson v. Revenue	92 OSP 0553	Morgan	07/21/93	
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 0634	Morrison	05/04/93	
Glinda C. Smith v. Wildlife Resources Commission	92 OSP 0653	Morrison	03/12/93	
Cindy G. Bartlett v. Correction	92 OSP 0671	Morgan	06/08/93	
William Kenneth Smith Jr. v. Broughton Hospital (Human Resources)	92 OSP 0684	Becton	05/10/93	
Larry O. Nobles v. Human Resources	92 OSP 0732	Mann	04/23/93	
Beatrice Wheelless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 0744 ^{*10}	Morgan	07/16/93	
Willie Thomas Hope v. Transportation	92 OSP 0947	Morgan	03/23/93	
David Seales v. Correction	92 OSP 0989	Chess	06/24/93	
Suzanne Ransley Hill v. Environment, Health, & Nat. Res.	92 OSP 0992	Reilly	03/18/93	8:2 NCR 224
Herman James Goldstein v. UNC-Chapel Hill et al.	92 OSP 1047	Morrison	05/04/93	
Beatrice Wheelless v. Lise M. Miller, University Payroll Off., NC St. Univ.	92 OSP 1124 ^{*10}	Morgan	07/16/93	
John B. Sauls v. Wake County Health Department	92 OSP 1142	Reilly	03/08/93	8:1 NCR 88
Gilbert Jaeger v. Wake County Alcoholism Treatment Center	92 OSP 1204	Reilly	05/10/93	
Joseph Henry Bishop v. Environment, Health, & Natural Res.	92 OSP 1243	Reilly	03/05/93	
Willie L. Hudson v. Correction	92 OSP 1468	Becton	05/26/93	
Brenda K. Campbell v. Employment Security Commission	92 OSP 1505	Morrison	03/17/93	
Christie L. Guthrie v. Environment, Health, & Natural Resources	92 OSP 1555	Becton	05/31/93	
James B. Price v. Transportation	92 OSP 1657	Mann	03/19/93	
Jerry L. Jones v. N.C.S.U. Physical Plant	92 OSP 1661	Chess	07/06/93	
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	
Larry G. Riddle v. Correction, Division of Prisons	92 OSP 1774	Gray	04/26/93	
Stevie E. Dunn v. Polk Youth Center	92 OSP 1789	Becton	04/19/93	
Buford D. Vieregge Jr. v. N.C. State University, University Dining	92 OSP 1796	Morrison	05/27/93	
Karen Canter v. Appalachian State University	93 OSP 0079	Reilly	06/15/93	
Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	

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Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & EHNR	93 OSP 0111	Reilly	04/16/93	
William G. Fisher v. St Bd of Ed, Albermarle City Schools & Bd of Ed	93 OSP 0134	Becton	04/20/93	
Grace Jean Washington v. Caswell Center	93 OSP 0153	Morgan	06/03/93	
Clifton E. Simmons v. Correction	93 OSP 0159	Morrison	04/21/93	
Willie L. James v. Caswell Center	93 OSP 0171	Morgan	05/27/93	
Irving S. Rodgers v. C.A. Dillon, Division of Youth Services	93 OSP 0177	West	04/21/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
Michael L. Pegram v. Correction	93 OSP 0275 ⁴⁸	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Michael L. Pegram v. Correction	93 OSP 0472 ⁴⁸	Reilly	06/28/93	
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				
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WITNESSES

For Petitioner:

1. Shirley J. Beshears - Lecturer and activist on the topic of Satanism in the Kernersville area;
2. Betty Crouse - Community activist on the topic of child abuse and murder, member of the Winston-Salem Police Chief's Task Force on that topic, Associate and co-lecturer with Shirley J. Beshears;
3. Jane Spano - Petitioner.

