

The **NORTH CAROLINA REGISTER**

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

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

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

ADOPTION AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

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

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

The NCAC is available in two formats.

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

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

CITATION TO THE NORTH CAROLINA REGISTER

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

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

NORTH CAROLINA REGISTER



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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	01/01/94
8:14	10/15/93	09/24/93	10/01/93	11/01/93	11/15/93	11/22/93	01/01/94
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 NO. 37
CITIZEN ACCESS TO PUBLIC RECORDS
MAINTAINED BY STATE GOVERNMENT**

WHEREAS, the State of North Carolina has one of the country's best laws on citizen access to public information; and

WHEREAS, a general climate of openness has protected North Carolina citizens from widespread scandal; and

WHEREAS, such a climate of openness led former Treasurer Edwin Gill to declare that, "In North Carolina, good government is a habit"; and

WHEREAS, technological advances give citizens access and the ability to analyze large volumes of public information, participating in their government in ways inconceivable just a decade ago; and

WHEREAS, virtually all state government information and records now are maintained on electronic, computerized data bases;

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

Section 1. Purpose.

That all state agencies shall have a clear understanding that state law carries a strong presumption that public information belongs to the public; that citizens have access to that information in any medium in which the agency is capable of providing it; and that such information should be made available at the actual cost of reproduction.

Section 2. Applicability.

This Executive Order, shall apply to the Department of Administration and the Department of Transportation, hereinafter "the agencies." At the end of nine months, this Order may be extended to include other agencies in the Executive Branch, after evaluation of implementation costs by the Information Resource Management Commission. The agencies shall keep records of the names and addresses of persons requesting information and of the costs, including the time spent by state employees in complying with this Order.

Section 3. Responsibilities.

(a) In order to facilitate public access to and copying of public information maintained in electronic form, a register of information within

the agencies shall be developed within one year of the issuance of this executive order. The register shall contain, at a minimum, names of the data bases and each of their fields; a description of each record series; information as to the frequency with which the data base is updated; a list of any data fields to which public access is restricted; a description of each form in which the data base can be copied or reproduced using the state agency's existing computer programs or the agency's custodian of public information; and a schedule of fees collectible for the production of copies in each form.

The register shall be written in language designed to be comprehensible to persons lacking detailed knowledge of computer language or formats. The form, content, and language of such a register shall be as prescribed by the Information Resource Management Commission, with the advice of the Division of Archives and History.

Until such time as the register is developed, the agencies shall be responsible for creating an initial, annotated list of all public electronic information that the agency is required to maintain by law. The annotated list also must include a schedule of fees collectible for the production of copies of public information in each form. The form and content of the annotated list shall be determined by the Information Resource Management Commission, with the advice of the Division of Archives and History. The agencies must complete their annotated lists within three months of the issuance of this Executive Order.

(b) No request to inspect, examine, or obtain copies of public information shall be denied on the grounds that confidential information is commingled with the requested non-confidential information. If it is necessary to separate confidential from non-confidential information in order to permit the inspection, examination, or copying of public information, the state agency shall bear the cost of such separation.

(c) Computer hardware or software purchased by the agency after the effective date of this Executive Order should be capable of easily separating confidential information maintained on the same data base.

Section 4. Access and Fees.

(a) Persons requesting copies of public information may elect to obtain them in any media which the agency currently has available. No request for copies of public information in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public infor-

mation available in another medium. The agency is not required to change the medium of an existing public record in order to fulfill a request. The agency is not required to maintain obsolete hardware or software merely because a person prefers to obtain public information in the format produced by obsolete hardware or software.

(b) Persons requesting printed copies of public information may request that the copies be certified. The fees for certifying copies of public information shall be as provided by law.

Except as otherwise provided by law, the agencies shall not charge a fee for an uncertified copy of public information that exceeds the actual cost to the state agency making the copy. "Actual cost" may include the cost of the materials and supplies needed to duplicate the information, but may not include labor costs or agency overhead. However, a special service charge may be added to the actual cost of duplication if the request requires extensive use of information technology resources or extensive clerical assistance. The term "extensive use of technology resources" and "extensive clerical assistance" are meant to reflect only extraordinary costs. The special service charge must be reasonable, and must reflect only the cost incurred for the use of extensive information technology resources or the cost actually incurred by the agency or attributable to the agency for clerical assistance required to fulfill the request.

(c) If anyone requesting public information from any state agency is charged a fee that the requestor believes to be unfair or unreasonable, the requestor may ask the Information Resource Management Commission to mediate the dispute.

Section 5. Effect of Other Executive Orders.

All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

This Executive Order shall be effective immediately, and shall expire in nine months, unless extended by further Executive Order.

Done in the Capital City of Raleigh, North Carolina, this the 28th day of January, 1994.

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:GS:FHD:emr

DJ 166-012-3

93-4297

93-4722

January 7, 1994

Richard J. Rose, Esq.
Poyner & Spruill
P. O. Box 353
Rocky Mount, North Carolina 27802

Dear Mr. Rose:

This refers to four annexations [Ordinance Nos. 0-93-44, 0-93-45, 0-93-53, and 0-93-67 (1993)] and the designation of the annexed areas to single-member districts of the City of Rocky Mount in Edgecombe and Nash Counties, 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 submissions on November 9 and December 17, 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 these submissions 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

U.S. Department of Justice

Civil Rights Division

Voting Section

P.O. Box 66128

Washington, D.C. 20035-6128

JPT:MAP:DBM:tlb

DJ 166-012-3

93-2679

93-2680

93-3720

January 10, 1994

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

Dear Mr. Crowell:

This refers to the following voting changes for the board of commissioners and the board of education in Perquimans County, North Carolina, submitted to the Attorney General pursuant to Section 5, as amended, 42 U.S.C. 1973c:

1. The 1966 reduction in the number of residency districts for election of county commissioners;
2. Chapter 96 (1993), which provides for an increase in the number of county commissioners from five to six, the elimination of residency districts, the method of staggering terms (three-three), the adoption of limited voting, a plurality-win provision in primary elections, and the implementation schedule (including the appointment of an interim commissioner); and
3. Chapter 21 (1993), which provides for an increase in the number of school board members from five to six, the elimination of residency districts, the method of staggering terms (three-three), the adoption of limited voting, and the implementation schedule (including the appointment of an interim board member).

We received your responses to our request for additional information regarding the changes occasioned by Chapters 96 and 21, on November 10 and December 7, 1993. We received your submission of the 1966 change in residency districts on December 7, 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).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

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

PROCLAMATION

Charles R. Fullwood, Executive Director, North Carolina Wildlife Resources Commission, acting pursuant to North Carolina General Statute §113-292(c) and authority duly delegated by the Wildlife Resources Commission, hereby declares that the season for harvesting striped bass by hook-and-line shall remain closed in all waters of the Roanoke River Striped Bass Management Area until 12:01 a.m. 19 February 1994.

Effective 19 February 1994 striped bass may be harvested from 12:01 a.m. on Saturdays through 12:00 midnight on Sundays, and from 12:01 a.m. through 12:00 midnight on Wednesdays. On all other days all striped bass caught, regardless of condition, shall be immediately returned to the waters where taken and no striped bass may be possessed.

The Roanoke River Striped Bass Management Area is defined as the inland and joint fishing waters of the Roanoke River and its tributaries, extending from its mouth to Roanoke Rapids Dam, including the Cashie, Middle, and Eastmost rivers and their tributaries.

This Proclamation shall be effective at 12:01 a.m. 24 January 1994 and shall remain in effect until a new proclamation closing described waters or portions thereof for striped bass fishing is issued.

This proclamation supersedes and replaces all prior proclamations.

NOTES:

- a) This Proclamation is issued under the authority of N.C.G.S. §§113-132; 113-134; 113-292; 113-304; and 113-305.
- b) All striped bass regardless of condition taken subsequent to the effective date and time of this Proclamation shall be immediately returned to the waters where taken and no striped bass may be possessed.
- c) Any person who violates this Proclamation also violates applicable law and is subject to the sanctions provided by law.

by: Charles R. Fullwood
Executive Director

Date: 1/21/94

TITLE 2 - DEPARTMENT OF AGRICULTURE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Agriculture intends to amend rules cited as 2 NCAC 38 .0401; 43L .0202; 48A .1702 - .1703; 48B .0119; and adopt rule cited as 2 NCAC 53 .0001.

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

The public hearing will be conducted at 10:00 a.m. on March 24, 1994 at the Gov. James B. Hunt Jr. Horse Complex (Restaurant), 4601 Trinity Rd., Raleigh, NC 27607.

Reason for Proposed Action:

- 2 NCAC 38 .0401 - To provide for disclosure of price for filling propane containers.
- 2 NCAC 43L .0202 - To increase rates to meet increased operating expenses.
- 2 NCAC 48A .1702 - To include other non-native *Lythrum* species in addition to Purple Loosestrife.
- 2 NCAC 48A .1703 - To add counties where certain noxious weeds have been found and to update reference to *Lythrum* species.
- 2 NCAC 48B .0119 - To clarify requirements.
- 2 NCAC 53 .0001 - To provide for licensing of aquaculture facilities.

Comment Procedures: Interested persons may present their statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 38 - STANDARDS DIVISION

SECTION .0400 - METHOD OF SALE OF COMMODITIES

.0401 ADOPTION BY REFERENCE

The Board hereby adopts by reference in accordance with G.S. 150B-14(c) the National Institute of Standards and Technology, Handbook 130, "Method of Sale of Commodities Regulation" with the following additions and exceptions:

- (1) Delete Section 1.2., "Bread", since this is addressed in ~~General Statute~~ G.S. 81A-41.
- (2) The preferred method for measuring

fireplace and stove wood is by the cord or fractional parts of a cord, however, nothing in Section 2.3., "Fireplace and Stove Wood", shall be construed as preventing the purchaser and seller of fireplace or stove wood from agreeing on a quantity other than a cord or fractional parts of a cord.

- (3) Sections ~~2.9., 2.11., 2.19.~~ 2.20., 4., and 5. are deleted.
- (4) Section ~~2.18~~ 2.19. applies only to kerosene sold in a container or kerosene sold through a retail device. In addition, a container or a device shall clearly and conspicuously indicate for 1-K kerosene "SUITABLE FOR USE IN UNVENTED HEATERS" and for 2-K kerosene "MAY NOT BE SUITABLE FOR USE IN UNVENTED HEATERS".
- (5) In Section ~~2.20.~~ 2.21., the temperature compensation requirements are not mandatory. However, if a company elects to sell liquefied petroleum gas on a temperature compensated basis, then all meters in the truck fleet must be equipped with an activated automatic temperature compensator which will remain in continuous operation for a period of not less than one year.
- (6) The price for propane dispensed into containers of less than 240 pounds water capacity may be on a minimum price basis provided the seller clearly and conspicuously displays the minimum price at the point of container fill and point of sale. This Rule does not apply to propane container exchange sales where an empty or partially empty container is exchanged for a full one.

Copies of National Institute of Standards and Technology, Handbook 130, "Method of Sale of Commodities Regulation" are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

Statutory Authority G.S. 81A-4; 150B-14.

CHAPTER 43 - MARKETS

SUBCHAPTER 43L - MARKETS

SECTION .0200 - FEES: CHARLOTTE FARMERS MARKET

.0202 GATE FEES

The following gate fees shall be paid upon entering the market:

	Day	Week
(1) Retail Shed A		
(a) March through November <u>December</u>	\$ 6.00	\$ 25.00
(b) December <u>January</u> through February	5.00	
(c) <u>May through September - Saturdays only</u>	<u>7.00</u>	
(d) <u>North Carolina farmers shall not be subject to the charges set forth in Sub-item (1)(c) of this Rule.</u>		
(2) Retail Building B		
(a) March through September	7.00	30.00
(b) October through February	7.00	20.00 <u>25.00</u>
(c) May through August <u>September</u> - Saturdays only	10.00	
(d) <u>North Carolina farmers shall not be subject to the charges set forth in Subparagraph Sub-item (2)(c) of this Rule.</u>		
(3) Retail Building C	5.00	
(4) Eighteen Wheelers	8.00	
(5) Deliveries	4.00	

Statutory Authority G.S. 106-22; 106-530.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48A - PLANT PROTECTION

SECTION .1700 - STATE NOXIOUS WEEDS

.1702 NOXIOUS WEEDS

(a) Class A Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class A Noxious Weeds:

- (1) All weeds listed in 7 C.F.R. 360.200 which is hereby incorporated by reference including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twelve dollars (\$12.00);
- (2) Elodea, African -- Lagarosiphon spp. (all species);
- (3) Fern, Water -- Salvinia spp. (all except *S. rotundifolia*);
- (4) Stonecrop, Swamp -- *Crassula helmsii*;
- (5) Water-chestnut -- *Trapa* spp.

(b) Class B Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class B Noxious Weeds:

- (1) Betony, Florida--*Stachys floridana* Shuttlew.;
- (2) Fieldcress, Yellow--*Rorippa sylvestris* (L.) Bess.;
- (3) ~~Loosestrife, Purple~~ *Lythrum salicaria* L. -- Any *Lythrum* species not native to North Carolina;
- (4) Puncturevine--*Tribulus terrestris* L.;
- (5) Thistle, Canada--*Cirsium arvense* (L.) Scop.;
- (6) Thistle, Musk--*Carduus nutans* L.;
- (7) Thistle, Plumeless--*Carduus acanthoides* L.;
- (8) Watermilfoil, Eurasian -- *Myriophyllum spicatum* L.;
- (9) Waterprimrose, Uruguay -- *Ludwigia uruguayensis* (Camb.) Hara.

(c) Class C Noxious Weeds. The North Carolina Board of Agriculture hereby establishes the following list of Class C Noxious Weeds: none.

(d) Other Noxious Weeds. The Commissioner may take appropriate action against any other noxious weed as provided in the Plant Pest Law, Article 36, Chapter 106 of the General Statutes.

Statutory Authority G.S. 106-420.

.1703 REGULATED AREAS

(a) Except as permitted in 2 NCAC 48A .1705 and .1706, the following is prohibited:

- (1) The movement of Canada Thistle [*Cirsium arvense* (L.) Scop.] or any regulated article infested with Canada Thistle from the following counties is prohibited: Ashe, Avery, Haywood, Mitchell, Northampton, Yancey;
- (2) The movement of Class A or B noxious weeds or any regulated article infested with Class A or B noxious weeds into North Carolina is prohibited;
- (3) The movement of a Class A noxious weed or any regulated article infested with any Class A noxious weed is prohibited throughout the State;
- (4) The movement of Eurasian Watermilfoil (*Myriophyllum spicatum* L.) or any regulated article infested with Eurasian Watermilfoil from the following counties is prohibited: Halifax, Northampton, Perquimans, Tyrrell, Warren;
- (5) The movement of Florida Betony (*Stachys floridana* Shuttlew.) or any regulated article infested with Florida Betony from the following counties is prohibited: Bladen, Brunswick, Cumberland, Forsyth, Hoke, New Hanover, Onslow, Wake;
- (6) The movement of Musk Thistle (*Carduus nutans* L.) or any regulated article infested with Musk Thistle from the following counties is prohibited: Buncombe, Cleveland, Chatham, Gaston, Henderson, Lincoln, Madison, Randolph, Rowan, Rutherford;
- (7) The movement of Plumeless Thistle (*Carduus acanthoides* L.) or any regulated article infested with Plumeless Thistle from the following counties is prohibited: ~~Jackson~~, Haywood, Jackson, Madison, Watauga;
- (8) The movement of Puncturevine (*Tribulus terrestris* L.) or any regulated article infested with Puncturevine from the following counties is prohibited: Durham, New Hanover;
- (9) The movement of ~~Purple Loosestrife~~ (~~*Lythrum salicaria* L.~~) any *Lythrum* species not native to North Carolina or any regulated article infested with ~~Purple Loosestrife~~ any non-native *Lythrum* species from the following counties is prohibited: Forsyth,

Watauga;

- (10) The movement of Uruguay Waterprimrose [*Ludwigia uruguayensis* (Camb.) Hara.] or any regulated article infested with Uruguay Waterprimrose from the following counties is prohibited: Bladen, Brunswick, Columbus, Durham, Granville, Hyde, New Hanover, Orange, Rowan, Wake, Warren;
- (11) The movement of Yellow Fieldcress [*Rorippa sylvestris* (L.) Bess.] or any regulated article infested with Yellow Fieldcress from the following county is prohibited: Orange.

(b) Other regulated areas. The Commissioner may take appropriate action as authorized under the Plant Pest Law, Article 36, Chapter 106 of the General Statutes, to designate as a regulated area any state or portion of a state in which he has reasonable cause to believe that a noxious weed exists, and there is an immediate need to prevent its introduction, spread or dissemination in North Carolina.

Statutory Authority G.S. 106-420.

SUBCHAPTER 48B - FERTILIZER

SECTION .0100 - FERTILIZER STANDARDS

.0119 DATA

~~Substantiation of data to back up claims made is requested when there is a question as to whether the product will perform as claimed. If such data is not available, registration is refused. Data to substantiate claims are requested when questions arise regarding the ability of a product to perform as claimed. Data should be developed from tests conducted under conditions identical to or closely related to those present in North Carolina. If such data are not available, registration is refused.~~

Statutory Authority G.S. 106-673.

CHAPTER 53 - AQUACULTURE

.0001 AQUACULTURE LICENSES

(a) A person who owns or operates an aquaculture facility for the purpose of possession, production, transportation, sale or commercial catchout of the species listed in G.S. 106-761, shall obtain a license from the Department of Agriculture.

(b) Applications for licenses may be obtained

from the Department of Agriculture, Division of Aquaculture and Natural Resources, P.O. Box 27647, Raleigh, NC 27611. Completed applications shall be returned to the same address.

(c) The application shall include:

- (1) License(s) being requested:
 - (A) Aquatic Propagation and Production Facility License;
 - (B) Commercial Catchout License;
 - (C) Holding Pond/Tank Permit;
- (2) Name of facility;
- (3) County of facility;
- (4) Address and telephone number of facility;
- (5) Name of responsible agent for the facility;
- (6) Address and telephone number of responsible agent;
- (7) Description of primary activities at the facility (hatchery, gamefish production, catchout, food fish production, etc.);
- (8) Primary species to be possessed on the facility.

(d) An Aquaculture Propagation and Production Facility License must be obtained for all freshwater aquaculture facilities as defined in G.S. 106-758(2) except for Commercial Catchout and Holding Pond/Tank operations. The license shall be issued without charge and shall be valid for five years.

(e) A Commercial Catchout Facility License must be obtained for a privately owned pond, lake, raceway, manmade stream or other water holding facility where fish are stocked for the purpose of harvest by hook and line. Such facilities sell the fish on a fee per unit time basis or fee per unit weight basis. This does not include privately owned ponds where fish populations naturally regenerate.

- (1) Receipts shall be provided to the purchasers of fish from Commercial Catchout Facilities. The receipt shall include the name of the facility, the date and the number, species and weight of the fish sold.
- (2) No fish taken from a Commercial Catchout Facility may be resold by the purchasing angler for any reason.
- (3) The license shall be issued without charge and shall be valid for five years.

(f) A Holding Pond/Tank Permit shall be obtained for all facilities holding live food or bait species for sale, except those facilities which are licensed as Aquaculture Propagation and Production Facilities. This permit shall be valid for two

years and shall be issued without charge.

Statutory Authority G.S. 106-761.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Agriculture intends to adopt rules cited as 2 NCAC 43L .0306 - .0339 and amend 2 NCAC 43L .0113, .0304 - .0305; 48B .0113 and .0121 .

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

The public hearing will be conducted at 10:00 a.m. on March 24, 1994 at the Gov. James B. Hunt, Jr. Horse Complex (Restaurant), 4601 Trinity Rd., Raleigh, NC 27607.

Reason for Proposed Action:

2 NCAC 43L .0113 - To offset increased operating costs.

2 NCAC 43L .0304 - To provide for rental of new facilities at the Western North Carolina Agricultural Center and conforming technical changes.

2 NCAC 43L .0305 - To provide for rental of new facilities at the Western North Carolina Agricultural Center and conforming technical changes.

2 NCAC 43L .0306 - .0339 - To provide rules for operation of Western North Carolina Agricultural Center.

2 NCAC 48B .0113 - To make terminology consistent with recent amendments to the Fertilizer Law.

2 NCAC 48B .0121 - To make terminology consistent with amendments to the Fertilizer Law.

Comment Procedures: Interested persons may present their statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 43 - MARKETS

SUBCHAPTER 43L - MARKETS

SECTION .0100 - FEES: STATE FARMERS' MARKET AT RALEIGH

.0113 GATE FEES

Gate fees shall be as follows:

(1) Wholesale Fees:

- (a) cars or station wagons \$ 3.00
- (b) car and trailer 6.00
- (c) trucks less than one ton 4.00
- (d) trucks less than one ton and trailer 8.00
- (e) trucks one ton thru 6 wheel (straight job) 7.00
- (f) trucks 10 wheel or tractor and trailer 8.00
- (g) nonresident sellers shall pay twice the above stated fees.

(2) Truckers Shed Fees:

- (a) trucks less than one ton \$ 6.00 first day
6.00 following days
- (b) trucks less than one ton and trailer 9.00 first day
6.00 following days
- (c) trucks one ton thru 6 wheel (straight job) 8.00 first day
6.00 following days
- (d) trucks 10 wheel or tractor and trailer 10.00 first day
8.00 following days
- (e) space by week \$36.00 to begin on Monday
- (f) space by month \$90.00 to begin only from 1-10 on a calendar month rates after the 10th will be daily or weekly

(3) Retail Fees - Retail Shed:

- (a) all months except June, July, August \$ 6.00
- (b) fees for June, July, August 7.00
- (c) off season holding fee of seventy five dollars (\$75.00) applies only to center shed and Christmas tree growers.

(4) Retail Fees - Farmers Area:

- (a) all months except June, July, August \$ 5.00
- (b) fees for June, July, August 6.00
- (c) nonresident sellers shall pay twice the above stated fees.

(5) Delivery Fees:

- (a) cars, cars/trailers, pickups, pickups/trailers, straight trucks 6 wheels: less than 100 packages \$ 1.00
100 - 250 packages 2.00
over 250 packages 3.00
- (b) 10 wheelers or tractor trailers:
less than 100 packages \$ 2.00
100 - 400 packages 3.00
over 400 packages 5.00

(1) Farmers Area - Wholesale:

- (a) all vehicles less than one ton \$ 4.00
- (b) trucks one ton thru six wheel straight truck 7.00
- (c) trucks - 10 wheel (one space) 8.00
- (d) trucks - tractor trailer 10.00
- (e) trailers 4.00
- (f) Sellers of out-of-state products shall pay double the above-stated fees.

(2) Farmers Area - Retail:

- (a) January, February, March \$ 5.00

PROPOSED RULES

- (b) April, May, June, July, August, December 7.00
- (c) September, October, November 6.00
- (d) An off-season holding fee of seventy-five dollars (\$75.00) applies only to Christmas tree sellers.
- (e) Sellers of out-of-state products shall pay double the above-stated fees.
- (3) Building 3 (Retail):
 - (a) January, February, March \$ 6.00
 - (b) April, May, September, October 7.00
 - (c) June, July, August 6.00
 - (d) November, December 8.00
- (4) Building 4 (Truckers):
 - (a) all vehicles thru six wheel straight truck \$ 8.00
 - (b) trucks - 10 wheel, tractor trailer 12.00
 - (c) space by month - five months and over 100.00
 - (d) space by month - one to four months 125.00
- (5) Delivery Fees: Wholesale Dealers, Building 4:
 - (a) all vehicles thru six wheel:
 - less than 50 packages \$ 1.00
 - 51 - 300 packages 3.00
 - 301 up packages 4.00
 - (b) 10 wheel tractor trailers:
 - less than 100 packages 3.00
 - 101 - 500 packages 5.00
 - 501 up packages 7.00

For other services provided to market users, the market manager may charge reasonable fees to offset the costs of providing such services.

Statutory Authority G.S. 106-530.

SECTION .0300 - FEES: CHARLOTTE FARMERS MARKET

.0304 HORSE FACILITY

- (a) Fees for non-livestock events are as follows:
 - (1) Fees for use of the show arena are six hundred dollars (\$600.00) per show day or ten percent of the gate, whichever is greater, provided that for the show arena to be opened before ~~6:00~~ 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of three hundred dollars (\$300.00).
 - (2) Fees for use of the covered practice ring shall be three hundred dollars (\$300.00) per day, provided that it is used in conjunction with the show arena. ~~The covered practice ring may be rented separately for four hundred dollars (\$400.00) per show day if a show is held within 120 days of the booking date.~~
 - (3) Fees for use of the covered arena and office shall be five hundred dollars (\$500.00) per day or ten percent of the gate, whichever is greater, provided that for the covered arena and office to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred and fifty dollars (\$250.00).
 - (4) ~~(3)~~ The open practice ~~ring~~ rings shall be rented at the ground rental rate as set forth in Rule .0305(e) of this Section.
 - (5) ~~(4)~~ A twenty-five dollar (\$25.00) fee shall be charged for any electrical connection to facility power outlets.
 - (6) ~~(5)~~ The fees set forth in Paragraph (b) of this Rule shall apply to any activity not specifically covered under this Paragraph.
- (b) Fees for livestock events are as follows:
 - (1) Fees for use of the show arena are five hundred dollars (\$500.00) per show day or ten percent of the gate, whichever is greater; provided that for the show arena to be opened before 6:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred and fifty dollars (\$250.00). Rental of the show arena shall include the

covered practice ring ~~and the open practice ring~~. The open practice ring adjacent to show arena may be rented for one hundred dollars (\$100.00) per show day provided it is used in conjunction with the show arena. This ring may be rented separately for two hundred dollars (\$200.00) per show day, provided it does not interfere with an event taking place in the show arena.

(2) ~~The covered practice ring may be rented separately for two hundred and fifty dollars (\$250.00) per show day if a show is held within 120 days of the booking date. Rental of the covered practice ring shall include the open practice ring. Fees for use of the covered arena and office shall be four hundred dollars (\$400.00) per day or ten percent of the gate, whichever is the greater, provided that for the covered arena and office to be opened before 7:00 a.m. or after midnight requires an additional fee of fifty dollars (\$50.00) per hour or part thereof for a maximum of two hundred dollars (\$200.00). Rental of the covered arena and office includes the opened practice ring adjacent to the covered arena and office.~~

~~(3) The covered practice ring may be rented separately for two hundred and fifty dollars (\$250.00) per show day if a show is held more than 120 days from the booking date; provided that a minimum of one thousand five hundred dollars (\$1,500) revenue from covered practice ring and stall rental is guaranteed to the Agricultural Center. Rental of the covered practice ring shall include the open practice ring.~~

(3) (4) Fees for stalls are as follows:

Days	Fees	
(A) 1	\$12.00;	<u>\$10.00 minimum for youth show;</u>
(B) 2	\$20.00;	
(C) 3	\$26.00;	
(D) 4	\$32.00;	
(E) 5	\$36.00;	and
(F) \$3.00 per additional day thereafter.		

(4) ~~(5)~~ Agricultural youth organizations may receive a 50 percent discount for stall rentals and a 25 percent discount on show arena rental when participation is restricted to youth. Educational clinics and seminars may receive a 50 percent discount on show arena and covered practice ring rates when left in clean condition. The Agricultural Center Manager will decide what qualifies as educational clinics and seminars.

~~(5)~~ (6) A fee of seventy-five dollars (\$75.00) per day is required for use of the facility's jumps.

~~(6)~~ (7) A fee of twenty-five dollars (\$25.00) per hour is required for use of the facility's motorized grounds equipment. Fee shall include operator.

~~(7)~~ (8) Fees for use of the facility's office equipment, if available, is charged on an expense incurred basis.

~~(8)~~ (9) Fees for security and other support services at any event are charged on a cost plus ten percent basis. The need for security is to be determined by facility management in consultation with show management.

~~(9)~~ (10) A fee of ten dollars (\$10.00) per night is required for any camper parking overnight on facility grounds. Any horse trailer connected to a power outlet at the facility will be charged the same fee as a camper.

(10) ~~(11)~~ Miscellaneous horse facility equipment is available according to the following fee schedule:

- (A) metal livestock panels - three dollars (\$3.00) each per show;
- (B) small livestock panels - one dollar (\$1.00) per panel or if installed, four dollars (\$4.00) per pen;
- (C) center ring set-up - thirty-five dollars (\$35.00);
- (D) removal of end gates - fifty dollars (\$50.00);
- (E) farm wagon for staging - twenty-five dollars (\$25.00) each;
- (F) chairs - forty cents (\$0.40) each per day;
- (G) tables - two dollars (\$2.00) each per day;
- (H) paper table coverings - thirty-five cents (\$0.35) each;
- (I) portable PA system - twenty-five dollars (\$25.00) per event;
- (J) wireless mike system - twenty-five dollars (\$25.00) (batteries not included);
- (K) 9 volt batteries - one dollar (\$1.00) each;
- (L) podium - ten dollars (\$10.00) per day;

- (M) projection screen - ten dollars (\$10.00) per day;
- (N) slide projector - thirty dollars (\$30.00) per day;
- (O) two-way radio - twenty-five dollars (\$25.00);
- (P) VHF hand held transceiver - six dollars (\$6.00) each per day.
- (11) ~~(12)~~ A fee of twenty-five dollars (\$25.00) per concessionaire is required.
- (12) ~~(13)~~ A lessee must have prior approval of the Agricultural Center Manager before catering services will be allowed on the grounds. A fifty dollar (\$50.00) fee is charged for catering services that serve no more than 200 plates. For each plate served in excess of 200 plates, a fee of thirty-five cents (\$0.35) per plate shall be charged.
- (13) ~~(14)~~ Auditing of ticketed events: seven dollars (\$7.00) per hour for ticket sellers, six dollars (\$6.00) per hour for ticket takers and securing doors and ten percent administrative charge.
- (14) ~~(15)~~ There will be a charge of ten dollars (\$10.00) per hour for the facility to be opened with minimum lighting after 5:00 p.m. the day prior to a show event.
- (15) ~~(16)~~ The Agricultural Center Manager shall establish reasonable fees for any services or activities not mentioned herein.

Statutory Authority G.S. 106-22; 106-530.

.0305 LIVESTOCK FACILITY

(a) Fees for use of the livestock facility are as follows:

- (1) Non-agricultural groups shall be charged two hundred dollars (\$200.00) per day for use of the sales arena only or three hundred dollars (\$300.00) per day for the sales arena and barn;
- (2) Agricultural youth groups are charged fifty dollars (\$50.00) per day for use of the sales arena only or one hundred dollars (\$100.00) per day for the sales arena and barn;
- (3) Agricultural groups shall be charged one hundred dollars (\$100.00) per day for use of the sales arena only or two hundred dollars (\$200.00) per day for sales arena and barn;
- (4) Use of the facility's kitchen is set at thirty dollars (\$30.00) per day for agricultural groups;
- (5) Use of the facility's kitchen is set at thirty dollars (\$30.00) per day or 30.5 percent of gross receipts after taxes, whichever is the greater, for non-agricultural groups;
- (6) Any group renting the sales arena only shall pay an additional fee of twenty-five dollars (\$25.00) for any time after 12:15 a.m. but before 2:00 a.m. The fee shall be twenty-five dollars (\$25.00) per hour after 2:00 a.m.

(b) Fees for use of folding chairs, tables, livestock panels and paper table coverings shall be based on the fee schedule set forth in .0304(b)~~(11)~~ (10) of this Section.

(c) A fifty dollar (\$50.00) charge for the remov-

al of bedding from the barn is required.

(d) Fees for use of the Youth Building are set at thirty dollars (\$30.00) per day.

(e) Ground rental shall be at the rate of ten cents (\$0.10) per square yard or one hundred and fifty dollars (\$150.00) per day, whichever is greater.

(f) Ticketed event charges shall be at the daily rate of the facility or ten percent of gate receipts, whichever is greater.

(g) Food catering fees shall be provided at the rate set forth in .0304(b)~~(13)~~ (12) of this Section.

Statutory Authority G.S. 106-22; 106-530.

.0306 INTERPRETATION AND VIOLATION

(a) The Western North Carolina Agricultural Center Manager shall have authority to enforce these Rules and settle and determine all matters, questions and differences in regard thereto, or otherwise arising out of, connected with or incident to the center and the management, control and protection of the Western North Carolina Agricultural Center grounds, provided, however, any aggrieved party may appeal to the Office of Administrative Hearings.

(b) Any person who violates any of these Rules will forfeit all privileges and premiums when applicable and be subject to such penalty as these Rules may provide.

Statutory Authority G.S. 106-22; 106-530.

.0307 TRAFFIC REGULATIONS

(a) Applicable North Carolina laws relating to traffic, parking and the operation of motor vehicles, as amended from time to time, are hereby incorporated into and made a part of these Rules,

and the same shall be in full force and effect as to all parts of the Western North Carolina Agricultural Center, and as to the operation of motor vehicles therein and thereon, and shall have the same force and effect as though the said provisions were herein specifically set out in full.

(b) Parking on the Agricultural Center grounds is permissible 24 hours per day during any event taking place at the complex with the exception of the North Carolina Mountain State Fair. Parking during the North Carolina Mountain State Fair is prohibited between the hours 1:00 a.m. and 6:00 a.m. All trucks and motorized vehicles must complete their deliveries and be off the grounds by 2:00 p.m. each day. Absolutely no deliveries will be allowed (with the exception of ice) by the Agricultural Center. During the period of the fair, certain locations within the Agricultural Center grounds will be designated "restricted area." Parking or vehicular traffic within such restricted areas is prohibited without special permit. At any time, if a vehicle is left more than 24 hours after an event has vacated the grounds, it may be towed away and impounded at owner's risk and expense.

(c) All vehicles shall be parked in a designated parking area including horse and livestock trailers. No horse or livestock trailer will be allowed to park adjacent to stall barns. Any trailer and any other vehicle left adjacent to the stall barn area for more than eight hours may be towed away and impounded at owner's risk and expense. During the North Carolina Mountain State Fair only those vehicles that are classed as exhibits and are parked in the exhibition area can be on the grounds, except those that are parked in designated area. In no such case can any unauthorized vehicle be operated in the independent or carnival midway during the period of the annual North Carolina Mountain State Fair. Western North Carolina Agricultural Center personnel are authorized to use vehicles, when necessary, on the grounds during the fair in performance of duties.

(d) Vehicles and contents that are parked in designated parking area will be left at owner's risk.

(e) Any trailer or similar vehicle used for sleeping or cooking must be parked in the limited areas established for that purpose.

(f) A vehicle parked in violation of North Carolina statutes and these Rules shall be removed to a parking lot outside the fence. Administration office shall be notified of make of vehicle, license and where it is moved to. Western North Carolina Agricultural Center is not responsible for any damage in moving or after moving said vehicle.

(g) The manager of the Western North Carolina Agricultural Center shall have authority to order the placement of such traffic control or restrictive signals and signs on the Agricultural Center grounds as he shall deem necessary for the proper safety, protection and control of said grounds.

Statutory Authority G.S. 106-22; 106-530.

.0308 ADVERTISING MATTER

(a) Distribution of advertising material or matter of any kind, nature, or description by concessionaires, exhibitors, patrons attending annual exhibitions on the Western North Carolina Agricultural Center grounds, political parties, or by any other person or persons whomsoever, shall be, and the same hereby is, prohibited on the Agricultural Center grounds unless such distribution shall be within and from the assigned and designated space and shall have been first duly authorized by the Western North Carolina Agricultural Center Manager upon application thereto, and that advertising material or matter of any kind, nature or description shall be on the counter or display area and shall not be handed out unless the material is requested by a patron attending an event at the Western North Carolina Agricultural Center. Promiscuous handing out of such material, even from designated areas, is strictly forbidden.

(b) The distribution in any manner of advertising material having a gummed or adhesive backing, such as labels, lapel badges, car bumper or window stickers, etc., whether such distribution shall be from a contracted exhibit or concession space or elsewhere, is prohibited upon the Agricultural Center grounds. Persons or firms found distributing such materials shall immediately forfeit all space right and in addition, may be held financially responsible for any and all damage done to or occasioned by the Western North Carolina Agricultural Center as a result of these materials being affixed to Agricultural Center property by third parties.

(c) Operation of a sound truck or other mobile vehicle equipped with a public address system or sign, whether such vehicle is in motion or parked on the Agricultural Center grounds, whether within or without the fenced-off area thereof, is hereby prohibited unless authorized by the Western North Carolina Agricultural Center Manager.

(d) For the purpose of enforcing the provisions of this Section, it is hereby determined that the Western North Carolina Agricultural Center property shall consist of and constitute that certain area of land in Buncombe County, North Carolina

bounded on the south by property owned by the North Carolina Department of Transportation (proposed NC 280 Interchange), on the east by I-26, on the north by Fanning Bridge Road and on the west by Airport Road.

(e) The prohibitions and restrictions relating to advertising in these Rules shall not be construed as being applicable to lettered service trucks advertising a concern or its products while making necessary deliveries of merchandise or service to concessionaires or exhibitors on the Agricultural Center grounds, or the normal small advertising on bumpers and windows of vehicles.

Statutory Authority G.S. 106-22; 106-530.

.0309 ADMISSION REGULATIONS

(a) All persons entering the Western North Carolina Agricultural Center grounds during the North Carolina Mountain State Fair must pay the established admission fee, except persons holding worker's permits. One-time-only admissions will be issued to those persons who are employed by the fair or are asked to appear on the grounds by the fair management for a specific purpose, relative to the operation of the fair.

(b) The gates of the Western North Carolina Agricultural Center will open one hour prior to fair time and close one hour after closing of the fair midway each day of the fair. Opening of the fair midway and exhibit building may vary each day of the fair.

(c) The Western North Carolina Agricultural Center Manager may operate a pass-out system at one or more of the outside gates during the fair. Persons exiting through these gates may, upon request, have their hand or vehicle stamped for readmittance through the same gate without additional charge. Readmittance must occur before 10:00 p.m. on the same day as pass-out or the hand stamp will not be honored.

(d) Outside gate admission prices are as follows:

- (1) adult/child, 13 years of age and over \$4.00
- (2) child, 6 through 12 years of age 2.00
- (3) child, under 6 years of age Free

(e) Outside gate admission prices for advance ticket sales are as follows:

- (1) adult/child, 13 years of age and over \$3.25
- (2) child, 6 through 12 years of age 1.50
- (3) child, under 6 years of age Free
- (4) adult group sales purchasing a minimum of 40 tickets 3.00

(f) The Western North Carolina Agricultural Center Manager may offer to exhibitors and concessionaires during the North Carolina Mountain State Fair a reduced rate for gate admission. If offered, such discount tickets may be purchased from the administration office. Each discount ticket shall allow one admission during each day of the fair. These cards shall be non-refundable, whether used or not, and shall be used only by persons involved with concessions or exhibits, and not for general admission. The purchase of said tickets shall furnish to the Western North Carolina Agricultural Center Manager a list of names to whom ticket will be issued.

Statutory Authority G.S. 106-22; 106-530.

.0310 GENERAL

(a) Any person or persons who shall make, aid, countenance or assist in making any noise, riot, disturbance and all persons who shall collect in bodies or crowds on the Western North Carolina Agricultural Center grounds for unlawful purposes or to the annoyance or disturbance of citizens and those who are attending and/or participating in an event at the Agricultural Center or lawfully on the

Agricultural Center grounds may be expelled from the complex for such period of time as the manager of the complex may determine.

(b) Any person who engages in any unlawful activity or behavior, or any activity or behavior which interferes with or is detrimental to the operation of the Agricultural Center may be expelled from the Agricultural Center grounds for such period of time as the manager of the Western

North Carolina Agricultural Center may determine.

(c) Any person who shall unnecessarily or maliciously beat, abuse or injure any animal on the Western North Carolina Agricultural Center grounds shall be subject to the penalties and punishment provided in Paragraph (a) of this Rule.

(d) No person shall carry from the specific area of any concession or other place of sale on the grounds of the Agricultural Center, any liquid beverage in glass containers, nor shall any person, when in motion about the grounds, carry any such liquid beverages in glass containers. This Section shall not apply to non-alcoholic liquids brought into the Agricultural Center grounds as a part of picnic meals or the like when consumed and used in a stationary locale. This Rule is promulgated for the welfare and protection of all visitors to the Agricultural Center and violators hereof shall be subject to the penalties provided in Paragraph (a) of this Rule.

(e) Dogs and cats are not allowed on the Agricultural Center grounds unless they are under leash, are under the control of the person having possession of such animal or are on display in an exhibit contracted by the Agricultural Center or a promoter who is leasing facilities.

Statutory Authority G.S. 106-22; 106-530.

.0311 BOOTH RULE

(a) Solicitation of donations or the sale, offering for sale or distribution of any item, including written or printed material, is prohibited, except from an assigned space in compliance with 2 NCAC 20B .0200. This Rule does not apply to wholesale vendors operating in accordance with 2 NCAC 20B .0200.

(b) Any person who violates this Rule may be ejected from the Agricultural Center grounds and prohibited from returning.

Statutory Authority G.S. 106-22; 106-530.

.0312 COMMERCIAL EXHIBITS AND CONCESSIONS

(a) The Western North Carolina Agricultural Center management shall allow the lessee to handle the sale of all exhibit space within the confined leased facilities, with the exception of the North Carolina Mountain State Fair. The lessee shall pay the Agricultural Center twenty-five dollars (\$25.00) per concessionaire for any assigned space granted to the lessee under his contract. No concessions are granted to lessee or

anyone acting under the lessee for the sale or dispensing of any kind of beverages or foods. During the North Carolina Mountain State Fair the Agricultural Center may issue the two following types of contracts:

(1) Concession Contracts shall include all contracts for the sale or delivery of food, merchandise or service on or from leased premises during the period of the North Carolina Mountain State Fair. Concessionaires who operate according to Agricultural Center rules may be allowed to renew their contracts. Space not claimed by former occupants within the time specified, may be made available to new applicants.

(2) Commercial Exhibit Contracts shall include all contracts for exhibition of goods, machinery and services for advertising purposes. Institutions or individuals operating under exhibit contracts may be permitted to take orders and partial deposits for future delivery, but may not make delivery on or from their premises during the period of the North Carolina Mountain State Fair. The same rule regarding renewal of space holdings by former concessionaires applies to commercial exhibitors.

(b) Due to grounds or space alterations or other changes, the Agricultural Center management shall have authority to eliminate certain previously available space from year to year. In such instances, the Agricultural Center reserves the right to offer substitute locations or to discontinue contracts entirely.

Statutory Authority G.S. 106-22; 106-530.

.0313 APPLICATIONS

Mountain State Fair Application for space either in buildings or on the grounds shall be directed to:
Western North Carolina Agricultural Center
1301 Fanning Bridge Road
Fletcher, North Carolina 28732

Statutory Authority G.S. 106-22; 106-530.

.0314 OCCUPANCY OF SPACE

(a) This Rule applies only to the North Carolina Mountain State Fair. Any other event occupancy of space will be handled by the event promoter.

(b) No space shall be occupied until full pay-

ment is made. The original copy of the rental contract shall be signed and returned to the Agricultural Center Manager. Final payment on Concession and Commercial Exhibit Contracts is due at the Western North Carolina Agricultural Center Office no later than August 15. Renters of space shall keep a copy of the rental contract on the rented premises.

Statutory Authority G.S. 106-22; 106-530.

.0315 FORFEITURE

(a) This Rule shall apply to the North Carolina Mountain State Fair. Any other event, the promoter of event shall handle their forfeiture rule.

(b) Space assigned and not occupied by 4:00 p.m. on the first day of the fair, as well as all fees previously paid, shall be forfeited to the Agricultural Center as liquidated damages. Any space which is not open for business or does not have an attendant at the space during normal operating hours of the fair, shall, at the option of the Agricultural Center Manager, be forfeited. Space rental contracts shall not be canceled by the lessee without written notification to Western North Carolina Agricultural Center Manager by August 15.

Statutory Authority G.S. 106-22; 106-530.

.0316 EXTORTION OF FAIR PATRONS OF THE WNC AGRICULTURAL CENTER

The Western North Carolina Agricultural Center Manager and Agricultural Center employees or agents shall use every precaution to guard against extortion in any form practiced upon the patrons of the Agricultural Center. Any extortion practiced by a lessee or anyone working under the lessee contract may, in the discretion of the Agricultural Center management, cause the forfeiture of contract money paid, or expulsion from the grounds, or both.