For Respondent:

1. Dr. David Allen - Psychiatrist in private practice and part time psychiatrist with the Forsyth-Stokes Mental Health Center;
2. Gayle Halpern - Social Worker III, Forsyth-Stokes Mental Health Center;

Based upon careful consideration of the testimony and evidence presented at the hearing and the documents and exhibits received into evidence, the undersigned makes the following:

EXHIBITS

For Petitioner

- P#1 "T's" Diary
P#2 Letter from "T"

ALJ Exhibits

- ALJ#1 Medical Records of "T"

FINDINGS OF FACT

1. In 1989, when the Petitioner's child (hereinafter referred to as "T") was 10 years old, she began to exhibit strange behavior.
2. At that point in time, a friend of "T's", Corey, had died and the funeral had just occurred.
3. "T's" mother attempted to comfort her daughter concerning her friend's death, but "T" stated repeatedly "you don't understand."
4. "T" recovered from her grief but after some time had passed, she began to socialize with a group of friends who stayed out late, drank, and were otherwise a bad influence on "T."
5. In 1991, when "T" was 12 years old, she again exhibited odd behavior one evening which included refusal to participate in "family night" and which also included "T" attempting to wash a pair of her own blue jeans by herself, which she did not normally do.
6. "T's" mother went to "T's" room to talk with her daughter and found that she had propped the window open with a stick and had left the house. Petitioner called the police and a police officer spoke with Petitioner and stated that he knew where she had gone. He stated that she was associating with older children and that he would go to that location and bring "T" back home, which he did.
7. The next morning, Petitioner spoke with her daughter and asked her if she was sexually active. Her daughter responded that she had been only on one occasion with one person.

8. Petitioner's daughter gave her a list of the names and phone numbers of the friends with whom she was associating.

9. Petitioner's mother began to call the friends' parents to inform them that they may want to look into their children's activities. Petitioner's mother also called the Kernersville Police Department because she suspected she knew the boy with whom her daughter had been sexually active and suspected him to be a minor also. She informed the police department that she wanted to press charges.

10. When Petitioner informed "T" of what she had done, "T" "went crazy" and kept repeating "you don't know what you're doing."

11. The boy who Petitioner suspected had been picked up by the police and the police determined that he had raped two other young women who were going to testify against him.

12. During that time, "T" became very withdrawn and Petitioner had "T" placed in the Forsyth-Stokes Mental Health Center for psychiatric care.

13. The boy was three months short of being four years older than "T" and he could not be charged with statutory rape.

14. At the time of the boy's arrest, "T" was unwilling to testify.

15. The evidence indicates that since the boy was charged with two other rape offenses, "T" was not pressed for her testimony.

16. It is not entirely known how intensely "T's" testimony was pursued, but the District Attorney (DA) told Petitioner that he did not need "T" to testify since he had two other solid charges.

17. When "T" was released from the Center, she went back to school and there was a period of calm and normal behavior.

18. About two years later, the Petitioner became aware that the boy who had allegedly sexually assaulted her daughter and who had been given active time in a correctional facility, was about to be released.

19. Petitioner found her daughter rolled into a fetal position in the back of her closet and found that her daughter would not leave the closet.

20. Petitioner again placed her daughter in the Forsyth-Stokes Mental Health Center.

21. While her daughter was at that Center, Petitioner went to her daughter's school and cleaned out her daughter's possessions. While the Petitioner was at the school, she found among her daughter's possessions a diary which was hidden in back of her locker. The diary makes reference to continuing death threats which "T" was receiving in 1991 and makes detailed reference to a newspaper article during which the boy in question had been arrested and was being charged with rape.

22. The diary also talks about telephone calls coming in to "T" and how "T" feels that her mother and sister are safe but that she is not. The diary also speaks in a childish code of witnessing a much more serious crime which would put the boy "away forever."

23. The diary also talked about phone calls which said that "T" would be dead at the end of the week and "David" would also be dead. The diary further talked about David and "T" visiting Corey's grave on the weekend after her release.

24. There were threatening phone messages coming in to "T's" home which stated that "T" would be dead in seven days and David would also be dead.

25. During the time of the threatening phone calls to "T" and her family, someone drove by the Petitioner's home and shot a bullet into the house.

26. After finding the diary and after receiving threatening phone calls herself, Petitioner hired a private detective.

27. The Petitioner has moved "T" out of the State where she is living in an undisclosed location.

28. At the present time, "T" has learned through correspondence, that the boy is about to be paroled. She has written in letters to friends that she does not anticipate living long after he is released.

29. Dr. David Allen, a psychiatrist who works part-time at the Forsyth-Stokes Mental Health Center, testified that he is somewhat familiar with "T's" case.

30. Dr. Allen testified that he worked with "T" in the Spring of 1991, that he sees patients at that Center four times a week, that he does not conduct therapy, and that his primary role is to regulate medication.

31. Dr. Allen testified, after reviewing some of his notes, that he had made the diagnosis of "symptoms of depression, some suicidal, grieving over peer two years earlier committed suicide. Diagnosis - depressive disorder with psychotic features." (sic)

32. Dr. Allen was asked to give examples of the psychotic features and testified that "T", on occasion, became mute during his sessions and would stare into space and that she sometimes thought she could see the face of her friend who had committed "suicide."

33. Dr. Allen testified that he felt very definitely that "T" was not being open with him and that there was some sort of secret involved.

34. During her hospitalization, "T" was given an electro-encephalogram (EEG). The determination made upon reading the EEG was that "T" may have suffered some petit mal seizures but that reading was not conclusive.

35. Dr. Allen testified that he ordered Tegretol, an anticonvulsive drug for "T" but that she did not wish to take it. He further testified that he ordered an antidepressant, Prozac, which she may or may not have taken. Dr. Allen testified that he did not diagnose "T" with post-traumatic stress disorder or any similar disorder, but that if he had to, he would have probably treated her with antidepressants anyway.

36. Although Dr. Allen testified that it was necessary to get permission from the parents before drugs are given to minors, the parents were never informed that their daughter had been prescribed Tegretol and Prozac and had been given an EEG or that there had been a diagnosis of possible petit mal seizures. This information was not known to the Petitioner until the day of the hearing.

37. The parents, despite several attempts, were also never able to see the records from the Forsyth-Stokes Mental Health Center until the morning of this hearing, at which point Mrs. Spano was given the opportunity to review the records and to request a continuance.

38. Dr. Allen testified that he did not think "T" had actually suffered from seizures but that she had suffered dissociative episodes.

39. Dr. Allen further testified that the boy who had allegedly committed suicide had written "T" a note stating that "they're going to kill me."

40. Dr. Allen, however, testified that there were other teenagers on the ward who were also there because of psychological problems brought about as a result of Corey's alleged suicide.

41. Dr. Allen testified that none of those children who were at the Center for psychiatric treatment would talk about Corey's suicide and that it was his judgment that there was some sort of "pact of silence" about it.

42. Dr. Allen was asked if he suspected that Corey may have been murdered and he stated that he thought that was a possibility.

43. Dr. Allen testified that he did not tell that to anyone because he was not the treating physician and it was purely speculation.

44. During "T's" hospitalization, there was one family therapy session held. During that session, Petitioner's husband was asked to leave the room and Mrs. Spano was told that her child had been raped violently and had had things done to her body which no one should ever know about and that she should take her child home and forget about it.

45. Gayle Halpern, a Social Worker with Forsyth-Stokes Mental Health Center, saw the family five times as outpatients after "T" had been released from the Center.

46. Ms. Halpern testified that "T" was very guarded about speaking about Corey's death.

47. Ms. Halpern testified that she believed that "T" did drink alcohol but can't recall if "T" had ever told Ms. Halpern that she was sexually active. When Ms. Halpern asked "T" how much she drank, "T" replied "half a bottle."

48. Ms. Halpern testified that she never saw evidence of alcohol or drugs and that "T" had told her she was tested for drugs, alcohol and pregnancy. The results of all those tests were negative.