Statutory Authority G.S. 106-22; 106-530.

.0317 REMOVAL OF STRUCTURES AND MATERIAL

Any person, firm or corporation owning buildings or materials upon the Agricultural Center grounds without lease, or whose lease has expired, who shall fail to remove same within 72 hours, shall forfeit all claim thereto and the Western North Carolina Agricultural Center may take possession thereof and the property will become

the property of the Agricultural Center.

Statutory Authority G.S. 106-22; 106-530.

.0318 AREA RESTRICTIONS

Events other than the North Carolina Mountain State Fair, restrictions if any other than those mentioned elsewhere, will be handled by the events promoter. During the North Carolina Mountain State Fair a lessee must confine his business, and the promotion and advertising of same on the Agricultural Center grounds to the space assigned him. Failure to comply with this Rule shall subject lessee, in the manager's discretion, to forfeiture of space privileges without reimbursement.

Statutory Authority G.S. 106-22; 106-530.

.0319 LOUDSPEAKERS

No loudspeaker, amplifier, radio or other broadcasting device is permitted on the Agricultural Center grounds unless written permission is obtained from the Western North Carolina Agricultural Center Manager. Approved loudspeakers must be kept at a reasonable volume so as not to disturb normal business transactions in adjoining exhibits nor the general public. The Agricultural Center management reserves the right to revoke loudspeaker permission if the provisions of this Rule are not observed.

Statutory Authority G.S. 106-22; 106-530.

.0320 DRESS OF LESSEES

Lessees and their help must be neat and tidy in their dress. Persons found working, not complying with this Rule, may be asked to clean up or leave the grounds.

Statutory Authority G.S. 106-22; 106-530.

.0321 STORAGE TRAILERS

Storage trailers will be allowed for any event where a lessee has rented or leased an entire building or the entire grounds. During the Mountain State Fair trailers used for storage of supplies or offices as a direct part of the concessions or exhibits will be permitted to park on the Agricultural Center property in a location determined by the Agricultural Center management and must have a sticker or receipt on the trailer proving payment has been made for this privilege.

Statutory Authority G.S. 106-22; 106-530.

.0322 DISPLAY AND SALE OF WEAPONS

The display and sale of weapons of any type is prohibited on the Agricultural Center grounds unless such display, sale or distribution is specifically authorized under the terms of an exhibit or concession contract executed by the Agricultural Center Manager. Failure to comply with this Rule shall be cause for the immediate termination of contract and removal from the Agricultural Center property or such other sanction as shall be deemed appropriate by Western North Carolina Agricultural Center Manager.

Statutory Authority G.S. 106-22; 106-530.

.0323 AUTHORITY TO ALLOW CERTAIN EXHIBITS

The Agricultural Center Manager shall have authority to deny acceptance or prohibit the showing of any exhibit, animal, concession or show that may be falsely entered or represented; or to deny acceptance or prohibit the showing of an exhibit, animal, concession or show; or authority to remove any sign, banner, display material or advertising matter if such exhibit or display is contrary to law, or violative of the complex's valid interest in providing for the health, safety and protection of the public.

Statutory Authority G.S. 106-22; 106-530.

.0324 ASSIGNMENT OF CONTRACTS

No contracts or portions thereof may not be assigned, interest therein sublet, or otherwise disposed of without the written consent of the manager. Obligations provided for in said contracts, including payments for space, electrical hook-up, electrical power and gas, shall remain the obligation of initial lessee, irrespective of approved subleasing or assignment otherwise provided.

Statutory Authority G.S. 106-22; 106-530.

.0325 GAS OR ELECTRIC SERVICE

(a) The Agricultural Center is not responsible or liable for failure of electric service.

(b) Positively no one shall tamper with, or change, any of the general lighting in any of the Agricultural Center buildings, and no electric connection excluding plug-ins shall be made by any person not in the direct employ, or under the supervision of, the Agricultural Center Manager.

(c) Prices quoted for electric service are for having electrical power available to the Lessee. Lessee is responsible for all internal wiring and is

responsible for having adapter plugs, if necessary, to connect to Agricultural Center's electrical system.

(d) Agricultural Center Manager reserves the right to terminate service if conditions of contract are violated.

Note: This Section addresses rules pertaining only to the North Carolina Mountain State Fair.

Statutory Authority G.S. 106-22; 106-530.

.0326 EXHIBITS AND EXHIBITORS

(a) The entry department will be open to receive and return exhibits two days prior to the fair and two days following the fair, 9:00 a.m. to 5:00 p.m.

(b) On the last night of the fair, after closing of the fair, exhibits may be packed up and stored for removal. Vehicles will be permitted to enter fair grounds to remove exhibits two hours after the closing on the last day of fair. Livestock, poultry, and rabbits will have a special release time on the last day of the fair.

(c) No fair superintendent or other employee shall be permitted, directly or indirectly, to make an entry in any department of the fair over which he presides or wherein he may be employed.

(d) The fair manager may limit exhibits to the facilities available at any given time.

Statutory Authority G.S. 106-22; 106-530.

.0327 LIVESTOCK SANITATION AND OFFICIAL VETERINARIAN

(a) All livestock exhibits will be subject to the rules and policies as established by the State Veterinarian.

(b) Premises and Management:

(1) All buildings for the use of animals, including exhibition halls or rings, stables, yards and pens, shall be maintained in a sanitary condition. All such buildings, rings, stables and pens shall be thoroughly cleaned and disinfected prior to the exhibition.

(2) If practical, a quarantine division shall be established. If such quarantine division is not available, the owner of any livestock or poultry showing symptoms of any infectious or communicable disease may be required to immediately remove such livestock or poultry from the exhibition premises.

(3) The animal health rules of North Caro-

lina will be strictly enforces. The rules will be included in the livestock section of the premium list.

(c) The official veterinarian shall perform the following:

- (1) Approve the cleaning and disinfection of the premises before the exhibition is opened and before any domestic animals or poultry are allowed admission to the premises;
- (2) Inspect all livestock and poultry on the date admitted to the premises; He shall refuse admission to any animal or bird showing symptoms of any infectious or communicable disease;
- (3) He shall refuse admission to any livestock not accompanied by proper health certificates when required; provided he may approve admission if he is satisfied that proper health certificates are being procured or are in transit from the point of origin and provided he is satisfied that such livestock has not been exposed to disease;
- (4) He shall inspect all livestock on the exhibition premises at lease once daily and shall order the immediate removal or isolation of any animal or bird showing symptoms of any infectious or communicable disease, and shall order and supervise the cleaning and disinfecting of any area from which suspect animals or birds are removed;
- (5) At the conclusion of the exhibition, he shall forward a written report to the Board of Agriculture of all violations, if any, of these Rules by an exhibitor of the management, and any other pertinent information relative to the exhibit.

(d) Exhibitors must make all applications for entry, specifying the number of animals or birds for which accommodations are desired, directly to:

Entry Department

Western North Carolina Agricultural Center
1301 Fanning Bridge Road
Fletcher, North Carolina 28732

All applications must be accompanied by the entry fee or other fees required by the special rules of the particular competitive department in which entry is made. The superintendent of the department will make all assignments of space for exhibits.

Statutory Authority G.S. 106-22; 106-530.

.0328 ENTRY REQUIREMENTS

(a) All applications for entry must be made in accordance with instructions and rules of the department premium list. Entry blanks and department rules may be obtained from:

Entry Department

Western North Carolina Agricultural Center
1301 Fanning Bridge Road
Fletcher, North Carolina 28732

The entry blanks, after being filled out and signed, must be filed with the entry department not later than the date specified for the closing of entries in the various department of the fair.

(b) Entry closing dates for each of the competitive departments will be determined by the fair manager and will be posted in the department premium list.

(c) Exhibitors in the horse, cattle, swine, sheep and poultry departments must pay, upon filing application for entry, the fees required in these departments.

(d) Any animal or exhibit which shows evidence of artificial means having been employed with intent to deceive for the purpose of removing or remedying physical defects or conformation, shall, together with any other entry or entries owned by the exhibitor of same, be forthwith excluded from participation in any of the awards. The said exhibitor likewise shall be prohibited from participation in competition and any and all awards or premiums previously awarded to said exhibitor shall be withdrawn. The judge in each classification shall have authority to make a final determination in the matter.

(e) All animals entered under a breed classification must have been recorded in an association recognized by the particular breed. Exhibitors must produce a certificate or registry at the request of the superintendent in charge of the department.

(f) All animals shown must be owned by the exhibitor from the time of making entry, except as otherwise provided in special rules of the department.

(g) Exhibitors making entries and not exhibiting, shall forfeit all fees paid for entry, stalls, pens and space.

(h) Corporations or partnerships entering for competition must be in lawful existence at the time of making entry, and all cases must be bona fide, and affidavits relating thereto may be required by the fair manager from appropriate persons.

(i) Exhibits which have been erroneously entered may, at the discretion of the fair manager or the superintendent of the department, be transferred to their proper lots previous to judging. If such lots

have been judged, they shall not be rejudged.

(j) Should any individual, partnership or corporation enter an animal or article in a name other than that of the bona fide owner, except as otherwise provided in special department rules, or attempt to perpetrate a fraud by the misrepresentation of any facts, or in the exhibition of said animal or article, the entry thus made shall not be allowed to compete for or receive any premiums, and said individual, partnership or corporation may, at the option of the fair manager, be barred from further showing, and any premiums previously awarded may be forfeited.

(k) Articles entered for premiums which are the result of mechanical or artistic skill, must be entered in the name of the artist, inventor, manufacturer or maker.

(l) The fair manager reserves the right to refuse entries or prohibit the exhibition of animals or articles entered if the showing of such animals or articles is contrary to law, or violative of the fair's valid interest in providing for the health, safety and protection of the fair-going public.

Statutory Authority G.S. 106-22; 106-530.

.0329 JUDGES AND JUDGING

(a) The judges shall read carefully the general rules and all special rules under the head of the department or class in which they are to serve; and especially note and follow those rules bearing on the classes to be judged by them.

(b) Judges shall not award prizes to an unworthy exhibit. No premium or distinction of any kind shall be given to any animal or article that is not deserving. This Rule shall be in effect whether or not there is competition.

(c) Judges shall report to the superintendent any exhibitor who in any way, whether in person or by agent or servant, interferes with them or shows any disrespect to them during the judging. The superintendent may, in his discretion, demand a proper apology from such exhibitor or exclude him from further competition. The fair may withhold from such exhibitor any or all premiums that have been awarded and expel him from further exhibiting at the fair.

(d) The judges and persons acting as clerks to the judges, must use special care, after awards have been made, to see that the same are properly entered in the award book, for it is upon this entry that the payment of premiums is made.

(e) The judge, superintendent and clerk recording the awards of the department must sign the award book at the close of each class immediately

after all awards in said class have been made.

(f) Judges will not award premiums to any article or animal because of its mere presence. No premium will be awarded to any exhibit that does not possess high intrinsic merit. Unless otherwise specified in the department rules, no exhibitor may win more than two premiums in any one individual class and not more than one premium in any group class. Premiums will be paid to winning exhibitors as soon after the awards are made as it is possible to compile and check all reports. Premiums not paid during the fair will be mailed to the exhibitor at the post office address given on his entry form.

(g) No person who is an exhibitor can act as judge in a class in which he is showing.

(h) If there is any question as to the regularity of an entry, or the right of any animal or article to compete in any lot, the judge or judges shall report same to the superintendent in charge for adjustment.

(i) A faithful observance of all rules governing the exhibit will be required and when in doubt as to the application or meaning of a rule, the superintendent in charge shall construe same by giving his opinion. This opinion, when required by either exhibitor or judge, must be reduced to writing and returned to the entry department with the award books.

(j) In judging livestock, the decision of the official veterinarian and judge as to soundness shall be final.

(k) The decision of the judges shall be final in all cases, except when mistake, fraud, misrepresentation, or collusion, not discovered at the time of the award, is alleged. In such cases, the fair manager shall make the final decision from which no appeal will lie.

Statutory Authority G.S. 106-22; 106-530.

.0330 PROTESTS AND APPEALS

(a) All protests from a decision of a judge must be made by noon the day after the award has been made to:

Fair Manager

Western North Carolina Agricultural Center

1301 Fanning Bridge Road

Fletcher, North Carolina 28732

An award is made when the notation of the decision of the judge is entered in the department award book.

(b) All protests must be made in writing and be accompanied by five dollars (\$5.00) which will be retained by the fair if the protest is not sustained.

(c) No protest or appeal based upon the statement that the judge or judges are incompetent or have overlooked an animal or article will be considered by the fair manager.

(d) All questions in disputed or differences not covered by these Rules shall be referred to the fair manager, whose decision shall be final.

Statutory Authority G.S. 106-22; 106-530.

.0331 PREMIUMS AND AWARDS

(a) The following colors will be used in designating awards except for a horse show:

- (1) Championship or Sweepstakes Royal Purple
- (2) Reserve Champion Lavender
- (3) First Premium Blue
- (4) Second Premium Red
- (5) Third Premium White
- (6) Fourth Premium Pink
- (7) Fifth Premium Yellow
- (8) Sixth Premium Dark Green
- (9) Seventh Premium Light Green
- (10) Eighth Premium Tan
- (11) Ninth Premium Gray
- (12) Tenth Premium Light Blue

(b) Where there are fewer animals or articles shown in lots than the number of premiums offered, the judge may, in his discretion, award a prize or prizes of such grade as the animal or article deserves.

(c) In the livestock departments, where there is but a single exhibitor in a division (lot) of any class, the judge shall award but one premium; where only two exhibitors and only two animals are showing, two premiums may be awarded, but if there two exhibitors and three or more animals showing, three premiums may be awarded; where there are three or more exhibitors, all premiums may be awarded. Where this Rule conflicts with special rules in any department, the latter will govern.

(d) No animal will be awarded a prize unless promptly brought into the show ring when its lot is called.

(e) Special prizes will not be accepted for classes that do not conform to the regular classification of the department in which they belong, unless for urgent reasons satisfactory to the fair manager and to the superintendent of the department in which they are offered.

(f) Specials must carry money prizes or articles of intrinsic value. Cups, meals or other articles offered as specials must be in the hands of the manager or the entry department on the opening day of the fair or awards will not be made.

(g) Cash premiums awarded in the livestock departments will be paid by check made out to exhibitor and mailed to the post office address of exhibitor as given on the entry blank.

(h) Premium money will be withheld in all instances when exhibits are removed from the grounds prior to the official time of release.

(i) The Agricultural Center reserves the right to make such reductions in premiums of the fair as financial conditions at the time the premiums are payable may justify.

Statutory Authority G.S. 106-22; 106-530.

.0332 AVAILABILITY OF FACILITIES

Use of buildings and grounds shall be subject to the approval of the manager of the Western North Carolina Agricultural Center on the basis of the following:

- (1) being in the public interest;
- (2) not in conflict with activities arranged and conducted as a part of the program

for year-round use of the Agricultural Center grounds;

- (3) use by a reputable organization, group, form or individual accepting by execution of a written contract the rules and rental schedules herein prescribed;
- (4) manager may limit the booking of similar events when deemed by him to be in the

- best interest of Western North Carolina Agricultural Center; and
- (5) at the option of the manager, an event may have first refusal on the same corresponding date in a subsequent year.

Statutory Authority G.S. 106-22; 106-530.

.0333 REHEARSALS: MOVE-IN AND MOVE-OUT PERIODS

For setting up and closing down, the following shall apply:

- (1) Any horse shows under contract for more than one day shall have up to two days to move in and one day to move out.
- (2) Other livestock events shall have one day to move in and one day to move out. The move in and move out days are for the use of horse stalls and cattle barn. Other facilities which are under contract to be used by these events, may be used provided no additional costs are realized by the Agricultural Center.
- (3) One day horse shows and any other events, an additional rental fee will be charged in units of half-days, figured at one-half the stated rental rate per day for moving in and moving out.

Statutory Authority G.S. 106-22; 106-530.

.0334 LIABILITY

Lessee shall be responsible for any damage to buildings, their fixtures and furnishings, and to all other buildings, land and structures on the Western North Carolina Agricultural Center grounds resulting from and incident to contracted use. Lessee shall, when deemed advisable by the manager of the Agricultural Center, be required to furnish bond or procure public liability insurance (with a satisfactory company licensed to do business in the State of North Carolina), to relieve the Western North Carolina Agricultural Center, Division of Marketing, North Carolina Department of Agriculture and its officers and employees from any and all accounts, bills, damages, suits and claims in any way arising out of the use of the building and/or other facilities on the Agricultural Center grounds by the lessee.

Statutory Authority G.S. 106-22; 106-530.

.0335 RESERVATIONS AND PAYMENT OF CHARGES

- (a) A tentative reservation may be made for use

of the building(s) by any organization, group, firm or individual approved by the manager of the Western North Carolina Agricultural Center, subject to the availability of the facilities, without payment of any fee. Such tentative reservation shall automatically expire on the 10th day following the date upon which the tentative reservation was made.

(b) If the date for which a tentative reservation was made is sought to be reserved by any other qualified organization, group, firm or individual, then the person(s) making the tentative reservation shall be allowed 48 hours after due notice in which to execute a written contract for use of the facilities and to pay the required cash deposit which must accompany such a contract.

(c) In any event, a written contract must be executed not less than 24 hours prior to the scheduled start of any and all performance or exhibition events, at which time lessee shall make a cash deposit of not less than the specified "guaranteed minimum."

(d) Lessee shall be required to make full settlement of 10 percent of the gross revenue if greater than "guaranteed minimum," along with payment for any special items or services provided by the Agricultural Center, within 24 hours after the end of the event for which use of the facilities was contracted. The manager of the Western North Carolina Agricultural Center may extend the period for final and full settlement if, in his judgment, additional time is required to determine the accurate gross revenue.

Statutory Authority G.S. 106-22; 106-530.

.0336 CONCESSIONS

The Western North Carolina Agricultural Center reserves the right to operate (or lease) any and all concession stands and sales within the arena building and elsewhere on the Agricultural Center grounds and lessee shall have no claim to any revenue from any such concession sales. Lessee desiring to sell any program, books, novelties, records, tapes, tee shirts or other merchandise connected with the event for which the facility was contracted will contact the complex manager and arrange to inventory all items in prior to show time and settle with the complex manager at the end of the event. All items are subject to approval of the complex manager. The Western North Carolina Agricultural Center Manager reserves the right to waive the above it is in the best interest of the Western North Carolina Agricultural Center and the contract with the event lessee.

Statutory Authority G.S. 106-22; 106-530.

.0337 ALCOHOLIC BEVERAGES

(a) A person shall not possess any alcoholic beverage on Agricultural Center property except as permitted by the Agricultural Center Manager and in compliance with the rules of the North Carolina Alcoholic Beverage Control Commission.

(b) Alcoholic beverages shall not be sold during the annual North Carolina Mountain State Fair nor at any other event that the Western North Carolina Agricultural Center Manager deems to be in the best interest of the Agricultural Center.

Statutory Authority G.S. 106-22; 106-530.

.0338 CONDITIONS FOR RENTAL OF FACILITIES

For purposes of this Chapter, "day" means the time used between 8:00 a.m. and 12:00 midnight or any fraction thereof. Time prior to or after the day shall be charged at a rate of fifty dollars (\$50.00) per hour plus attending staffing and service fees, unless otherwise agreed by the Agricultural Center management and the user prior to the event. All users are subject to the rules of this Chapter and the terms of the lease agreement.

Statutory Authority G.S. 106-22; 106-530.

.0339 RENTAL RATES: FEES: AND PREMIUM BOOKS

(a) The manager of the Western North Carolina Agricultural Center shall annually publish:

- (1) a schedule of fees and other charges governing rental rates for Western North Carolina Agricultural Center properties and services; and
- (2) for the North Carolina Mountain State Fair, a premium book for exhibits and horse shows governing the awarding of cash prizes and other awards.

(b) The Board of Agriculture shall give notice of any hearing at which fees and other charges governing rental rates for Western North Carolina Agricultural Center properties and services are approved pursuant to the procedures outlined in G.S. 150B-12.

(c) Copies of fee schedules and premium books shall be maintained in the office of the Western North Carolina Agricultural Center Manager and made available to the public upon request.

Statutory Authority G.S. 106-22; 106-530.

CHAPTER 48 - PLANT INDUSTRY

SUBCHAPTER 48B - FERTILIZER

SECTION .0100 - FERTILIZER STANDARDS

.0113 REGISTRATION OF FERTILIZER-PESTICIDE MIXTURES

(a) Fertilizer-pesticide mixtures may be registered for sale and use with the Plant Industry Division and Food and Drug Protection Division provided:

- (1) Both the pesticide and the fertilizer grades are approved for use and sale in North Carolina;
- (2) The mixture is approved by the Plant Industry Division; and
- (3) The directions for use are printed on the label.

(b) Fertilizers-pesticides may be mixed for direct application at the farmer's request without registering the mixture provided as follows:

- (1) The mixing of the pesticide with fertilizer is not prohibited by the pesticide label and the fertilizer contains a minimum of 20 percent primary plant nutrients, Nitrogen (N), Available Phosphoric Acid Phosphate (P₂O₅), and Soluble Potash (K₂O).
- (2) The product is delivered directly to the point of application and not stored.
- (3) The consumer shall be issued an invoice showing the analysis of the fertilizer and the trade name of the pesticide as well as the net content of each.

(c) Any fertilizer-pesticide mixture sold in bulk shall be covered with a tarpaulin or other covering to prevent spillage or dusting while in transport.

(d) Any fertilizer-pesticide mixture sold in bags shall be in multi-wall bags which will prevent dusting, spillage, or otherwise losing content of the bag.

(e) Nothing in this Regulation Rule shall prohibit the Board of Agriculture from refusing to register and/or approve any fertilizer-pesticide mixture or denying a farmer's request for a fertilizer-pesticide mixture for direct application.

Statutory Authority G.S. 106-673.

.0121 APPLICATION FOR REGISTRATION OF FERTILIZERS

(a) Each application for registration of any fertilizer shall include the:

- (1) net weight;
- (2) brand;
- (3) grade;
- (4) name and address of the person guaranteeing registration; and
- (5) sources from which nitrogen, ~~phosphoric acid~~ phosphate, and potash are derived in mixed fertilizers.