49. Ms. Halpern testified that "T's" talk of alcohol and drugs might have all been "a brag."

50. Shirley Beshears testified that she is a community activist and lectures on the topic of satanism. Ms. Beshears has been actively involved in community task forces and other activities involving child abuse and murder.

51. Ms. Beshears testified that her son was killed in 1980 and that after his death she had found evidence in his room of satanic involvement. Additionally, after her son's death, Ms. Beshears' sister told her that their stepson (Mrs. Beshears' nephew) had a satanic bible.

52. Subsequently, Ms. Beshears testified, many of her friends began to tell her that there was devil worship in their local town.

53. Ms. Beshears began to read and learn about that topic.

54. Petitioner and her daughter "T", heard Ms. Beshears speak at a church function and subsequently became friends with Ms. Beshears. "T" became particularly fond of Ms. Beshears and shared many of her concerns with her.

55. At one point, Petitioner had accumulated enough money to purchase eye glasses for "T." The glasses were stolen and someone told "T" that they had given them to the boy who was incarcerated and that he could see her actions by looking through her glasses. "T" believed that the boy could "do spells" from jail.

56. "T" told Ms. Beshears that she was told by many other young people that she was going to be killed the Summer of 1993.

57. Betty Crouse is also a community activist who began to work with Ms. Beshears in the lecture circuit speaking on satanism and satanic cults.

58. Ms. Crouse became friends with "T" and Ms. Crouse testified that "T" has an intelligence quotient (IQ) of 161, but that she "is a terrified child."

59. At some point in time, Ms. Beshear and Ms. Crouse went to the local police department because they had learned that a satanic cult in the area was planning to steal and murder a baby. Ms. Crouse testified that the police cooperated and sent officers to guard the house from which the baby was allegedly to be taken.

60. Ms. Crouse testified that she was certain that Corey had not committed suicide and that there were drugs and alcohol involved in this circle of friends as well as satanism and murder. She further testified that there are two Winston-Salem gangs who supply guns to the local cults.

61. Ms. Crouse testified that there have been eight children murdered in the area; Ms. Beshears' and seven others.

62. Ms. Crouse also testified that letters were received by the families of these eight murdered children, which letters were received on the date of the death of the child stating that the children would be dead on that day.

63. After careful and deliberate observation of Ms. Beshears, Ms. Crouse and Ms. Spano, and after reconciling their testimony with the available facts, the undersigned finds their testimony to be fully and completely credible.

64. After careful observation of the testimony of Dr. Allen, the undersigned finds that while his testimony may be credible, it is replete with vagaries, caveats, and a blatant example of his lack of involvement in his admitted failure to report to anyone his speculation that a murder may be the root cause of the psychological trauma of a number of teenagers in the area.

65. The Center's medical records indicate that "T's" problems began to manifest themselves at the time of her friend's suicide.

66. The Center's medical records also indicate that she is "reality oriented", "poised", and "personable", but also reports that she is "basically unrealistic regarding her life situation", "oppositional", and "defies adult authority."

67. That record further reflects that "T" was a witness to a suicide at 10 and had been earlier sworn to silence by the suicide victim, that she was molested by a black male, and that she seems to be "trapped in the grief process."

68. Two days after the alleged rape, "T's" father reported the offense to the Respondent.

69. The investigator for the Commission was told during the investigation that "T" had stated that she had consented to the sexual act.

70. On January 14, 1993, the Commission denied the Petitioner's claim for compensation and, in pertinent part, found that the "investigation had produced insufficient information to establish that claimant's personal injury or death directly and proximately resulted from criminally injurious conduct..." (emphasis added)

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

CONCLUSIONS OF LAW

1. The North Carolina Crime Victims Compensation Act (Act), N.C. Gen. Stat. 15B, was created in 1983 to compensate victims of crime for criminally injurious conduct.

2. The Recommendation for Denial from the Commission was not based upon whether or not "T" was prepared to testify. The denial, rather, was based upon the conclusion that no crime had actually occurred because of "T's" consent.