(b) Each application for registration of any fertilizer in addition to the general information contained in Paragraph (a) of this Rule, shall include a guaranteed analysis showing the percentages of plant food in the following order and form:

- (1) tobacco fertilizers:
 - (A) total nitrogen (N) X Percent;
[breakdown of nitrogen (N) is optional]
 - (B) available ~~phosphoric acid~~ phosphate (P_2O_5) X Percent;
 - (C) soluble potash (K_2O) X Percent;
 - (D) chlorine (maximum) X Percent;
- (2) fertilizer materials:
 - (A) total nitrogen (N) X Percent;
 - (B) available ~~phosphoric acid~~ phosphate (P_2O_5) X Percent;
 - (C) soluble potash (K_2O) X Percent;
- (3) specialty fertilizers, manures and fortified mulch:
 - (A) total nitrogen (N) X Percent;
 - (B) available ~~phosphoric acid~~ phosphate (P_2O_5) X Percent;
 - (C) soluble potash (K_2O) X Percent;
- (4) organic fertilizers:
 - (A) total nitrogen (N) (see 2 NCAC 48B .0122) X Percent;
 - (B) available ~~phosphoric acid~~ phosphate (P_2O_5) X Percent;
 - (C) soluble potash (K_2O) X Percent.

(c) Immediately following the guarantees for primary plant nutrients, the following secondary plant nutrients, if used, shall be listed on the application and guaranteed by percentage of each in elemental form:

- (1) calcium (Ca);
- (2) magnesium (Mg) (see 2 NCAC 48B .0132);
- (3) sulfur (S);
- (4) boron (B);
- (5) chlorine (Cl);
- (6) cobalt (Co);
- (7) copper (Cu);
- (8) iron (Fe);
- (9) manganese (Mn) (see 2 NCAC 48B .0132);
- (10) molybdenum (Mo);
- (11) sodium (Na); and
- (12) zinc (Zn).

Sources of these elements and proof of availability shall be provided to the Commissioner upon request.

(d) A person shall not make any guarantee or claim for a secondary or minor plant nutrient not listed in Paragraph (c) of this Rule.

(e) A person shall express potential acidity or basicity as equivalent pounds per ton of calcium carbonate, if acid forming or nonacid forming potential is guaranteed.

(f) Where no determination of available ~~phosphoric acid~~ phosphate for organic phosphates is made, total ~~phosphoric acid~~ phosphate shall be guaranteed, except as provided in Paragraph (g) of this Rule.

(g) Where unacidulated mineral phosphates or basic slag is used, both total and available ~~phosphoric acid~~ phosphate, as well as degree of fineness, shall be guaranteed.

Statutory Authority G.S. 106-660(a); 106-673.

**TITLE 10 - DEPARTMENT OF
HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-21.2 that DHR/Secretary's Office intends to adopt rules cited as 10 NCAC 1N .0001 - .0008.

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

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Written demand for a public hearing may be directed to Jack Jenkins, General Counsel, N.C. Department of Human Resources, 101 Blair Drive, Raleigh, NC 27603 on or before March 8, 1994.

Reason for Proposed Action: 45 CFR 84.7, Implementing the Section 504 of the Rehabilitation Act of 1973 requires adoption of grievance procedures to resolve complaints.

Comment Procedures: Written comments may be directed to Jack Jenkins, General Counsel, N.C. Department of Human Resources, 101 Blair Drive, Raleigh, NC 27603 on or before March 22, 1994.

CHAPTER I - DEPARTMENTAL RULES

**SUBCHAPTER 1N - SECTION 504
GRIEVANCE PROCEDURES**

.0001 APPLICABILITY AND SCOPE

This Subchapter provides for the prompt and equitable resolution of complaints against any division within the Department of Human Resources alleging any action prohibited by the U.S. Department of Justice regulations implementing Section 504 of the Rehabilitation Act of 1973, 45 CFR Part 84.

Authority 45 C.F.R. 84.7.

.0002 COMPLAINTS

(a) A complaint shall be filed in writing, contain the name and address of the person filing it, and briefly describe the alleged violation of 45 CFR Part 84. If the complainant requires secretarial assistance in preparing the complaint due to his disability, the Division Section 504 Coordinator shall provide such assistance upon request of the

complainant.

(b) A complaint shall be filed with the Division Section 504 Coordinator within 60 days after the complainant becomes aware of the alleged violation.

Authority 45 C.F.R. 84.7.

.0003 INVESTIGATION

An investigation of the allegations of the complaint shall be conducted by a Section Chief designated by the Division Section 504 Coordinator. The investigation shall afford all interested persons and their representatives, if any, an opportunity to submit evidence relevant to the complaint.

Authority 45 C.F.R. 84.7.

.0004 WRITTEN DETERMINATION

A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by the Division Section 504 Coordinator and a copy forwarded to the complainant no later than 30 days after the filing of the complaint.

Authority 45 C.F.R. 84.7.

.0005 RECONSIDERATION

(a) The complainant may request a reconsideration of the determination as to the validity of the complaint in instances where he is dissatisfied with the resolution. The request for reconsideration shall be made to the Division Director within 30 days of the issuance of the determination of validity.

(b) A written determination to the request for reconsideration shall be issued by the Division Director or his designee, and copy forwarded to the complainant and Section 504 Coordinator within 30 days after the filing of a request for reconsideration.

Authority 45 C.F.R. 84.7.

.0006 RECORDS

The Division Section 504 Coordinator shall maintain the files and records of the Division relating to the complaints filed, written determinations issued, and any reconsiderations requested or issued.

Authority 45 C.F.R. 84.7.

.0007 OTHER REMEDIES

The right of a person to a prompt and equitable resolution of the complaint filed under this Subchapter shall not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 complaint with the responsible federal department or agency. Use of the procedures of this Subchapter is not a prerequisite for the pursuit of other remedies.

Authority 45 C.F.R. 84.7.

.0008 CONSTRUCTION

This Subchapter shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards, and to assure that the Department and the Divisions comply with Section 504 of the Rehabilitation Act of 1973 and implementing regulations.

Authority 45 C.F.R. 84.7.

TITLE II - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Department of Insurance intends to amend rules cited as 11 NCAC 10 .1201 - .1202, .1206; repeal rule cited as 11 NCAC 10 .0308; and adopt rules cited as 11 NCAC 10 .1303, .1403.

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

The public hearing will be conducted at 10:00 a.m. on March 3, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action:

11 NCAC 10 .1201 - Requires insurance companies assign specific form numbers to each form being filed.

11 NCAC 10 .1202 - Reflects proper identification of Bureaus.

11 NCAC 10 .1206 - Updates language according to statutory changes.

11 NCAC 10 .0308 - Repealed due to statutory changes.

11 NCAC 10 .1303 & .1403 - Established guidelines for loss cost rate filings.

Comment Procedures: Written comments may be sent to Charles Swindell at P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Charles Swindell at (919) 733-3368 or Ellen Sprengel at (919) 733-4529.

CHAPTER 10 - PROPERTY AND CASUALTY DIVISION

SECTION .0300 - RULES AND INTERPRETATIONS

.0308 PREPAID LEGAL EXPENSE PROVISIONS

~~Any program offering prepaid legal expense constituting the offering of insurance or offered by a company engaged in the insurance business shall have the approval of the North Carolina State Bar before it shall be considered by the commissioner for approval.~~

Statutory Authority G.S. 58-9; 84-23.1.

SECTION .1200 - FORMS FILINGS

.1201 GENERAL REQUIREMENTS

~~(a) Except inland marine insurance that is not generally written according to manual rates and rating plans, and with the exception of fidelity, surety and guaranty bonds which are written in accordance with a statute or at the direction of the insured, all forms intended for use in this state shall be filed with the commissioner for approval prior to their use.~~

~~(a) (b) Form(s) Insurers shall submit form filings must be submitted separately and under independent cover separate from Rates and Rules rate and rule filings, which shall be made under 11 NCAC 10 .1100. The requirements of this Rule are applicable to form(s) filings only. Rates and Rules filings are addressed in Section .1100.~~

(b) Each insurer shall display a unique identifier on each form filed that differentiates that form from all other forms filed with the Commissioner by that insurer.

(c) Applications or declarations pages that are used with policy forms shall be submitted to and approved by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-6-5; 58-36-55; 58-37-35; 58-41-50; 58-44-15; 58-45-45; 58-46-55.

.1202 REFERENCE FILINGS

With the exception of Flood Insurance written in accordance with Federal Emergency Management Agency (FEMA) requirements, ~~form(s) filing form filings~~ by reference are not permitted. ~~Individual companies adopting a form(s)~~ If an insurer adopts a form that has been promulgated by a licensed bureau or licensed rating organization advisory organizations and licensed joint underwriting organizations of which said company the insurer is a member or subscriber, the adoption of that form is NOT not deemed to be a reference filing.

Statutory Authority G.S. 58-2-40; 58-3-150; 58-36-55; 58-37-35; 58-41-50; 58-44-15; 58-45-45; 58-46-55.

.1206 COMMERCIAL LINES

All licensed insurance companies, licensed rating bureaus, licensed rating organizations, ~~or and~~ any other licensed entity filing forms for ~~non-essential lines (as defined in 58-131.36 or 58-472)~~ coverages governed by G.S. 58, Articles 40 and 41 shall:

- (1) use the Letter of Transmittal as prescribed in ~~Chapter 10, Rule .1203~~ 11 NCAC 10 .1203;
- (2) complete the Questionnaire as prescribed in ~~Chapter 10, Rule .1207~~ 11 NCAC 10 .1207;
- ~~(3) be in compliance with the other provisions of this Rule;~~
- ~~(3)~~ (4) when if the filer is filing a modification to an existing form, it will provide a "side-by-side" comparison of the old and proposed form(s) existing and modified forms and explain all broadenings and restrictions of coverage;
- ~~(5) such other information as the commissioner may require.~~

Statutory Authority G.S. 58-2-40; 58-3-150; 58-41-50.

SECTION .1300 - NORTH CAROLINA JOINT UNDERWRITING ASSOCIATION

.1303 LOSS COST RATE FILINGS

If the North Carolina Rate Bureau or the Insurance Services Office, Inc., makes a loss cost rate filing that requires the N.C. Joint Underwriting Association to make a filing in order to have final rates, the Association must make its filing within 60 days after the loss cost filing is approved by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-46-55.

SECTION .1400 - NORTH CAROLINA INSURANCE UNDERWRITING ASSOCIATION

.1403 LOSS COST RATE FILINGS

If the North Carolina Rate Bureau or the Insurance Services Office, Inc., makes a loss cost rate filing that requires the N.C. Insurance Underwriting Association to make a filing in order to have final rates, the Association must make its filing within 60 days after the loss cost filing is approved by the Commissioner.

Statutory Authority G.S. 58-2-40; 58-45-45.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to repeal rules cited as 11 NCAC 11A .0601 - .0609.

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

The public hearing will be conducted at 10:00 a.m. on March 3, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N. C. 27611.

Reason for Proposed Action: This Section has been replaced by statutory provisions.

Comment Procedures: Written comments may be sent to Ray Martinez at P.O. Box 26387, Raleigh, N. C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Ray Martinez at (919) 733-5633 or Ellen Sprenkel at (919) 733-4529.

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0600 - REINSURANCE INTERMEDIARIES

.0601 DEFINITIONS

As used in this Section:

- (1) ~~"Actuary" means a person who meets the standards of a qualified actuary, as specified in the National Association of Insurance Commissioners Annual Statement Instructions, as amended or clarified by rule or order of the Commissioner, for the type of insurer for which an intermediary is establishing loss reserves.~~
- (2) ~~"Broker" means any person, other than an officer or employee of a ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the ceding insurer.~~
- (3) ~~"Commissioner" means the Commissioner of Insurance of North Carolina and includes his authorized deputies and employees.~~
- (4) ~~"Controlling person" means any person who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of an intermediary.~~
- (5) ~~"Intermediary" has the same meaning contained in G.S. 58-2-225(a) and includes a broker or a manager.~~
- (6) ~~"Manager" means any person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for the reinsurer. The following persons are not managers, with respect to a reinsurer:~~
 - (a) ~~An employee of a reinsurer;~~
 - (b) ~~A U.S. manager of the United States branch of an alien reinsurer;~~
 - (c) ~~An underwriting manager that, pursuant to contract, manages all the reinsurance operations of a reinsurer, is under common control with the reinsurer under Article 19 of General Statute Chapter 58, and whose compensation is not based on the volume of premiums written;~~
 - (d) ~~The manager of a group, association, pool, or organization of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance regulator of the state in which the manager's principal business office is located.~~
- (7) ~~"Person" includes an individual, aggrega-~~

~~tion of individuals, corporation, association, or partnership.~~

- (8) ~~"Producer" means an insurance agent or insurance broker licensed under Article 33 of General Statute Chapter 58 or an intermediary licensed under this Section.~~
- (9) ~~"Qualified U.S. financial institution" means a bank that:~~
 - (a) ~~Is organized, or in the case of a U.S. office of a foreign banking organization is licensed, under the laws of the United States or any state;~~
 - (b) ~~Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and~~
 - (c) ~~Has been determined by the Securities Valuation Office of the National Association of Insurance Commissioners to meet its standards of financial condition and standing in order to issue letters of credit.~~
- (10) ~~"Reinsurer" means any licensed insurer that is authorized to assume reinsurance.~~

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

.0602 LICENSURE

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

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

(b) ~~No person shall act as a manager:~~

- (1) ~~For a reinsurer domiciled in this State, unless the manager is a producer in this State;~~
- (2) ~~In this State, if the manager maintains an office directly, as a member or employee of a non-corporate entity, or as an officer, director or employee of a corporation in this State, unless the manager is a producer in this State;~~
- (3) ~~In another state for a foreign insurer, unless the manager is a producer in this State or another state having a law or rule substantially similar to this Section;~~

~~or the manager is licensed in this State as a nonresident intermediary.~~

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

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

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

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

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

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

~~(1) the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, is, based on his or her business experience or business reputation, not trustworthy; or~~

~~(2) any controlling person of the applicant is not, based on that person's business experience or business reputation,~~

~~trustworthy to act as an intermediary; or~~

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

~~Upon written request, the Commissioner shall furnish a written summary of the reasons under this Paragraph for refusal to issue a license.~~

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

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

.0603 REQUIRED CONTRACT PROVISIONS - BROKERS

~~Transactions between a broker and the insurer it represents as a broker shall only be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization shall include provisions to the effect that:~~

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

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

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

~~(4) The broker will comply with this Rule.~~

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

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

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

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

insurer.

- (9) ~~For at least 10 years after the expiration of each contract of reinsurance transacted by the broker, the broker will keep a complete record for each transaction showing:~~
- (a) ~~The type of contract, limits, underwriting restrictions, classes or risks and territory;~~
 - (b) ~~Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;~~
 - (c) ~~Reporting and settlement requirements of balances;~~
 - (d) ~~Rate or rates used to compute the reinsurance premium;~~
 - (e) ~~Names and addresses of assuming reinsurers;~~
 - (f) ~~Rates of all reinsurance commissions, including the commissions on any retrocession handled by the broker;~~
 - (g) ~~Related correspondence and memoranda;~~
 - (h) ~~Proof of placement;~~
 - (i) ~~Details regarding retrocessions handled by the broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;~~
 - (j) ~~Financial records, including premium and loss accounts; and~~
 - (k) ~~When the broker procures a reinsurance contract on behalf of a licensed ceding insurer:~~
 - (i) ~~Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or~~
 - (ii) ~~If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.~~

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

.0604 DUTIES OF INSURERS USING SERVICES OF BROKERS

- (a) An insurer shall not engage the services of any person to act as a broker on its behalf unless the person is licensed under 11 NCAC 11A .0602.
- (b) An insurer shall not employ an individual who is employed by a broker with which it transacts business, unless the broker is under common control with the insurer under Article 19 of Gener-

al Statute Chapter 58.

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

.0605 REQUIRED CONTRACT PROVISIONS - MANAGERS

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

- (1) The reinsurer may terminate the contract for cause upon written notice to the manager. The reinsurer may immediately suspend the authority of the manager to assume or cede business during the pendency of any dispute regarding the cause for termination.
- (2) The manager will render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the manager; and will remit all funds due under the contract to the reinsurer at least once every month.
- (3) All funds collected for the reinsurer's account will be held by the manager in a fiduciary capacity in a qualified U.S. financial institution. The manager may retain no more than three months' estimated claims payments and allocated loss adjustment expenses. The manager shall maintain a separate bank account for each reinsurer that it represents.
- (4) For at least 10 years after the expiration of each contract of reinsurance transacted by the manager, the manager will keep a complete record for each transaction showing:
 - (a) The type of contract, limits, underwriting restrictions, classes or risks and territory;
 - (b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation, and disposition of outstanding reserves on covered risks;
 - (c) Reporting and settlement requirements of balances;

- ~~(d) Rate used to compute the reinsurance premium;~~
- ~~(e) Names and addresses of reinsurers;~~
- ~~(f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the manager;~~
- ~~(g) Related correspondence and memoranda;~~
- ~~(h) Proof of placement;~~
- ~~(i) Details regarding retrocessions handled by the manager, as permitted by 11 NCAC 11A .0607, including the identity of retrocessionaires and percentage of each contract assumed or ceded;~~
- ~~(j) Financial records, including but not limited to, premium and loss accounts; and~~
- ~~(k) When the manager places a reinsurance contract on behalf of a ceding insurer:

 - ~~(i) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or~~
 - ~~(ii) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.~~~~
- ~~(5) The reinsurer will have access and the right to copy all accounts and records maintained by the manager related to its business in a form usable by the reinsurer.~~
- ~~(6) The contract cannot be assigned in whole or in part by the manager.~~
- ~~(7) The manager will comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.~~
- ~~(8) The rates, terms, and purposes of commissions, charges, and other fees that the manager may levy against the reinsurer shall be set forth.~~
- ~~(9) If the contract permits the manager to settle claims on behalf of the reinsurer:

 - ~~(a) All claims will be reported to the reinsurer in a timely manner;~~
 - ~~(b) A copy of the claim file will be sent to the reinsurer at its request or as soon as it becomes known that the claim:

 - ~~(i) Has the potential to exceed an amount set by the reinsurer and approved by the Commissioner;~~
 - ~~(ii) Involves a coverage dispute;~~
 - ~~(iii) May exceed the manager's claims settlement authority;~~~~~~
- ~~(iv) Is open for more than six months; or~~
- ~~(v) Is closed by payment of an amount set by the reinsurer and approved by the Commissioner.~~
- ~~(e) All claim files will be the joint property of the reinsurer and manager. However, upon an order of liquidation of the reinsurer the files shall become the sole property of the reinsurer or its estate; the manager shall have reasonable access to and the right to copy the files on a timely basis;~~
- ~~(d) Any settlement authority granted to the manager may be terminated for cause upon the reinsurer's written notice to the manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.~~
- ~~(10) If the contract provides for a sharing of interim profits by the manager, the interim profits will not be paid until one year after the end of each underwriting period for property business and five years after the end of each underwriting period for casualty business and not until the adequacy of reserves on remaining claims has been verified pursuant to 11 NCAC 11A .0607.~~
- ~~(11) The manager will annually provide the reinsurer with an audited statement of its financial condition prepared by an independent certified public accountant.~~
- ~~(12) The reinsurer shall at least semi-annually conduct an on-site review of the underwriting and claims processing operations of the manager.~~
- ~~(13) The manager will disclose to the reinsurer any relationship it has with any insurer before ceding or assuming any business with the insurer pursuant to this contract.~~
- ~~(14) Within the scope of its actual or apparent authority the acts of the manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.~~

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

.0606 PROHIBITED ACTS

A manager shall not:

- (1) Cede retrocessions on behalf of the reinsurer, except that the manager may cede facultative retrocessions pursuant to

~~obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for the retrocessions. The guidelines shall include a list of reinsurers with which the automatic agreements are in effect, and for each reinsurer, the coverages and amounts or percentages that may be reinsured, and commission schedules.~~

- ~~(2) Commit the reinsurer to participate in reinsurance syndicates.~~
- ~~(3) Appoint any producer without assuring that the producer is duly licensed to transact the type of reinsurance for which he is appointed.~~
- ~~(4) Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.~~
- ~~(5) Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.~~
- ~~(6) Jointly employ an individual who is employed by the reinsurer unless the manager is under common control with the reinsurer under Article 19 of General Statute Chapter 58.~~
- ~~(7) Appoint a sub manager.~~

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

.0607 DUTIES OF REINSURERS USING SERVICES OF A MANAGER

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

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

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

~~(d) Within 30 days after termination of a contract with a manager, the reinsurer shall provide~~

~~written notification of the termination to the Commissioner.~~

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

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

.0608 EXAMINATION AUTHORITY

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

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

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

.0609 PENALTIES AND LIABILITIES

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

- ~~(1) For each separate violation, pay a penalty of one thousand dollars (\$1,000), not to exceed a total penalty of five thousand dollars (\$5,000);~~
- ~~(2) Be subject to revocation or suspension of its license; and~~
- ~~(3) If a violation was committed by the intermediary, the intermediary shall make restitution to the insurer or reinsurer or to the rehabilitator or liquidator of the insurer or reinsurer for any net losses incurred by the insurer or reinsurer that are caused by the violation.~~

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

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

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

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

**TITLE 12 - DEPARTMENT
OF JUSTICE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Private Protective Services Board intends to adopt rules cited as 12 NCAC 7D .1101 - .1110.

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

The public hearing will be conducted at 2:00 p.m. on March 2, 1994 at the State Bureau of Investigation, Conference Room, 3320 Old Garner Road, Raleigh, N. C. 27626-0500.

Reason for Proposed Action: To establish more specific guidelines for training and supervision of private investigator trainees.

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 through March 17, 1994. Written comments must be delivered to: W. A. Hoggard, N.C. Private Protective Services Board, 3320 Old Garner Road, Raleigh, N. C. 27626-0500.

**CHAPTER 7 -PRIVATE PROTECTIVE
SERVICES**

**SUBCHAPTER 7D - PRIVATE
PROTECTIVE SERVICES BOARD**

**SECTION .1100 - TRAINING
AND SUPERVISION FOR
PRIVATE INVESTIGATOR ASSOCIATES**

.1101 DEFINITIONS

In addition to the definitions set forth in Chapter 74C of the General Statutes of North Carolina, the following definitions will apply to this Section:

- (1) "Private Investigator Associate" refers to individuals training to become Private Investigators. A Private Investigator Associate must complete three levels of training requirements.
- (2) "One-on-one Supervision" means person to person contact whereby the licensed investigator is personally and directly

supervising or training the Associate. The training investigator must be the sponsoring licensed Private Investigator or any licensed Private Investigator who is a member of the sponsoring Private Investigator's firm, association, or corporation. The Private Investigator Associate may not subcontract his employment to another Private Investigator unless the Administrator has given prior approval. One-on-one supervision may be satisfied if the Associate undergoes training from an individual or educational course approved by the Administrator prior to the Associate receiving the training.

- (3) "Training Checklist" refers to the document(s) which must indicate all areas of training and work that the Associate has performed. The supervising Private Investigator must be responsible for maintaining the training checklist and a copy must be given to the Associate. The Training Checklist must further be updated to reflect the date the associate advances from one level to another. The training checklist must be signed by the Associate and the sponsoring Private Investigator at the end of each reporting period. In the event the Associate transfers employment to another Private Investigator, the Associate must provide the new supervising Private Investigator with the training checklist and the new sponsoring Private Investigator will then be responsible for the maintenance of the checklist. The Training Checklist must be updated on a quarterly basis for Level One associates and on a yearly basis for Level Two and Level Three associates. The training checklist must be maintained pursuant to 12 NCAC 7D .0109. When an associate completes Level Three, the Training Checklist must be made a part of the associate's application for a Private Investigator's license. The Board shall have immediate access to the training checklist.

- (4) "Associate Log" refers to the document(s) maintained by the sponsoring Private Investigator which must list each case the Associate has worked, the number of hours spent on the case, and the type of work performed. One-on-one training must be specifically documented within the

Associate's log.

Statutory Authority G.S. 74C-5(2).

**.1102 TRAINING AND SUPERVISION
REQUIRED IN LEVEL ONE**

(a) If upon sponsorship, the associate has less than one year or 1,000 hours of verifiable training or experience, the associate will undergo 160 hours of one-on-one supervision training.

(b) The first 40 hours of employment must be one-on-one supervision. The remaining 120 hours of one-on-one supervision must be gathered over the first year of employment or the first 1,000 hours of actual work, whichever comes first.

(c) A Level One Associate can not, independently of the sponsor, accept or contract employment. The Associate must have direct face-to-face or telephone contact with the sponsor or another licensed Private Investigator within the firm, association, or corporation before accepting employment or before accepting a new case.

(d) The sponsor or another licensed Private Investigator associated with the sponsor's firm, association, or corporation must meet with the Level One associate to review the associate's work product. The Private Investigator's review may be by telephone or face-to-face and must occur at least four times per month. The licensed Private Investigator must review each case on which the associate is working or has worked since the last review. Review sessions may encompass more than one case.

Statutory Authority G.S. 74C-5(2).

**.1103 TRAINING AND SUPERVISION
REQUIRED IN LEVEL TWO**

(a) If upon initial application for a training permit, the applicant has at least one year or 1,000 hours of verifiable training or experience, the applicant will skip Level One and be classified as a Level Two Private Investigator Associate. An applicant that skips Level One must undergo 80 hours of one-on-one training. The first 40 hours of one-on-one supervision must occur within the first 40 hours of employment. The remaining 40 hours must be gathered over the first year of employment or the first 1,000 hours of actual work, which ever comes first.

(b) A Level Two Associate can not, independently of the sponsor, accept or contract employment. The Associate must have direct face-to-face or telephone contact with the sponsor or another licensed Private Investigator within the firm,

association, or corporation before accepting employment or before accepting a new case.

(c) The sponsor or another licensed Private Investigator associated with the sponsor's firm, association, or corporation must meet with the Level Two associate to review the associate's work product. The Private Investigator's review may be by telephone or face-to-face and must occur at least four times per month. The licensed Private Investigator must review each case on which the associate is working or has worked since the last review. Review sessions may encompass more than one case.

Statutory Authority G.S. 74C-5(2).

**.1104 TRAINING AND SUPERVISION
REQUIRED IN LEVEL THREE**

(a) If upon sponsorship the Associate has at least two years or 2,000 hours of verifiable training or experience, the associate will be classified as a Private Investigator Associate and must undergo 40 hours of one-on-one training.

(b) The first 40 hours of employment for the Level Three Private Investigator Associate must be one-on-one supervision.

(c) When the Level Three Associate completes the requirements of Level Three, the associate may apply for a private investigator's license.

(d) The sponsor or another licensed Private Investigator associated with the sponsor's firm, association, or corporation must meet with the Level Three associate to review the associate's work product. The licensed Private Investigator must review each case on which the associate is working or has worked since the last review. Review sessions may encompass more than one case.

(e) The sponsoring Private Investigator must have contact with the Level Three Associate sufficient to ensure compliance with G.S. 74C.

Statutory Authority G.S. 74C-5(2).

**.1105 EDUCATIONAL DEGREES AND
NON-DEGREED TRAINING**

(a) An applicant will receive a minimum of 400 hours of experience credit for an associate's degree. The Administrator or the Board may grant up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.

(b) An applicant will receive 800 hours of

experience credit for a bachelor's degree. The Administrator or the Board may grant up to 200 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the bachelor's degree.

(c) An applicant will receive 1,200 hours of experience credit for a graduate degree. The Administrator or the Board may grant an additional 300 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the graduate degree.

(d) During the first 40 hours of one-on-one supervision, a Level One Associate may receive up to 4 hours of one-on-one supervision credit for time spent in the courtroom observing a docketed trial. Of the remaining 120 hours of one-on-one supervision required in Level One, the Associate may receive up to 12 hours of credit for time spent in the courtroom observing an actual trial. Of the thousand hours of training required in Level One, the Associate can not receive more than 100 hours of credit for time spent in the courtroom observing an actual trial. To receive credit for courtroom observation, the Level One Associate must indicate in the Associate's Log the docket number of the trial and the time spent observing the actual trial.

(e) During the first 40 hours of one-on-one supervision, a Level Two Associate may receive up to 4 hours of one-on-one supervision credit for time spent in the courtroom observing a docketed trial. Of the remaining 80 hours of one-on-one supervision required in Level Two, the Associate may receive up to 8 hours of credit for time spent in the courtroom observing an actual trial. Of the thousand hours of training required in Level Two, the Associate can not receive more than 100 hours of credit for time spent in the courtroom observing an actual trial. To receive credit for courtroom observation, the Level Two Associate must indicate in the Associate's Log the docket number of the trial and the time spent observing the actual trial.

(f) During the first 40 hours of one-on-one supervision, a Level Three Associate may receive up to 4 hours of one-on-one supervision credit for time spent in the courtroom observing a docketed trial. Of the one thousand hours of training required in Level Three, the Associate can not receive more than 100 hours of credit for time spent in the courtroom observing an actual trial. To receive credit for courtroom observation, the Level Three Associate must indicate in the Associate's Log the docket number of the trial and

the time spent observing the actual trial.

Statutory Authority G.S. 74C-5(2).

.1106 TIME LIMITS ON EXPERIENCE

(a) The Board will consider any practical experience gained within 10 years of the application date.

(b) The Board will consider any educational experience referred to in 12 NCAC 7D .1105.

Statutory Authority G.S. 74C-5(2).

.1107 ENFORCEMENT

Violations by a Associate may be deemed to be those of the sponsor if the violation is found to be the result of insufficient supervision and may subject the sponsor to any enforcement actions pursuant to G.S. 74C-17.

Statutory Authority G.S. 74C-5(2).

.1108 GRANDFATHER CLAUSE

All associates holding valid training permits at the time this section becomes effective will be grandfathered in at the level their experience dictates. All associates being grandfathered will only be required to watch and successfully complete the training test set forth in 12 NCAC 7D .1109 upon renewal of their training permit.

Statutory Authority G.S. 74C-5(2).

.1109 TRAINING VIDEO AND TRAINING TEST

The Board will develop a training video and test which will be administered by the sponsoring Private Investigator. Each Associate must view and successfully pass the training test prior to submitting the initial application for a training permit. The sponsoring Private Investigator must submit written certification stating that the applicant has watched the training video and passed the test.

Statutory Authority G.S. 74C-5(2).

.1110 TRANSFERABILITY OF TRAINING HOURS

If a Level One associate transfers employment to another Private Investigator, the one-on-one training will not transfer and the associate must undergo one-on-one supervised training with the new sponsoring Private Investigator. If a Level Two or Level Three associate transfers employ-

ment to another Private Investigator, all training hours will be transferred.

Statutory Authority G.S. 74C-5(2).

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to amend rules cited as 13 NCAC 07A .0707 - .0711.

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

The public hearing will be conducted at 10:00 a.m. on March 3, 1994 at the Seaboard Building Conference Room, 413 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To make technical amendments and to amend the public notice requirements to correlate with the Administrative Procedures Act and with NC Dept. of Labor rule-making notice requirements.

Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Department three business days prior to the hearing date. Written comments will be accepted until March 17, 1994. Direct all correspondence to Jill F. Cramer, NCDOL/OSH, 413 N. Salisbury Street, Raleigh, NC 27603-5942.

CHAPTER 7 - OSHA

SUBCHAPTER 7A - GENERAL RULES AND OPERATIONAL PROCEDURES

SECTION .0700 - RULES OF PRACTICE FOR VARIANCES: LIMITATIONS: VARIATIONS: TOLERANCES AND EXEMPTIONS

.0707 VARIANCES AND OTHER RELIEF UNDER SECTION 95-132(a)

(a) Application for a Temporary Variance. Any employer, or class of employers, desiring a tempo-

rary variance from a standard, or portion thereof, authorized by section 95-132 of the act may file a written application containing the information specified in Paragraph (b) of this Rule with the Commissioner of the North Carolina Department of Labor, Raleigh, North Carolina ~~27611~~. 27601.

(b) Contents. An application filed pursuant to Paragraph (a) of this Rule shall include:

- (1) the name and address of the applicant;
- (2) the address of the place or places of employment involved;
- (3) a specification of the standard or portion thereof from which the applicant seeks a variance;
- (4) a representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;
- (5) a statement of the steps the applicant has taken and will take with specific dates where appropriate, to protect employees against the hazard covered by the standard;
- (6) a statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standard;
- (7) a statement of the facts the applicant would show to establish that:
 - (A) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
 - (B) He is taking all available steps to safeguard his employees against the hazards covered by the standard; and
 - (C) He has an effective program for coming into compliance with the standard as quickly as practicable;
- (8) any request for a hearing, as provided in this part;
- (9) a statement that the applicant has informed his affected employees of the application by giving a copy thereof to their authorized representative, posting

- a statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices are normally posted, and by other appropriate means; and
- (10) a description of how affected employees have been informed of the application and their right to petition the commissioner for a hearing;
- (11) where the requested variance would be applicable to employment or places of employment in more than one state, including at least one state with a state plan approved under section 18 of the act federal Occupational Safety and Health Act of 1970, and involves a standard, or portion thereof identical to a state standard effective under such plan:
- (A) a side-by-side comparison of the federal standard, or portion thereof, involved with the state standard, or portion thereof, identical in substance and requirements;
- (B) a certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any state authority having jurisdiction under an approval plan over any employment or place of employment covered in the application; and
- (C) a statement as to whether, with an identification of, any citations for violation of the state standard, or portion thereof, involved have been issued to the employer or employers by any of the state authorities enforcing the standard under a plan, and are pending.
- (c) Interim Order:
- (1) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of facts and arguments as to why the order should be granted. The commissioner may rule *ex parte* upon the application.
- (2) Notice of Denial of Application. If an application filed pursuant to Subparagraph (1) of this Paragraph is denied,

the applicant shall be given prompt notice of the denial, which shall include or be accompanied by, a brief statement of the grounds therefor.

- (3) Notice of the Grant of an Interim Order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.
- (4) No interim order shall be effective for longer than 180 days.

Statutory Authority G.S. 95-132.

.0708 VARIANCES AND OTHER RELIEF UNDER SECTION 95-132(b)

(a) Application for a Permanent Variance. Any employer, or class of employers, desiring a permanent variance authorized by section 95-132(b) of the act may file a written application containing the information specified in Paragraph (b) of this Rule, with the Commissioner of the North Carolina Department of Labor, Raleigh, North Carolina ~~27611~~ 27601.

(b) Contents. An application filed pursuant to Paragraph (a) of this Rule shall include:

- (1) the name and address of the applicant;
- (2) the address of the place or places of employment involved;
- (3) a description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
- (4) a statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;
- (5) a certification that the applicant has informed his employees of the application by:
- (A) giving a copy thereof to their authorized representative;
- (B) posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to

employees are normally posted (or in lieu of such summary, the posting of the application itself); and

- (C) by other appropriate means;
- (6) any request for hearing, as provided in this Part; and
- (7) a description of how employees have been informed of the application and of their right to petition the commissioner for a hearing;
- (8) where the requested variance would be applicable to employment or places of employment in more than one state, including at least one state with a state plan approved under section 18 of the act federal Occupational Safety and Health Act of 1970, and involves a standard, or portion thereof, identical to a state standard effective under such plan:
 - (A) a side-by-side comparison of the federal standard, or portion thereof, involved with the state standard, or portion thereof, identical in substance and requirements;
 - (B) a certification that the employer or employers have not filed for such variance on the same material facts for the same employment or place of employment with any state authority having jurisdiction under an approved plan over any employment or place of employment covered in the application; and
 - (C) a statement as to whether, with an identification of, any citations for violations of the state standard, or portion thereof, involved have been issued to the employer or employers by any of the state authorities enforcing the standard under a plan, and are pending.
- (c) Interim Order:
 - (1) Application. An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order may include statements of fact and arguments as to why the order should be granted. The commissioner may rule *ex parte* upon the application.
 - (2) Notice of Denial of Application. If an application filed pursuant to Subpara-

graph (1) of this Paragraph is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds thereof.

- (3) Notice of the Grant of an Interim Order. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

Statutory Authority G.S. 95-132.

.0709 MODIFICATION: REVOCATION: AND RENEWAL OF RULES OR ORDERS

- (a) Modification or Revocation:
 - (1) An affected employer or an affected employee may apply in writing to the commissioner for a modification or revocation of a rule or order issued under section 95-132(a) and/or 95-132(b) of the act. The application shall contain:
 - (A) the name and address of the applicant;
 - (B) a description of the relief which is sought;
 - (C) a statement setting forth with particularity the grounds for relief;
 - (D) if the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:
 - (i) giving a copy thereof to their authorized representative;
 - (ii) posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and
 - (iii) other appropriate means.
 - (E) if the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and
 - (F) any request for a hearing, as provided

in this part.

- (2) The commissioner may on his own motion proceed to modify or revoke a rule or order issued under section 95-132(a) or 95-132(b) of the act. In such event, the commissioner shall cause to be published a notice of his intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take other action as may be appropriate to give actual notice to affected employees. The notice of hearing shall be published in ~~one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem.~~ the North Carolina Register. Any request for a hearing shall include a short and plain statement of:

- (A) how the proposed modification or revocation would affect the requesting party, and
- (B) what the requesting party would seek to show on the subjects or issues involved.

(b) **Renewal.** Any final rule or order issued under section G.S. 95-132(a) or G.S. 95-132(b) of the act may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

(c) **Multi-State Variances.** Where a federal variance has been granted with multi-state applicability, including applicability in a state operating under a state plan approved under section 18 of the act, from a standard or portion thereof, identical to a state standard, or portion thereof, without filing the information required in 13 NCAC 7A .0707(b)(11) or .0708(b)(8), such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligation with regard to the state standard, or portion thereof, upon filing the information required in 13 NCAC 7A .0707(b)(11) or .0708(b)(8), provided no objections of substances are found to be interposed by the state authority under 13 NCAC 7A .0710.

Statutory Authority G.S. 95-132.

.0710 ACTION ON APPLICATIONS

(a) **Defective Applications:**

- (1) If an application filed pursuant to .0707, or .0708, or .0709 of this Section does not conform to the applicable section, the commissioner may deny the application.
- (2) Prompt notice of the denial of an application shall be given to the applicant.
- (3) A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
- (4) A denial of an application pursuant to this Paragraph shall be without prejudice to the filing of another Paragraph.

(b) **Adequate Applications:**

- (1) If an application has not been denied pursuant to Paragraph (a) of this Rule the commissioner shall publish in ~~one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem~~ the North Carolina Register a notice of the filing of the application and require posting of such notice by the applicant in a conspicuous place or places where notices to employees are customarily posted. Verification of the posting of this notice shall be provided to the commissioner.
- (2) A notice of the filing of an application shall include:
 - (A) the terms, or an accurate summary, of the application;
 - (B) a reference to the section of the act under which the application has been filed;
 - (C) an invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
 - (D) information to affected employers, employees, and appropriate state authority having jurisdiction over employment or places of employment covered in the application of any right to request a hearing on the application.
- (3) Where the requested variance, or any proposed modification or extension thereof, involves a federal standard, or any portion thereof, identical to a state standard, or any portion thereof, as provided in 13 NCAC 7A .0707(b)(11) and .0708(b)(8), the ~~secretary~~

commissioner will promptly furnish a copy of the application to the appropriate state authority and provide an opportunity for comment, including the opportunity to participate as a party, on the application by such authority, which shall be taken into consideration in determining the merits of the proposed action.

- (4) A copy of each final decision of the ~~secretary~~ commissioner with respect to an application filed under 13 NCAC 7A .0707, .0708, or .0709 shall be furnished, within 10 days of issuance, to the state authorities having jurisdiction over the employment or place of employment covered in the application.

Statutory Authority G.S. 95-132.

.0711 REQUESTS FOR HEARINGS ON APPLICATIONS

(a) Request for Hearing. Within the time allowed by a notice of the filing of an application, any affected employer, employee, or appropriate state agency having jurisdiction over employment or places of employment covered in an application for a multi-state variance may file with the ~~secretary~~, commissioner, in quadruplicate, a request for a hearing on the application.

(b) Contents of a Request for a Hearing. A request for a hearing pursuant to Paragraph (a) of this Rule shall include:

- (1) a concise statement of facts showing how the employer or employee would be affected by the relief applied for;
- (2) a specification of any statement or representation in the application which is denied, and a concise summary of the evidence that would be adduced in support of each denial; and
- (3) any views or arguments on any issue of fact or law presented.

Statutory Authority G.S. 95-132.

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

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

The public hearing will be conducted at 10:00 a.m. to 4:00 p.m. on the following dates and locations:

March 8, 1994

*Transportation Building Auditorium
1 South Wilmington Street
Raleigh, N. C.*

March 15, 1994

*Board of Commissioner's Room
Cabarrus County Courthouse
65 Church Street
Concord, N. C.*

March 22, 1994

*Southern Pines Town Hall
140 Memorial Park Court
Southern Pines, N. C.*

Reason for Proposed Action: Allow permits for 16-foot wide mobile or modular homes to be transported on specified North Carolina highways.

Comment Procedures: Interested persons may preregister to speak at the public hearings by contacting Emily Lee, N.C. DOT, P.O. Box 25201, Raleigh, NC 27611, (919) 733-2520 no later than two days prior to the hearing. A 10-minute speaking time limit will be observed. Written comments will also be accepted and should be sent to Ms. Lee at the above address no later than April 1, 1994.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2D - HIGHWAY OPERATIONS

SECTION .0600 - OVERSIZE-OVERWEIGHT PERMITS

.0607 PERMITS-WEIGHT, DIMENSIONS AND LIMITATIONS

(a) Vehicle/vehicle combinations with non-divisible overwidth loads are limited to a maximum width of 15 feet. Authorization for a permit may be given by the Central Permit Office or head of the Maintenance Unit for movement of loads in excess of 15 feet for buildings, structures, electrical equipment, or machinery or mobile/modular homes. If blades of construction equipment or front end loader buckets cannot be angled to extend no more than 12 feet across the roadway, they shall be removed. A blade, bucket or other attachment that is an original part of the equipment as manufactured which has been removed may be hauled with the equipment without being considered a divisible load. Permission to move vehicles wider than 12 feet 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.

A single trip permit shall be issued vehicle specific not to exceed a width of 15 feet for all movements unless authorized by the Central Permit Office or Head of Maintenance. Permits for house moves shall be issued as specified in G.S. 20-356 through G.S. 20-372. An exception is mobile/modular homes with a width not to exceed 16 feet to include any overhang shall be permitted for export out of state on approved designated routes.

An annual permit shall be issued vehicle specific not to exceed a maximum width of 12 feet authorizing travel on all highways in North Carolina. Mobile/modular homes being transported from the manufacturer to an authorized North Carolina mobile/modular home dealership are an exception and shall be permitted for a width not to exceed a 14 feet foot unit with an allowable roof overhang not to exceed a total of 12 inches. These mobile homes shall be authorized to travel on designated ~~North Carolina, Interstate and US Highways~~ routes approved by the Department of Transportation.

(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 to be unsafe and if they may cause damage to such highway or structure. A surety bond may be required as determined by the issuing agent to cover the cost of potential damage to pavement, bridges or other damages incurred during the permitted move.

(1) The maximum single trip and annual permit weight allowed for a specific vehicle or vehicle combination not 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	108,000 lbs.
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.
Tandem axle	50,000 lbs.

2 AXLE VEHICLE

extreme wheelbase less than 10'	65,000 lbs.
10' or greater	70,000 lbs.