3. N.C. Gen. Stat. 14-27.2 provides that first degree rape is vaginal intercourse with a victim who is a child under the age of 13 and a defendant who is at least twelve years old and at least four years older than the victim. That same statute provides, in pertinent part, that first degree rape also includes vaginal intercourse with another person by force or against the will of the other person.

There are a line of cases promulgated under this which stand for the premise that actual physical force is not required but that physical force may include fear, fright or duress. State v. Overman 269 N.C. 453, 153 S.E.2d 44 (1967); State of Primes 275 N.C. 61, 165 S.E.2d 225 (1969); State v. Roberts 293 N.C. 1, 235 S.E.2d 203 (1977); State v. Hall 293 N.C. 559, 238 S.E.2d 473 (1977).

4. Although "T" stated at the time shortly after the alleged rape that she had given her consent, she told both Ms. Beshears and Ms. Crouse that she had been raped. Additionally, and more importantly, during her hospitalization, a hospital official reported to "T's" mother that "T" had been raped very violently and had things done to her body which no one should know about.

This is clearly a case of unusual and extraordinary circumstances which must be considered in a single case approach. A juvenile who may have been traumatized at the age of 10 by witnessing a murder and who is subsequently raped by the same perpetrator, may be "forced" to "consent" both through fear and intimidation for her life and because of threats of death made to herself and her family.

Since the alleged "suicide" and possible murder of Corey some years earlier had caused a number of teenagers in the area to suffer enough psychological trauma to cause them to be hospitalized, there is an indication that tragic and serious events were occurring within the teenage community of this small town. Additionally, civic leaders provided evidence that macabre and occasionally fatal activities were occurring which were not disregarded by the local police. Further, "T's" behavior, upon learning of the alleged perpetrator's pending release, would indicate a high level of fear which further corroborates the likelihood that a forced rape occurred.

A review of the Center's medical records on "T" indicates a somewhat inconsistent and contradictory summary which does not provide a clear or conclusive picture of "T's" problems.

Since "T" was a child at the time, it is difficult to hold her to the same standards to which other victims of crime are held. The drafter of the Act wisely inserted the word "may" when drafting both the "contributory misconduct" clause and the "police cooperation" clause, thus leaving the Commission with room for contemplation and decision. In like manner, the provision of the Act which requires that a crime have been committed does not address whether that crime must have had all the elements proven, be likely to be proven in court, or be pled to a lesser offense. Further, the Act does not require a conviction.

The evidence indicates that "T" was, at the age of 12, raped against her will by the same person she believed to have been responsible for at least one other serious crime and that "T's" fear, fright and duress were of such magnitude that it rose to the level of force.

It is emphatically the opinion of the undersigned that this victim suffered greatly as a result of criminally injurious conduct and that the Commission would well serve the people of this State by considering this matter in light of its unique and singular fact pattern which requires special attention and deliberation.

5. After having the opportunity to observe these witnesses at close range and to reconcile numerous facts with their testimony, the undersigned is convinced and hereby concludes as a matter of law that the child "T" was the victim of a crime - forced rape - and was unable, through force, terror, and duress to reveal all that had happened and all that she knew.

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

RECOMMENDATION

That the Commission reconsider its determination, reverse its original finding, and reimburse the Petitioner for all eligible expenses related to this crime.

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 N. C. Department of Crime Control and Public Safety, Division of Victims and Justice Services.

This the 30th day of July, 1993.

Dolores O. Nesnow
Administrative Law Judge

2. The petitioner did not violate G.S. 143-215.1(a)(1) by making an outlet into the waters of the State. "Waters" is defined in G.S. 143-212(6).
3. The respondent did not properly assess a civil penalty and enforcement costs against the petitioner.

RECOMMENDED DECISION

It is recommended that the civil penalty and the enforcement costs assessed against the petitioner be dismissed.

ORDER

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

NOTICE

The final decision in this contested case shall be made by the Environmental Management Commission. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 23rd day of July, 1993.

Robert Roosevelt Reilly, Jr.
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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