3 AXLE VEHICLE

single/tandem axle configuration	
extreme wheelbase less than 16'	75,000 lbs.
16' or greater	80,000 lbs.

single/single/single axle

PROPOSED RULES

configuration	gross weight determined after review of schematics
4 AXLE VEHICLE	
extreme wheelbase 28' or greater	90,000 lbs.
single axle	37,000 lbs.
(B) Self-propelled truck cranes with counterweights and boom removed (if practical):	
2 AXLE VEHICLE	
single/single axle configuration	
more than 8'	50,000 lbs.
single axle	25,000 lbs.
3 AXLE VEHICLE	
single/tandem axle configuration	
extreme wheelbase greater than 15'	70,000 lbs.
single axle	25,000 lbs.
tandem axle	50,000 lbs.
4 AXLE VEHICLE	
quad grouping (less than 8' between any two consecutive axles)	
extreme wheelbase greater than 18'	78,000 lbs.
single axle	20,000 lbs.
tandem/tandem	
extreme wheelbase greater than 16' but less than 22'	78,000 lbs.
tandem axle	50,000 lbs.
extreme wheelbase 22' or greater	90,000 lbs.
tandem axle	50,000 lbs.
5 AXLE VEHICLE	
tandem/tri axle configuration	
extreme wheelbase greater than 24' but less than 28'	86,000 lbs.
tandem axle	37,500 lbs.
tri axle	60,000 lbs.
extreme wheelbase 28' or greater	94,500 lbs.
tandem axle	37,500 lbs.
tri axle	60,000 lbs.
tandem/tandem/single axle configuration	
extreme wheelbase 31' or greater	94,500 lbs.
single axle	15,000 lbs.
tandem axle	50,000 lbs.
6 AXLE VEHICLE	
tri/tri axle configuration	
extreme wheelbase greater than 29' but less than 34'	100,000 lbs.
tri axle	60,000 lbs.
extreme wheelbase 34' or greater	108,000 lbs.
tri axle	60,000 lbs.
tandem/tandem/tandem axle configuration	
extreme wheelbase greater than 37' but less than 39'	100,000 lbs.
tandem axle	50,000 lbs.
(no two consecutive set of tandems to exceed 90,000 lbs.)	
extreme wheelbase 39' or greater	108,000 lbs.
tandem axle	50,000 lbs.

PROPOSED RULES

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

7 AXLE VEHICLE

gross weight determined
after review of schematics

ALL VARIATIONS OF AXLE CONFIGURATIONS OTHER THAN THOSE LISTED WILL REQUIRE SCHEMATICS OF THE VEHICLE TO BE FURNISHED FOR REVIEW BY THE DEPARTMENT OF TRANSPORTATION.

- (3) Vehicles hauling sealed ship containers may qualify for an overweight permit provided the vehicles:
- (A) Are going to or from a designated seaport (to include in state and out of state) and have been or will be transported by marine shipment;
 - (B) Are licensed for maximum allowable weight allowed in G.S. 20-118;
 - (C) Are vehicle/vehicle combinations with at least five axles;
 - (D) Have proper documentation (shippers bill of lading or trucking bill of lading) of sealed commodity being transported available for enforcement inspection.
- (c) Overlength permits will be limited as follows:
- (1) Single trip permits are limited to 85 feet to include towing vehicle. Approval may be given by the Central Permit Office for permitted loads in excess of 85 feet after review of route of travel. Mobile/modular homes may be issued permits not to exceed ~~95~~ 100 feet.
 - (2) Annual (blanket) permits will not be issued for lengths to exceed 65 feet. Front overhang may not exceed 3 feet unless if transported otherwise would create a safety hazard. Mobile/modular home permits may be issued for a length not to exceed ~~94~~ 100 feet.
- (d) There are ~~not~~ no set limits for permitted height as it is controlled by clearances on designated route. The permit shall 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 shall be checked by the permittee prior to movement underneath.
- (e) The move is to be made between sunrise and sunset Monday through Saturday with no move to be made on Sunday. Mobile/modular homes up to a width of a 14 feet unit with an allowable roof overhang not to exceed a total of 12 inches are restricted to travel between sunrise and sunset Monday through 12 noon on Saturday. Mobile/modular homes with a width not to exceed 16 feet to include any overhang are restricted to travel Monday through Thursday 9:00 a.m. to 2:30 p.m. Additional time restrictions may be set by the issuing office if it is in the best interest for safety or to expedite traffic. No movement is permitted for a 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 is permitted until noon on the day following a holiday. Continuous travel (24 hr/7 day/365 days a year) is authorized for any vehicle/vehicle combination up to but not to exceed a gross weight of 94,500 lbs. provided the permitted vehicle has:
- (1) no other over legal dimension of width, height or length is included in the permitted move. 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 feet, and
 - (2) the vehicle is licensed for the maximum allowable weight determined by extreme axle measurements.
- (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. Mobile/modular homes 14 feet wide or greater are an exception and are restricted to a speed not to exceed 10 miles per hour below the posted limit. The driver will maintain a safe speed consistent with the traveling public and avoid creating traffic congestion by periodically ~~and~~ relinquishing the traffic way to allow the passage of following vehicles when a build up of traffic occurs. Seven axle self-propelled truck cranes with extreme wheel base of 44 feet shall not exceed a maximum speed of 45 miles per hour.
- (g) Additional safety measures are as follows:
- (1) A yellow or orange banner measuring 7 feet x 18 inches bearing the legend "Oversize Load" in 10 inch black letters shall be displayed on the front bumper of the towing unit for all loads in excess of 10 feet wide;
 - (2) Red flags measuring 18 inches square shall be displayed on all sides at the widest point of load for all loads in excess of 10 feet wide but the flags shall be so mounted as to not increase the overall width of the load;

- (3) 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;
- (4) Flashing amber lights shall be used as determined by the issuing permit office.
- (h) The object to be transported 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 shall be made when weather conditions render visibility less than 500 feet for a person or vehicle. Moves 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 foot unit with an allowable roof overhang not to exceed 12 inches or a 16 foot wide mobile/modular home to include any overhang shall be prohibited when wind velocities exceed 25 miles per hour in gusts.
- (j) All obstructions, including traffic signals, signs and utility lines 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) DOT may require escort vehicles accompany oversize or overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel will be considered to determine escort requirements.

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

**TITLE 21 - OCCUPATIONAL
LICENSING BOARDS**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rules cited as 21 NCAC 14H .0005, .0008, .0010 - .0013, .0018 and 14J .0501.

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

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Anyone wishing to demand a public hearing may contact Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609, (919) 850-2793. This demand must be in writing and received by March 15, 1994.

*Reason for Proposed Action:
21 NCAC 14H - Bring Sanitation rules up-to-date.
21 NCAC 14J .0501 - Clarify the handling of cosmetology instruction taken in another state.*

Comment Procedures: Written comments regarding these rules should be mailed or delivered to

Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, 1110 Navaho Drive, Raleigh, N.C. 27609, and received by March 15, 1994.

**CHAPTER 14 - BOARD OF
COSMETIC ART EXAMINERS**

SUBCHAPTER 14H - SANITATION

**.0005 SANITARY RATINGS AND
POSTING OF RATINGS**

(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments will be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B; and
- (3) all establishments receiving a rating of at least 70 percent, and less than 80 percent, shall be awarded grade C.

(b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school is normally graded four times a year, and a cosmetic art salon is normally graded ~~twice~~ once a year.

(c) The sanitary rating given to a beauty establishment shall be posted in a conspicuous place at

all times.

(d) No beauty establishment shall be permitted to operate without first having obtained a sanitary rating card with a grade of not less than 70 percent.

(e) Cosmetic art inspectors shall give each beauty establishment a new sanitary rating card each year.

(f) Violation of any sanitary rules, or the operation of a beauty establishment which fails to receive a sanitary rating of at least 70 percent (grade C) shall be sufficient cause for revoking or suspending the letter of approval or permit.

(g) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, if the rating at the last inspection was less than 70 percent.

Statutory Authority G.S. 88-23; 88-30.

.0008 FLOOR COVERINGS

~~(a)~~ All floor coverings shall be easily cleanable, and shall be kept clean and in good repair.

~~(b)~~ Bathroom floors shall be constructed of washable tile.

Statutory Authority G.S. 88-23.

.0010 BATHROOM FACILITIES

(a) Toilet and hand washing facilities consisting of at least one commode and one lavatory with hot and cold running water, soap and individual towels shall be provided.

~~(b)~~ It is suggested if both sexes are employed or served, separate facilities for each sex equal to the minimum requirements in (a) of this Rule shall be provided.

~~(b)~~ (e) A residential beauty salon shall furnish bathroom facilities separate and apart from the residence.

Statutory Authority G.S. 88-23.

.0011 CLEANLINESS OF OPERATORS

(a) All operators should be personally clean and neat.

(b) Every person employed in a beauty establishment shall wear clean, washable non-see-through outer garments with sleeves while serving patrons.

Statutory Authority G.S. 88-23.

.0012 CLEANLINESS OF CLINIC

AREA: SUPPLIES: COMBS AND BRUSHES

(a) The clinic area shall be kept clean.

(b) Waste material shall be kept in suitable covered receptacles. The area surrounding the waste receptacles shall be maintained in a neat and sanitary manner.

(c) Sanitation rules which apply to towels and cloths are as follows:

(1) Separate and clean towels shall be used for each patron.

(2) After a towel has been used once, it shall be discarded and placed in a clean, closed container until properly laundered.

~~(3) Clean towels shall be kept in a clean, closed cabinet until they are needed~~
There shall be a supply of clean towels at all times.

~~(4) Chair cloths and shampoo aprons~~ All capes used on patrons shall be kept clean and shall not be allowed to come in direct contact with the patron's neck.

~~(d)~~ ~~The head rest of an operating chair shall be covered with a clean towel or other sanitary covering before being used.~~

~~(e)~~(d) At least six combs and brushes shall be provided for each cosmetology operator and cosmetology student.

~~(f)~~(e) All combs, brushes and manicurist instruments shall be cleaned and disinfected after each use in the following manner:

(1) They shall be soaked in a cleaning solution that will not leave a residue and, if necessary, scrubbed.

(2) They shall be disinfected ~~by immersion for a least ten minutes in 70 percent by volume isopropyl alcohol, or they shall be disinfected,~~ in accordance with the manufacturer's instructions that state the solution will destroy HIV virus, TB or HBV and is with a disinfectant approved by the Federal Environmental Protection Agency. When selecting a disinfectant, care should be taken to choose one that will not shorten the service life of the comb, brush or manicuring instrument. In using a disinfectant, care should be taken to wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant by the manufacturer.

(3) They shall be rinsed with hot tap water and dried thoroughly with a clean towel

before their next use. If they are not used immediately, they shall be stored in a clean, closed cabinet until they are needed.

(2) If it is immersible, it ~~must~~ shall be disinfected by immersion, at least once a day and whenever it comes in contact with blood, with a disinfectant that states the solution will destroy HIV, TB or HBV viruses, and in 70 percent by volume isopropyl alcohol or in a disinfectant approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions.

Statutory Authority G.S. 88-23; 88-30.

.0013 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

(a) All scissors, shears, razors, and other metal instruments used while shaping hair ~~must~~ shall be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it ~~must~~ shall be cleaned by wiping it with a clean cloth moistened ~~with 70 percent by volume isopropyl alcohol or~~ with a disinfectant that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions.

(3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

(c) Tanning beds must be wiped with a cleaning solution containing at least one part alcohol or household bleach for every ten parts water.

Statutory Authority G.S. 88-23.

.0018 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

(a) The system of grading the sanitary rating of manicurist schools, based on the rules set out in 21 NCAC 14H .0006 to .0017 shall be as follows, setting out areas to be inspected and considered, and the points given for compliance:

- (1) clean and well-repaired entrance and reception room 2;
- (2) general condition of the entire establishment 8;
- (3) water system; hot and cold running water 2;
- (4) walls, ceiling and floors:
 - (A) construction and coverings 4;
 - (B) clean 4;
 - (C) good repair 3;
- (5) lighting and fresh continuous ventilation (windows included); their adequacy and cleanliness 7;
- (6) public toilet:
 - (A) clean and well ventilated 5;
 - (B) soap and individual towels furnished 5;
 - (C) hot and cold running water 2;
- (7) appearance of operators and students 4;
- (8) linens:
 - (A) ~~clean towels properly stored and in adequate supply of clean towels~~ 2;
 - (B) soiled towels properly stored in closed containers 2;
- (9) waste in closed containers and clean area 4;
- (10) equipment cleanliness:
 - (A) disinfectants selected from those approved by the Federal Environmental Protection Agency 6;
 - (B) disinfectants used properly 5;
 - (C) all implements cleaned, disinfected, and properly stored 12;
 - (D) booths clean 8;
- (11) working area:
 - (A) lavatories clean 4;

PROPOSED RULES

- (B) jars and containers closed, clean and disinfected 2;
 - (C) no unnecessary articles in work area 2;
 - (12) antiseptics and first aid supplies on hand 1;
 - (13) cosmetics:
 - (A) clean and sanitary conditions 2;
 - (B) storage area for supplies clean and in order 3;
 - (14) no animals or birds kept in establishment 1.
- (b) The system of grading the sanitary rating of all other beauty establishments, based on the rules set out in 21 NCAC 14H .0006 to .0017 shall be as follows, setting out areas to be inspected and considered, and the points given for compliance:
- (1) clean and well-repaired entrance and reception room 2;
 - (2) general condition of the entire establishment 8;
 - (3) water system; hot and cold running water 2;
 - (4) walls, ceiling and floors:
 - (A) construction and covering 4;
 - (B) clean 4;
 - (C) good repair 3;
 - (5) lighting and ventilation (windows included); their adequacy and cleanliness 3;
 - (6) public toilet:
 - (A) clean and well ventilated 5,
 - (B) soap and individual towels furnished 5,
 - (C) hot and cold running water 2;
 - (7) appearance of operators or student 4;
 - (8) linens:
 - (A) ~~clean towels properly stored and in adequate supply of clean towels~~ 2,
 - (B) soiled towels properly stored in closed containers 2,
 - (C) ~~hair cloths~~ clean capes 1;
 - (9) waste in closed containers and clean area 4;
 - (10) equipment cleanliness:
 - (A) disinfectants selected from those approved by the Federal Environmental Protection Agency 6,
 - (B) disinfectants used properly 5,
 - (C) all implements cleaned, disinfected, and properly stored 12;
 - (11) working area:
 - (A) booths clean 4,
 - (B) lavatories clean 4,
 - (C) jars and containers clean and disinfected 2,
 - (D) no unnecessary articles in work area 2;
 - (12) dryers clean and in repair 3;
 - (13) styling and shampooing chairs clean and sanitary 4;
 - (14) antiseptics and first aid supplies on hand 1;
 - (15) cosmetics:
 - (A) clean and sanitary condition 2,
 - (B) storage area for supplies clean and in order 3;
 - (16) no domestic animals or birds kept in establishment 1.

Statutory Authority G.S. 88-23; 88-30.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0500 - CREDIT FOR COSMETOLOGY STUDY OUTSIDE OF NORTH CAROLINA

.0501 APPROVAL OF CREDIT FOR COSMETOLOGY INSTRUCTION/ ANOTHER STATE

(a) A cosmetology student may receive credit for instruction taken in another state if the conditions set forth in this Rule are met or by approval of the Board.

(b) The cosmetology student's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If this agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state

agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then this Board will not give any credit for the out of state instruction shall review the student's records on a case-by-case basis.

(c) If the requirements of Paragraph (b) of this Rule are met, then the Board will give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, this Board will not give any credit for performances completed as part of the out-of-state instruction.

Statutory Authority G.S. 88-10; 88-13.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Dental Examiners intends to amend rule cited as 21 NCAC 16M .0001.

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

The public hearing will be conducted at 3:00 p.m. on March 11, 1994 at the Office of the North Carolina State Board of Dental Examiners, Chatham Building of the Koger Executive Center, 3716 National Drive, Suite 221, Raleigh, North Carolina.

Reason for Proposed Action: To require each dentist renewing his license to practice dentistry in North Carolina to pay \$15.00 to be contributed to the operation of the Caring Dentist Program.

Comment Procedures: Any person desiring to present oral data, views, or arguments on the proposed rule must, at least 10 days prior to the proposed hearing, file a notice with the Board. Notice of such request to appear or failure to give timely notice may be waived by the Board in its discretion. Comments should be limited to five minutes. Any person permitted to make an oral presentation is directed to submit a written statement of such presentation to the Board prior to or at the time of such hearing. The Board's address is Post Office Box 32270, Raleigh, North Carolina 27622-2270. Any person may file written submission of comments or argument at any time up to and including April 1, 1994.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

SUBCHAPTER 16M - FEES PAYABLE

.0001 DENTISTS

(a) The following fees shall be payable to the Board:

- (1) Application for general dentistry examination \$200.00

- (2) Application for instructor's license and examination or renewal \$ 75.00
- (3) Application for provisional license \$ 75.00
- (4) Application for intern permit or renewal thereof \$ 75.00
- (5) Certificate of license to a resident dentist desiring to change to another state or territory \$ 25.00
- (6) License issued to a practitioner of another state or territory to practice in this State \$125.00
- (7) Reinstatement of license after retirement from practice in this State \$125.00

(b) The fee payable to the Board for each general dentistry license renewal shall be annually fixed by the Board. Each year the Board shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this state by mailing such notice no later than November 30 to the last address of record for each dentist. Said renewal fee shall not exceed seventy-five dollars (\$75.00).

(c) Each dentist renewing his license to practice dentistry in North Carolina shall be assessed a fee of fifteen dollars (\$15.00), in addition to the annual renewal fee, to be contributed to the operation of the Caring Dentist Program, an organization established to assist impaired dentists.

Statutory Authority G.S. 90-28; 90-39; 90-48.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to adopt rules cited as 21 NCAC 32P .0001 - .0006.

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

The public hearing will be conducted at 9:00 a.m. on March 2, 1994 at the NC Medical Board, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action: To conform with new statutes.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before March 17, 1994 to the following address: NC Medical Board, Administrative Procedures, PO Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32P - LIMITED LIABILITY COMPANIES

.0001 NAME OF LIMITED LIABILITY COMPANY

The name of a limited liability company to practice medicine shall not include any adjectives

or other words not in accordance with ethical customs of the medical profession.

Statutory Authority G.S. 55B-5; 55B-12; 57C-2-01.

.0002 PREREQUISITES FOR ORGANIZATION

(a) Before filing the articles of organization for a limited liability company with the Secretary of State, the organizing members shall submit the following to the Board:

- (1) a registration fee as set by Rule .0006 of this Subchapter; and
- (2) a certificate certified by all organizing members, setting forth the names and addresses of each person who will be employed by the limited liability company to practice medicine, and stating that all such persons are duly licensed to practice medicine in North Carolina, and representing that the company will be conducted in compliance with the North Carolina Limited Liability Company Act and this Subchapter.

(b) A certification that each of the organizing members is licensed to practice medicine in North Carolina shall be returned to the limited liability company for filing with the Secretary of State.

Statutory Authority G.S. 55B-4; 55B-10; 55B-12; 57C-2-01.

.0003 CERTIFICATE OF REGISTRATION

A Certificate of Registration for a limited liability company shall remain effective until December 31 of each odd-numbered year. A Certificate of Registration shall be renewed biennially on application forms supplied by the Board. The application shall be accompanied by a renewal fee as set

by Rule .0006 of this Subchapter.

Statutory Authority G.S. 55B-10; 55B-11; 57C-2-01.

.0004 CHARTER AMENDMENTS AND MEMBERSHIP TRANSFERS

The Board shall issue the certificate authorizing transfer of membership when membership is transferred in the company. This transfer form shall be permanently retained by the company. The membership books of the company shall be kept at the principal office of the company and shall be subject to inspection by authorized agents of the Board.

Statutory Authority G.S. 55B-6; 55B-12; 57C-2-01.

.0005 DOCUMENTS

The forms and documents regarding limited liability companies are issued by the Board.

Statutory Authority G.S. 150B-11.

.0006 FEES

The initial registration fee for a limited liability company is fifty dollars (\$50.00). The fee for renewal of a Certificate of Registration is twenty-five dollars (\$25.00).

Statutory Authority G.S. 55B-10; 55B-11; 57C-2-01.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to adopt rules cited as 21 NCAC 32Q .0101 - .0104, .0201 - .0208.

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

The public hearing will be conducted at 11:00 a.m. on March 18, 1994 at the NC Medical Board, 1203 Front St., Raleigh, NC 27609.

Reason for Proposed Action: To include physician assistants in the health and effectiveness program already in place for impaired physicians.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before March 17, 1994 to the following address: NCBME, Administrative Procedures, P.O. Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32Q - IMPAIRED PHYSICIAN ASSISTANT PROGRAM

SECTION .0100 - GENERAL INFORMATION

.0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the Board of Medical Examiners of the State of North Carolina.
- (2) "Committee" means the North Carolina Academy of Physician Assistants Health and Effectiveness Committee established to function as an advisory body to the North Carolina Physicians Health Program.
- (3) "Impairment" means mental illness, chemical dependency, physical illness, or aging problems.
- (4) "Program" means the North Carolina Physicians Health Program established for promoting a coordinated and effective peer review process.
- (5) "Medical Director" means the person employed by the Program to coordinate the activities of the Program.
- (6) "Physician Assistant" means an individual licensed or authorized by the Board to perform medical acts, tasks, or functions in accordance with North Carolina law.

Statutory Authority G.S. 90-21.22.

.0102 AUTHORITY

G.S. 90-21.22, entitled "Peer Review Agreements," authorizes the Board to adopt rules allowing it to enter into agreements with the North Carolina Academy of Physician Assistants. The Board is further required to adopt rules with provisions concerning impaired physician assistant

programs. The rules in this Subchapter are adopted by the Board pursuant to this authority.

Statutory Authority G.S. 90-21.22.

.0103 PEER REVIEW AGREEMENTS

The Board may enter into peer review agreements with the North Carolina Academy of Physician Assistants. Peer review agreements may cover some or all of the peer review activities delineated in G.S. 90-21.22, as deemed appropriate by the Board.

Statutory Authority G.S. 90-21.22.

.0104 DUE PROCESS

Any action taken pursuant to a peer review agreement must afford the subject physician assistant all due process rights enumerated in G.S. 90-14.1 and all relevant due process rights contained in the North Carolina Administrative Procedure Act, G.S. 150B.

Statutory Authority G.S. 90-21.22.

SECTION .0200 - GUIDELINES FOR PROGRAM ELEMENTS

.0201 RECEIPT AND USE OF INFORMATION OF SUSPECTED IMPAIRMENT

(a) The Program may receive information concerning physician assistants with suspected impairments from any source, including reports made by but not limited to medical or paramedical professionals, family members, or self-referral.

(b) The Board shall provide information to the Program as required under G.S. 90-14(b).

(c) If the Program receives information of a physician assistant suspected of impairment, the Program shall conduct an investigation. The Medical Director of the Program shall coordinate all such investigations.

(d) The Program may conduct routine inquiries regarding physician assistants with suspected impairments.

(e) As part of its investigation, the Program may require a physician assistant suspected of impairment to submit to personal interviews before the Medical Director of the Program, the Committee chairperson, a Committee member, or the full Committee.

Statutory Authority G.S. 90-21.22.

.0202 INTERVENTION AND REFERRAL

(a) Following an investigation, if impairment is confirmed, the Program shall initiate intervention using specialized techniques designed to assist the impaired physician assistant in acknowledging responsibility for dealing with the impairment. Interventions are arranged and conducted as soon as possible after the Program confirms impairment.

(b) In cases referred by the Board, a representative of the Board may be present when interventional methods and objectives are discussed with the impaired physician assistant.

(c) Once intervention is initiated, the Program may refer the impaired physician assistant to an appropriate treatment source.

(d) The Program determines interventional methods and objectives on a case by case basis.

(e) The Program evaluates all treatment sources before referring any impaired physician assistant for treatment.

(f) The Program records all intervention outcomes, including treatment contracts, that are elements of an intervention.

Statutory Authority G.S. 90-21.22.

.0203 MONITORING TREATMENT

The Program shall monitor each treatment source to which it refers physician assistants as to the treatment source's ability to provide:

- (1) adequate medical and non-medical staffing;
- (2) appropriate treatment;
- (3) affordable treatment;
- (4) adequate facilities; and
- (5) appropriate post-treatment support.

Statutory Authority G.S. 90-21.22.

.0204 MONITORING REHABILITATION AND PERFORMANCE

(a) The Program shall monitor rehabilitation and performance requirements for each physician assistant who is the subject of intervention under this Subchapter.

(b) The Program may test the physician assistant's adherence to rehabilitation regularly, randomly, or on demand.

(c) The Program may require treatment sources to submit reports to the Program regarding a physician assistant's rehabilitation and performance.

(d) The Program may require an impaired physician assistant to submit to periodic personal interviews before the Medical Director of the

Program, the Committee chairperson, a Committee member, or the full Committee.

(e) The Program shall maintain appropriate case records.

Statutory Authority G.S. 90-21.22.

.0205 MONITORING POST-TREATMENT SUPPORT

(a) In appropriate circumstances, the Program may offer post-treatment support to impaired physician assistants. This post-treatment support may include, but is not limited to, family counseling, locum tenens, advocacy and other services and programs that the Program deems appropriate to improve recoveries.

(b) The Program shall monitor treatment sources' post-treatment support on an ongoing basis.

(c) The Medical Director shall monitor the Program's post-treatment support on an ongoing basis.

Statutory Authority G.S. 90-21.22.

.0206 REPORTS OF INDIVIDUAL CASES TO THE BOARD

(a) After the Program has investigated and reviewed a physician assistant suspected of impairment, the Program shall determine whether G.S. 90-21.22(d) requires the Program to submit a report to the Board.

(b) Quarterly, the Program shall submit a report to the Board and the Committee on the status of all physician assistants then involved in the Program who have been previously reported by the Board. The Program shall submit to the Board periodic reports on the status of any physician assistants previously reported to the Board then in active treatment until such time as mutually agreed to by the Board and the Program.

Statutory Authority G.S. 90-21.22.

.0207 PERIODIC REPORTING OF STATISTICAL INFORMATION

Annually, the Program shall submit to the Board and the Committee a comprehensive statistical report, which shall include information concerning physician assistants with suspected impairments, impairments, self-referrals, post-treatment support and other significant demographic and substantive information collected through Program operations.

Statutory Authority G.S. 90-21.22.

.0208 CONFIDENTIALITY

Any non-public information that the Program acquires, creates, or uses in good faith shall be treated according to G.S. 90-21.22.

Statutory Authority G.S. 90-21.22.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Mortuary Science intends to amend rules cited as 21 NCAC 34B .0103, .0110, .0120; 34D .0202 and adopt 34B .0126, with changes from the proposed text noticed in the Register, Volume 8, Issue 15, pages 1461 - 1463.

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

Reason for Proposed Action:

21 NCAC 34B .0103 -- *To permit trainees, under supervision, to engage in preneed funeral planning and to define supervision for all trainee activities.*

21 NCAC 34B .0110 -- *To require trainee reports to include names of purchasers of preneed funeral contracts.*

21 NCAC 34B .0120 -- *To require trainee affidavit to include number of preneed funeral contracts assisted in.*

21 NCAC 34B .0126 -- *To require trainees in funeral directing and funeral service to gain experience in planning funerals as well as in post-planning activities.*

21 NCAC 34D .0202 -- *To permit trainees, under supervision, to negotiate, but not sign, preneed funeral contracts.*

Comment Procedures: *Interested persons may present statements in writing by mail addressed to the NC Board of Mortuary Science, P.O. Box 27368, Raleigh, NC 27611-7368.*

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

MORTUARY SCIENCE

210.25(a)(4); 90-210.67(a); 90-210.69(a).

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0100 - RESIDENT TRAINEES

.0103 AUTHORIZED PRACTICE: SUPERVISION

(a) Duly certified resident trainees in training for funeral service, duly certified resident trainees in training for funeral directing and duly certified resident trainees in training for embalming, while participating in learning experiences and while supervised by a person licensed by the Board as a funeral service licensee, funeral director or embalmer, respectively, may ~~engage assist~~ in the practice of funeral service, funeral directing or embalming ~~respectively~~. respectively, as limited by this Rule. When such person so licensed by the Board is not on the premises where the activities of the resident trainee are taking place, the resident trainee shall not be deemed to be supervised as required by this Rule.

(b) Duly certified resident trainees in training for funeral service or for funeral directing, while participating in learning experiences and while supervised by a person licensed by the Board as a preneed sales licensee, may also assist in the preneed funeral planning activities described in 21 NCAC 34D .0202(b)(1), (2), (4) and (5).

(c) When a resident trainee assists in funeral service, funeral directing, embalming or preneed funeral planning in or on the premises of a funeral home, the licensed supervisor shall be on the funeral home premises where and while such activities are performed. When a resident trainee assists in funeral service, funeral directing, embalming or preneed funeral planning off the funeral home premises, such activities shall be performed only in the presence of the licensed supervisor.

(d) The licensed supervisor shall review with the purchaser any contract negotiated by a resident trainee, and then the licensed supervisor shall obtain the purchaser's signature on the contract in the licensed supervisor's presence.

(e) The resident trainee's license certificate for indicating the trainee's authority to assist in the activities described and authorized in this Rule and in 21 NCAC 34D .0202(b) is the resident trainee pocket certificate.

Statutory Authority G.S. 90-210.23(a); 90-

.0110 REPORTS ON WORK

The resident trainee shall submit a report to the Board every three months on forms provided by the Board listing the work ~~performed~~ assisted in during the preceding three months. Such reports shall include the dates and a description of the work and must be certified as correct by the licensee under whom the trainee served during the period and by the manager of the funeral establishment. The names of the deceased ~~persons~~ persons, and the names of the purchasers of preneed funeral contracts, on whose cases the trainee ~~worked~~ assisted and reported during traineeship must be retained by the trainee until his traineeship requirement has been fulfilled, and during such time such information shall be subject to inspection by the Board or its authorized agent. Such reports must be filed in the office of the Board not later than the 10th day of the calendar month which immediately follows the completion of each three-month period of resident traineeship. Failure to submit such reports when due shall be sufficient cause for suspension or revocation of the certificate of resident traineeship.

Statutory Authority G.S. 90-210.23(a), (d), (f); 90-210.25(a) (4e) (4g); 90-210.67(a); 90-210.69(a).

.0120 TRAINEE FINAL AFFIDAVIT FORM

Form BMS-10 is the resident trainee affidavit. It is used for certification by the supervising licensee that the trainee has served and performed certain work under him as required by G.S. 90-210.25(a)(4). It contains space for the names of the licensee and the trainee; dates and place of service; and the number of ~~funerals or~~ funerals, preneed funeral contracts and ~~embalmings, or both, funerals, preneed funeral contracts and~~ embalmings that the trainee has assisted in during traineeship. The form is filed with the Board upon ending resident traineeship with a licensed supervisor.

Statutory Authority G.S. 90-210.23(a), (d), (f); 90-210.25(a) (4f); 90-210.67(a); 90-210.69(a);

.0126 FUNERAL DIRECTING AND FUNERAL SERVICE TRAINING

To fulfill the requirements that funeral director and funeral service trainees shall assist in directing at least 25 funerals during resident traineeship, such trainees shall, under supervision, assist in all of the components of "funeral directing," as defined in G.S. 90-210.20(f), but as limited by 21

NCAC 34B .0103; and to achieve this end such trainees shall assist in, in at least 25 cases, activities of arranging (whether performed at time of need or by assisting in preneed funeral planning activities or a combination) and, in at least 25 cases, activities pertaining to the funeral ceremony and disposition of the body.

Statutory Authority G.S. 90-210.20(f); 90-210.23(a), (d), (f); 90-210.25(a)(4); 90-210.67(a); 90-210.69(a).

SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS

SECTION .0200 - LICENSING

.0202 PRENEED SALES LICENSE

(a) Subject to G.S. 90-210.69(c), holding a funeral director's license, issued by the Board, or a funeral service license, issued by the Board, is the qualification to be eligible for a preneed sales license.

(b) The preneed sales licensee may engage, under the preneed sales license, in the following preneed funeral planning activities, pursuant to the definition of "preneed funeral planning" in G.S. 90-210.60(8):

- (1) show and explain written materials, including price lists and photographs, descriptive of the funeral services and merchandise and the preneed funeral plan or contract being offered;
- (2) explain the various types of funeral ceremonies and services and the qualities and characteristics of various kinds of funeral merchandise;
- (3) sell, on a preneed basis, funeral services and merchandise;
- (4) record, on any form or otherwise, specific items of funeral services and merchandise selected on a preneed basis;
- (5) make funeral arrangements on a preneed basis; and
- (6) sign preneed contracts.

No preneed funeral planning activities shall be engaged in by anyone other than a preneed sales licensee; licensee or a registered resident trainee in funeral service or funeral directing pursuant to 21 NCAC 34B .0103(b); provided, however, no preneed sales license is required solely for the sale of an insurance policy, and in connection with such a sale, the salesperson shall not be deemed to have engaged in preneed funeral planning if, for

the sole purpose of permitting a prospective purchaser to make an informed decision as to the amount of insurance desired, the salesperson shows only price lists of funeral services and merchandise.

(c) A licensed funeral director or funeral service licensee wishing to apply for a preneed sales license shall submit to the Board the applicant's name, address, telephone number, funeral director's or funeral service license number, name and address of the preneed funeral establishment licensee or licensees on whose behalf the applicant will sell preneed funeral contracts, and the applicant's employment or agency relationship with the licensee or licensees. If the applicant proposes to sell on behalf of more than one preneed funeral establishment licensee, the applicant shall disclose information to satisfy the requirement of G.S. 90-210.67(a) that the preneed funeral establishment licensees be related by ownership or contract.

(d) The Board shall issue to each preneed sales licensee a pocket card as certification of the preneed sales license. The preneed sales licensee shall carry the card while engaging in preneed funeral planning. The card shall indicate the names of the preneed funeral establishment licensees on whose behalf the preneed sales licensee is authorized to sell preneed funeral contracts, and if there is any change in the list of establishments on whose behalf the preneed sales licensee is authorized to sell, the preneed sales licensee shall make a new application for a preneed sales license and shall pay the application fee.

(e) The preneed sales licensee shall sign and affix his or her preneed sales license number to each preneed funeral contract, which he or she sells, in the presence of the purchaser of the contract at the time of sale.

Statutory Authority G.S. 90-210.25(a)(4); 90-210.67(a), (c); 90-210.69(a).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Registration for Professional Engineers and Land Surveyors intends to amend rules cited as 21 NCAC 56 .0403, .0502, .0505, .0602, .0606, .0802, .0804, .0901, - .0902, .1103, .1105 and .1302.

The proposed effective date of this action is May

1, 1994.

The public hearing will be conducted at 9:00 a.m. on March 11, 1994 at 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.

Reason for Proposed Action: Set forth specific fees for initial applications and all exams, require professional seals on renewal forms, and to provide for the practice of engineering and land surveying by limited liability companies.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at the hearing to be held as indicated above. Written statements not presented at the hearing should be submitted to the Board's office before March 17, 1994.

CHAPTER 56 - BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

SECTION .0400 - RECORDS AND REPORTS OF BOARD: RETENTION AND DISPOSITION

.0403 APPLICATION FILES

Application files are reviewed on an annual basis. If an application has been pending for one year or more, notice will be given to the applicant of the status of the application file. If after notice the applicant does not wish to pursue the application or does not reply to the Board's inquiry within 30 days after such notice, the file will be transferred to the State Records Center maintained by the Department of Cultural Resources in Raleigh, North Carolina, and any unobligated fees returned to the applicant.

Statutory Authority G.S. 89C-10(a); 89C-12.

SECTION .0500 - PROFESSIONAL ENGINEER

.0502 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become licensed as a Professional Engineer must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for an appropriate application form may be made at the Board ad-

dress.

(c) Applicable Forms:

(1) Student Form. This form requires the applicant to set forth his personal history, his educational background, provide character references, and furnish a photograph for identification purposes. The form is for use by those graduating, or those having graduated, from an engineering curriculum approved by the Board as follows:

- (A) Students graduating in the same semester or quarter in which the fundamentals of engineering examination is administered.
- (B) Graduates with less than two years since graduation.

(2) Professional Engineer Form:

(A) All persons, including comity applicants and graduates of an engineering curriculum approved by the Board with more than two years progressive engineering experience, shall apply for registration by using the Professional Engineer form. The submission of this form will signify that the applicant seeks registration, and will result in seating for each examination required, when the applicant is so qualified. This form requires the applicant to set forth his personal and educational background, his engineering experience and his character references. A passport-type photograph for identification purposes is required.

(B) Persons who have previously completed the fundamentals examination by use of the Student Form will submit the Professional Engineer Form to request registration when qualified to take the final eight-hour examination.

(3) Supplemental Form. Persons who initially applied for the fundamentals of engineering exam using the Professional Engineer form must supplement their initial application upon applying for the principles and practice examination. The supplemental form requires that engineering experience from the date of the initial application until the date of the supplemental application be listed. Five references shall be submitted which are current to within one year of the examination date.

(4) Reference Forms:

- (A) Persons applying to take the examination for fundamentals of engineering must submit to the Board names of three individuals who are familiar with the applicant's work, character and reputation. One of these individuals must be registered as a Professional Engineer. Persons applying to take the examination for principles and practices of engineering must submit to the Board names of five individuals who are familiar with the applicant's work, character and reputation. Two of these individuals must be registered Professional Engineers.
- (B) In addition to the applicant submitting names to the Board of individuals familiar with the applicant's work, character and reputation, those individuals listed are required to submit to the Board their evaluation of the applicant on forms supplied them by the applicant. Such information is considered confidential and will not be released by the Board.
- (C) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, his knowledge of the applicant and to state other information concerning the applicant's engineering experience, character and reputation.
- (D) The reference forms will be received by the applicant when he receives his application. The reference forms are then to be distributed by the applicant to the persons listed by him on his application as references. It is the applicant's responsibility to see that the individuals listed as references return the reference forms to the Board prior to the filing deadline for the examination.

(d) Fees:

- (1) Student Form. The registration examination fee of ~~thirty dollars (\$30.00)~~ for applicants applying for examination on the fundamentals of engineering using the student form is payable with the filing of the application. Once the applicant passes the examination on the fundamentals of engineering, the registration fee of one hundred dollars (\$100.00) and the examination fee for

the principles and practice of engineering examination is applied toward payable with the applicant's subsequent application for registration as a Professional Engineer using the Professional Engineer form.

- (2) Professional Engineer Form. The registration fee of one hundred dollars (\$100.00) and appropriate examination fee for applicants applying for the examination on the fundamentals of engineering or the principles and practice of engineering using the Professional Engineer form is payable with the filing of the application.
- (3) Comity. The registration fee of one hundred dollars (\$100.00) for applicants for comity registration is payable with the filing of the application.
- (4) Re-Examination. The registration examination fee for any applicant ~~who is re-examined~~ is payable with the filing of the application ~~for re-examination~~ in accordance with the following schedule:
 - (A) Engineering Fundamentals \$30.00
 - ~~(B) Land Surveying Fundamentals \$50.00~~
 - (B) (C) Engineering Principles & Practice \$70.00
 - ~~(D) Land Surveying Principles & Practice \$60.00~~

(e) The Board will accept the records maintained by the National Council of Examiners for Engineering and Surveying (NCEES) as evidence of registration in another state.

Statutory Authority G.S. 89C-10; 89C-13; 89C-14.

.0505 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Professional Engineer Registration. An annual renewal fee of thirty five dollars (\$35.00) for certificates of registration for Professional Engineers shall be payable to the Board. The Board will send to each registered Professional Engineer a form which requires the registrant to provide the Board with his business and residential address and to affix the registrant's North Carolina Professional Engineer's seal thereupon. The completed form for renewal of certificate along with the required fee is to be forwarded to the Board.

(b) Engineer-In-Training Certificate. The Engineer-In-Training certificate does not expire and, therefore, does not have to be renewed.

Statutory Authority G.S. 89C-10; 89C-17.

SECTION .0600 - LAND SURVEYOR

.0602 APPLICATION PROCEDURE: INDIVIDUAL

(a) General. A person desiring to become a Registered Land Surveyor must make application to the Board on a form prescribed and furnished by the Board.

(b) Request. A request for the application form may be made at the Board address.

(c) Application Form. All persons applying to be licensed as a Registered Land Surveyor shall apply using the standard application form. This form requires the applicant to set forth his personal background, plus his educational background, his land surveying experience, and his references. A passport-type photograph for identification purposes is required also.

(d) Supplemental Form. Persons who initially applied for registration as a land surveyor, but were not eligible initially to be admitted to the examination for principles and practice of land surveying, must supplement their initial application upon ultimately applying for the second examination. The applicant must supplement his initial application by using the supplemental form, which requires him to list his land surveying experience from the date of the initial application, until the date of the supplemental application. Five references shall be submitted which are current to within one year of the examination date.

(e) Reference Forms:

- (1) Persons applying to take the examination for the fundamentals of land surveying or the examination for principles and practice must submit to the Board names of individuals who are familiar with the applicant's work, character and reputation. The names are submitted by the applicant on the application form.
- (2) Persons applying for the fundamentals of land surveying examination must submit three references, one of which must be a Registered Land Surveyor. Persons applying for the principles and practice examination must submit five references, two of which must be a Registered Land Surveyor.
- (3) In addition to the applicant submitting names to the Board of such individuals, those individuals listed are required to

submit to the Board their evaluation of the applicant on reference forms supplied them by the applicant. Such information is considered confidential and will not be released by the Board.

- (4) The reference form requires the individual evaluating the applicant to state the evaluating individual's profession, his knowledge of the applicant and other information concerning the applicant's land surveying experience, character and reputation.
- (5) The reference form will be received by the applicant when he receives his application for registration. The reference forms are then to be distributed by the applicant to the persons listed by him on his application as references. It is the applicant's responsibility to see that the individuals listed as references return the forms to the Board prior to the filing deadline for the examination applied for by the applicant.

(f) Fees:

- (1) Regular. The registration fee of one hundred dollars (\$100.00) and appropriated examination fee for those applying for registration based upon examination, experience, character and exhibit is payable with the filing of the application.
- (2) Comity. The registration fee of one hundred dollars (\$100.00) and appropriate examination fee for those applying for registration based upon comity is payable with the filing of the application.
- (3) Re-Examination. ~~Should an applicant be required to take an examination over again, the re-examination fee is payable upon making a request for re-examination. The examination fee for any applicant is payable with the filing of the application in accordance with the following schedule:~~
 - (A) Land Surveying Fundamentals \$50.00
 - (B) Land Surveying Principles & Practice \$60.00

Statutory Authority G.S. 89C-10; 89C-13; 89C-14.

.0606 EXPIRATIONS AND RENEWALS OF CERTIFICATES

(a) Registered Land Surveyor Registration. An annual renewal fee for certificates of registration for Registered Land Surveyors shall be payable to the Board. The Board will send each Registered Land Surveyor a form which requires the registrant to provide to the Board his business and residential address and to affix the registrant's North Carolina Registered Land Surveyor's seal thereupon. The completed form for renewal of certificate along with any required fee is to be forwarded to the Board.

(b) Surveyor in Training Certificate. The Surveyor In Training certificate does not expire and, therefore, does not have to be renewed.

Statutory Authority G.S. 89C-17.

SECTION .0800 - FIRM REGISTRATION

.0802 PROCEDURE

(a) Request. A request for an application for registration as a professional corporation or professional limited liability company engaged in the practice of engineering or land surveying may be made at the Board address.

(b) Applicable Form. All professional corporations and professional limited liability companies complying with the statutory requirements of G.S. 89C and G.S. 55B and G.S. 57C which desire to practice engineering or land surveying shall apply by using a form prepared by the Board. This form requires the applicant, by and through its president or manager, to certify that it and the stockholders of the corporation or members of the limited liability company have complied with the provisions of the applicable provisions of the General Statutes and requires that the officers, directors, shareholders, members and professional employees be listed on that application.

(c) Certificate of Registration:

(1) Upon receiving the ~~professional corporation~~ application with registration fee of fifty dollars (\$50.00), the Board, after determining that the ~~professional corporation~~ firm has complied with the statutory requirements, will then issue a certificate of compliance ~~to the professional corporation~~.

(2) The ~~professional corporation~~ firm, then, must forward, ~~in accordance with G.S. 55B,~~ the certificate of compliance to the Secretary of State along with its articles of incorporation or articles of organization.

(3) Upon approval by the Secretary of State, the ~~professional corporation~~ firm then must forward to the Board a certified copy of its articles of incorporation or articles of organization.

(4) Upon receipt of the certified copy of the articles of ~~incorporation of the~~ firm, if all statutory requirements have been met, the Board will approve the application ~~of the professional corporation~~ and issue it the firm a certificate of registration.

Statutory Authority G.S. 55B-4; 55B-10; 89C-10; 89C-24.

.0804 ANNUAL RENEWAL

(a) Renewal. The certificate of registration for a professional corporation and limited liability company shall be renewed annually.

(b) Expiration. The certificate of registration shall expire on the last day of December following its issuance by the Board and shall become invalid on that date unless renewed.

(c) Written Application. Upon written application ~~of the corporation~~ signed by its president or manager on a renewal form prescribed by the Board accompanied by the prescribed fee of twenty five dollars (\$25.00), the Board shall renew the certificate of registration providing that the ~~corporation~~ firm has complied with all rules of the Board and ~~Chapter 55B of the~~ applicable General Statutes of North Carolina. The form will be mailed to all registrants in good standing prior to the end of the calendar year.

(d) Failure of a ~~corporation~~ firm to renew its certificate of registration within one calendar year shall require the ~~corporation~~ firm to submit a new application for a new certificate of registration in accordance with all requirements of these rules and of all applicable statutes.

Statutory Authority G.S. 89C-10; 89C-24; 55B-11.

SECTION .0900 - BUSINESS ORGANIZATIONS: GENERAL

.0901 OFFICES

(a) Professional Engineering Services. Every firm, partnership ~~or~~, corporation or limited liability company which performs or offers to perform engineering services in the State of North Carolina shall have a resident registered

Professional Engineer in responsible charge in each separate office in which professional engineering services are performed or offered to be performed.

(b) Land Surveying Services. Every firm, partnership or corporation or limited liability company which performs or offers to perform land surveying services in the State of North Carolina shall have a resident Registered Land Surveyor in responsible charge in each separate office in which land surveying services are performed or offered to be performed.

(c) Resident. A resident registered Professional Engineer or Registered Land Surveyor as used in this Rule, means a licensee who spends a majority of his normal working time in said place of business. A registered Professional Engineer or Registered Land Surveyor can be the resident licensee at only one place of business at one time.

(d) No firm, partnership, or corporation or limited liability company shall practice, or offer to practice either land surveying or engineering, unless there is a registered resident for that service in responsible charge at that said place of business. Advertisements, signs, letterheads, business cards, directories, or any other form of representation shall avoid any reference to any service that cannot be provided under the responsible charge of a properly qualified resident professional.

Statutory Authority G.S. 89C-10; 89C-24.

.0902 TITLES OF BUSINESS ORGANIZATIONS

(a) Companies, partnerships, corporations, limited liability companies or any other business organization providing professional engineering or land surveying services in North Carolina shall not practice under a name that is misleading. Except as provided below, the title of engineering or land surveying companies, partnerships, or corporations, limited liability companies or any other business organization organized primarily to provide such professional services shall not contain the name of an individual not registered in North Carolina.

(b) A firm may include in its title the name or names of one or more deceased or retired former members of the firm, provided that the firm submit a letter of request and explanation with its application to the Board, and that the Board finds as a fact that the use of the name is not misleading.

Statutory Authority G.S. 55B-5; 89C-10; 89C-24.

SECTION .1100 - SEAL

.1103 STANDARD CERTIFICATION REQUIREMENTS

(a) Certification. The seal of a registrant on a map, drawing, plan, specification, plat, or report shall signify that it is the final work of the registrant unless the work is stamped or clearly marked as "preliminary work" as follows:

- (1) "Preliminary - Do not use for construction",
- (2) "Progress Drawings - Do not use for construction",
- (3) "Preliminary Plat - Not for recordation, conveyances, or sales",
- (4) "Final Drawing - Not released for construction".

(b) Certification of Final Drawings. Certification is not required for "preliminary work." All other drawings or maps shall conform to the following:

- (1) Certification is required on reproducible or original drawings.
- (2) The seal may be a rubber stamp, or other facsimile.
- (3) The registrant's signature must be placed over, or near, the seal on the original document.
- (4) The date of signing must be annotated on the original document.
- (5) All sheets of engineering and surveying drawings must be sealed.
- (6) The Registered Land Surveyor who performs a survey will be identified by name and registration number in all pertinent title descriptions or other technical documents.

(c) Certification of Specifications and Reports. Certification is not required for "preliminary work." All other specifications and reports shall conform to the following:

- (1) Certification is required on original specifications.
- (2) The seal may be a rubber stamp, or other facsimile.
- (3) The registrant's signature must be placed over, or near, the seal on the original document.
- (4) The date of signing must be annotated on the original document.
- (5) The title sheet of engineering specifications or other reports must be sealed.

Statutory Authority G.S. 89C-10; 89C-16.

.1105 FIRM SEAL

The use of ~~the corporate~~ a seal by ~~professional corporations~~ a firm is not required for certification. ~~The corporate~~ A firm seal is not authorized for use in lieu of the required seal of a Professional Engineer or Registered Land Surveyor. When ~~the corporate~~ a firm seal is used, it does not relieve the individual registrant of the requirements and responsibilities pertaining to his seal.

Statutory Authority G.S. 89C-10; 89C-16; 89C-24.

**SECTION .1300 - BOARD
DISCIPLINARY PROCEDURES**

**.1302 UNLAWFUL PRACTICE BY AN
UNREGISTERED PERSON**

(a) General. Alleged unlawful practice by an unregistered person shall be subject to Board investigation and reference to an agency of the state for appropriate legal action.

(b) Preferring Charges. Any person who believes that any person or ~~corporation~~ firm is in violation of the acts specified in G.S. 89C may prefer charges against that person or ~~corporation~~ firm by setting forth in writing those charges and swearing to their authenticity. The charges are to be filed at the Board's office in Raleigh, North Carolina.

(c) Preliminary or Threshold Determination:

- (1) Upon receipt of a properly filed charge, an investigation is initiated.
- (2) In the discretion of the executive secretary, a field investigation may be performed without notifying any of the parties involved.
- (3) After preliminary evidence has been obtained, the matter is referred to the Board's review committee which is made up of the following individuals:
 - (A) one member of the Board,
 - (B) the legal counsel of the Board,
 - (C) the executive secretary, ~~and~~
 - ~~(D) the violations administrator.~~
- (4) The review committee is specifically delegated the responsibility of recommending to the Board whether there is probable cause to believe that a party against whom a charge has been brought in fact has violated the provisions of G.S. 89C.
- (5) Upon review of the available evidence, the review committee makes a threshold determination of the charges brought.

The review committee then presents to the Board written recommendations that:

- (A) The investigation be continued,
 - (B) The charge be dismissed as unfounded or trivial,
 - (C) When the charge is admitted as true, the Board accept the admission of guilt by the person charged and order him not to commit in the future the specific act or acts admitted by him and, also, not to violate any of the acts of misconduct specified in the law at any time in the future,
 - (D) The matter be referred to an appropriate agency for necessary legal action.
- (d) Board Decision. Notice of decision by the Board on recommendations of the review committee shall be given to the party submitting the charge.

Statutory Authority G.S. 89C-10; 89C-23.

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).

ADMINISTRATIVE HEARINGS

Hearings Division

<i>26 NCAC 3 .0207 - Compensation of the Mediator</i>	<i>RRC Objection 01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 01/20/94</i>

AGRICULTURE

Aquaculture

<i>2 NCAC 53 .0001 - Aquaculture Licenses</i>	<i>RRC Objection 12/16/93</i>
<i>Agency Withdrew Rule</i>	<i>01/20/94</i>

COMMERCE

Banking Commission

<i>4 NCAC 3F .0202 - Permissible Investments</i>	<i>RRC Objection 12/16/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 01/20/94</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

<i>15A NCAC 7H .2002 - Approval Procedures</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/16/93</i>
<i>15A NCAC 7H .2004 - General Conditions</i>	<i>RRC Objection 09/17/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd 10/21/93</i>
<i>No Action</i>	<i>Obj. Cont'd 11/18/93</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed 12/16/93</i>

Environmental Management

<i>15A NCAC 2D .0101 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0501 - Compliance with Emission Control Standards</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0503 - Particulates from Fuel Burning Indirect Heat Exchangers</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0524 - New Source Performance Standards</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>
<i>15A NCAC 2D .0525 - National Emission Standards for Hazardous Air Pollutants</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	<i>01/20/94</i>

RRC OBJECTIONS

15A NCAC 2D .0530 - Prevention of Significant Deterioration	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0531 - Sources in Nonattainment Areas	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0532 - Sources Contributing to an Ambient Violation	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0533 - Stack Height	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0601 - Purpose and Scope	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0801 - Purpose and Scope	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0802 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0803 - Highway Projects	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0804 - Airport Facilities	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0805 - Parking Facilities	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .0806 - Ambient Monitoring and Modeling Analysis	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2D .1109 - Case-By-Case Maximum Achievable Control Technology	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0601 - Purpose and Scope	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0602 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0603 - Applications	
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15A NCAC 2H .0604 - Final Action on Permit Applications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0605 - Issuance; Revocation; and Enforcement of Permits	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0606 - Delegation of Authority	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0607 - Copies of Referenced Documents	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2H .0609 - Permit Fees	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0101 - Required Air Quality Permits	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0102 - Activities Exempted from Permit Requirements	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0103 - Definitions	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0104 - Where to Obtain and File Permit Applications	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0105 - Copies of Referenced Documents	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0106 - Incorporation by Reference	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0107 - Confidential Information	
Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0108 - Delegation of Authority	

RRC OBJECTIONS

<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0109 - Compliance Schedule for Previously Exempted Activities</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0110 - Retention of Permit at Permitted Facility</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0111 - Applicability Determinations</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0201 - Applicability</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0202 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0203 - Permit and Application Fees</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0204 - Inflation Adjustment</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0205 - Other Adjustments</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0206 - Payment of Fees</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0207 - Annual Emissions Reporting</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0301 - Applicability</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0302 - Activities Exempted from Permit Requirements</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0303 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0304 - Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0305 - Application Submittal Content</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0306 - Permits Requiring Public Participation</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0307 - Public Participation Procedures</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0308 - Final Action on Permit Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0309 - Termination, Modification and Revocation of Permits</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0310 - Permitting of Numerous Similar Facilities</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0311 - Permitting of Facilities at Multiple Temporary Sites</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0401 - Applicability</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0402 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0403 - New Units Exemption</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0404 - Retired Units Exemption</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0405 - Requirement to Apply</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0406 - Requirements for Permit Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94

RRC OBJECTIONS

15A NCAC 2Q .0407 - Permit Application Shield and Binding Effect of Permit Application Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0408 - Compliance Plans Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0409 - Phase II Repowering Extensions Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0410 - Permit Contents Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0411 - Standard Requirements Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0412 - Permit Shield Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0413 - Permit Revisions Generally Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0414 - Permit Modifications Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0415 - Fast-Track Modifications Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0416 - Administrative Permit Amendment Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0417 - Automatic Permit Amendment Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0418 - Permit Reopenings Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0501 - Purpose of Section and Requirement for a Permit Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0502 - Applicability Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0503 - Definitions Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0504 - Option for Obtaining Construction and Operation Permit Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0505 - Application Submittal Content Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0506 - Initial Permit Application Submittal Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0507 - Application Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0508 - Permit Content Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0509 - Permitting of Numerous Similar Facilities Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0510 - Permitting of Facilities at Multiple Temporary Sites Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0511 - Synthetic Facilities Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0512 - Permit Shield and Application Shield Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0513 - Permit Renewal and Expiration Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0514 - Administrative Permit Amendments Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0515 - Minor Permit Modifications Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)	01/20/94
15A NCAC 2Q .0516 - Significant Permit Modification	

RRC OBJECTIONS

<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0517 - Reopening for Cause</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0518 - Final Action</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0519 - Termination, Modification, Revocation of Permits</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0520 - Certification by Responsible Official</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0521 - Public Participation</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0522 - Review by EPA and Affected States</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0523 - Changes Not Requiring Permit Revisions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0524 - Ownership Change</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0601 - Purpose of Section and Requirement for a Permit</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0602 - Definitions</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0603 - Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0604 - Public Participation</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0605 - Final Action on Permit Applications</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94
<i>15A NCAC 2Q .0606 - Termination, Modification and Revocation of Permits</i>	
<i>Rule Returned to Agency for Failure to Comply with APA G.S. 150B-21.4(b)</i>	01/20/94

Health: Epidemiology

<i>15A NCAC 19A .0206 - Infection Control - Health Care Settings</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93
<i>15A NCAC 19C .0703 - Method of Reporting</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93
<i>15A NCAC 19H .0702 - Research Requests</i>	<i>RRC Objection</i>	01/20/94
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	01/20/94

Health: Personal Health

<i>15A NCAC 21A .0817 - Grant Proposals</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93

Laboratory Services

<i>15A NCAC 20A .0006 - Fees</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93

Mining: Mineral Resources

<i>15A NCAC 5B .0003 - Procedures for Obtaining Permits: Bonding Reqs.</i>	<i>RRC Objection</i>	12/16/93
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	12/16/93

Soil and Water Conservation Commission

RRC OBJECTIONS

15A NCAC 6F .0004 - *Approved Best Management Practices (BMPs)* RRC Objection 01/20/94
15A NCAC 6F .0005 - *Technical Specialist Designation Procedure* RRC Objection 01/20/94

Solid Waste Management

15A NCAC 13B .1705 - *Design, Constr./Operation/Structural Fill Facilities* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93
15A NCAC 13B .1708 - *Other Uses for Coal Combustion By-products* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93
15A NCAC 13B .1710 - *Annual Reporting* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93

HUMAN RESOURCES

Aging

10 NCAC 22T .0101 - *Scope of Health Screening Services* RRC Objection 01/20/94
10 NCAC 22T .0201 - *Provision of Health Screening Services* RRC Objection 01/20/94
10 NCAC 22U .0101 - *Scope of Senior Companion* RRC Objection 01/20/94

Day Care Rule

10 NCAC 46H .0104 - *Target Populations* RRC Objection 01/20/94
Agency Revised Rule Obj. Removed 01/20/94

Facility Services

10 NCAC 3R .1617 - *Required Staffing and Staff Training* RRC Objection 01/20/94
Agency Revised Rule Obj. Removed 01/20/94
10 NCAC 3R .2114 - *Information Required of Applicant* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93
10 NCAC 3R .3405 - *Required Staffing and Staff Training* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93
10 NCAC 3R .3505 - *Required Staffing and Staff Training* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93
10 NCAC 3R .3906 - *Required Staffing and Staff Training* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93

Individual and Family Support

10 NCAC 42A .0605 - *Locating a Bed and Securing Placement* RRC Objection 01/20/94
Agency Revised Rule Obj. Removed 01/20/94

Mental Health: General

10 NCAC 14J .0206 - *Procedures: Seclusion, Restraints, or Isolation Time Out* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93

INSURANCE

Financial Evaluation Division

11 NCAC 11B .0611 - *Deposits: Bonds: Excess Insurance - Groups* RRC Objection 12/16/93
Agency Revised Rule Obj. Removed 12/16/93
11 NCAC 11H .0011 - *Insolvency or Hazardous Financial Condition* RRC Objection 11/18/93

RRC OBJECTIONS

Agency Revised Rule
Agency Revised Rule

Obj. Cont'd 11/18/93
Obj. Removed 12/16/93

JUSTICE

Departmental Rules

12 NCAC 1 .0106 - ADA Dispute Resolution Procedure
Agency Revised Rule

RRC Objection 12/16/93
Obj. Removed 12/16/93

Private Protective Services

12 NCAC 7D .0108 - Law Enforcement Officers Special Provisions
No Response from Agency
Agency Withdrew Rule
12 NCAC 7D .0203 - Renewal or Re-issue of Licenses and Trainee Permits
Agency Revised Rule
12 NCAC 7D .0401 - Experience Reqs. a Private Investigator License
Agency Revised Rule

RRC Objection 11/18/93
Obj. Cont'd 12/16/93
01/20/94
RRC Objection 12/16/93
Obj. Removed 12/16/93
RRC Objection 12/16/93
Obj. Removed 12/16/93

LICENSING BOARDS AND COMMISSIONS

Dental Examiners

21 NCAC 16D .0102 - Restrictions on Practice
Agency Revised Rule
21 NCAC 16H .0203 - Permitted Functions of Dental Assistant II
Agency Revised Rule
21 NCAC 16Q .0301 - Sedation Credentials and Permit
Agency Revised Rule

RRC Objection 12/16/93
Obj. Removed 12/16/93
RRC Objection 12/16/93
Obj. Removed 12/16/93
RRC Objection 12/16/93
Obj. Removed 12/16/93

Landscape Architects

21 NCAC 26 .0209 - Unprofessional Conduct
21 NCAC 26 .0210 - Dishonest Practice
21 NCAC 26 .0211 - Incompetence

RRC Objection 01/20/94
RRC Objection 01/20/94
RRC Objection 01/20/94

Opticians

21 NCAC 40 .0202 - Registration of Place of Business
Agency Revised Rule
21 NCAC 40 .0314 - Apprenticeship and Internship Requirements: Registration
Agency Revised Rule

RRC Objection 12/16/93
Obj. Removed 12/16/93
RRC Objection 12/16/93
Obj. Removed 12/16/93

Refrigeration Examiners

21 NCAC 60 .0210 - Special Examination
Agency Revised Rule

RRC Objection 01/20/94
Obj. Removed 01/20/94

Therapeutic Recreation

21 NCAC 65 .0005 (Recodified as 21 NCAC 65 .0002)- Meetings
Agency Revised Rule
21 NCAC 65 .0008 (Recodified as 21 NCAC 65 .0004) - Academic -TRS Exam.
Agency Revised Rule

RRC Objection 12/16/93
Obj. Removed 12/16/93
RRC Objection 12/16/93
Obj. Removed 01/20/94

RRC OBJECTIONS

21 NCAC 65 .0011 (Recodified as 21 NCAC 65 .0007) - Cert. Ren. Eff. 7/1/95 Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
21 NCAC 65 .0013 (Recodified as 21 NCAC 65 .0008) - Revocation Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93

TRANSPORTATION

Division of Highways

19A NCAC 2C .0102 - Minimum Standards for Secondary Roads Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 2C .0103 - Addition of Roads to the Secondary Road System Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 2C .0204 - Utility Requirements for Subdivision Roads Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 2C .0206 - Bridge and Dam Requirements for Subdivision Roads Agency Repealed Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 2C .0211 - Street Intersections for Subdivision Streets Agency Repealed Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 2C .0213 - Subdivision Name Markers Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93

Division of Motor Vehicles

19A NCAC 3B .0620 - Grounds for Revocation or Denial of Certification Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 12/16/93
19A NCAC 3B .0621 - Denial/Revocation: Company Examiner: Instructor Cert. Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 12/16/93
19A NCAC 3C .0223 - Registration: Motor Homes: Etc. Rule Returned to Agency for Failure to Comply with APA		11/18/93
19A NCAC 3C .0436 - Highway Use Tax Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 12/16/93
19A NCAC 3D .0231 - Hearings Pursuant to Articles 12 & 15 of Chapter 20 Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 3D .0515 - Safety Inspection Licensing and Procedures	RRC Objection	12/16/93
19A NCAC 3D .0602 - Collection of Assessments Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 3D .0702 - Information for Manufacturer Agency Repealed Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 3D .0823 - Vehicle Registration and Identification Required Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 3D .0825 - Reproduction of Forms Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 3G .0205 - Issuing of Original Certificate Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 12/16/93
19A NCAC 3I .0505 - Confidentiality Agency Revised Rule	RRC Objection Obj. Removed	11/18/93 12/16/93
19A NCAC 3J .0202 - Original Application Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93
19A NCAC 3J .0604 - Contract Provisions Agency Revised Rule	RRC Objection Obj. Removed	12/16/93 12/16/93

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.

10 NCAC 26I .0101 - PURPOSE: SCOPE AND NOTICE OF CHANGE IN LEVEL OF CARE

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0101 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

10 NCAC 26I .0102 - REQUEST FOR RECONSIDERATION AND RECIPIENT APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0102 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

10 NCAC 26I .0104 - FORMAL APPEALS

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 10 NCAC 26I .0104 void as applied in *Dorothy McNeil Moore v. N. C. Department of Human Resources, Division of Medical Assistance* (93 DHR 1342).

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
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* Consolidated cases.

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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	
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Anthony M. Little v. Human Resources, John Umstead Hospital	92 OSP 1734	Becton	09/01/93	
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Barbara A. Johnson v. Human Resources	93 OSP 0103	Morrison	03/17/93	
Carrie P. Smith v. County of Stanly	93 OSP 0109	Becton	04/01/93	
George W. Allen v. Human Resources, Correction, Agri & 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	
Ralph Snipes v. Transportation and Correction	93 OSP 0157	Mann	12/13/93	
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	
Richard E. Howell v. Correction, Wayne Correctional Center	93 OSP 0245	Gray	08/25/93	
Brian Dale Barnhardt v. State Highway Patrol	93 OSP 0251	Reilly	07/27/93	
F.R. "Don" Bowen v. Human Resources	93 OSP 0253	Morgan	08/06/93	
Michael L. Pegram v. Correction	93 OSP 0275*8	Reilly	06/28/93	
Jerry D. Doss Sr. v. Correction	93 OSP 0287	Gray	05/17/93	
Odessa Parker v. Durham County Dept. of Social Services	93 OSP 0366	Nesnow	12/15/93	
Debbie Renee Robinson v. Correction	93 OSP 0383	Nesnow	06/07/93	
Sharon Brandon v. Dorothea Dix Hospital	93 OSP 0419	Gray	12/06/93	
Shaw Boyd v. Correction	93 OSP 0438	Morgan	11/12/93	8:18 NCR 1838
Ida Gaynell Williams v. Wilson County Dept. of Social Services	93 OSP 0440	Gray	12/01/93	
Linda R. Wharton v. N.C. A & T University	93 OSP 0456	Chess	09/22/93	
Michael L. Pegram v. Correction	93 OSP 0472*8	Reilly	06/28/93	
Ralph W. Burcham v. Transportation	93 OSP 0493	Chess	10/15/93	8:16 NCR 1558
Claudius S. Wilson v. Human Resources	93 OSP 0498	Gray	12/15/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0522*13	Morrison	12/14/93	8:19 NCR 1922
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0523*13	Morrison	12/14/93	8:19 NCR 1922
Carrie Lee Gardner v. Human Resources	93 OSP 0537	Reilly	12/21/93	

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Alvin Lamonte Breedon v. OPC Mental Health	93 OSP 0551	Gray	11/23/93	
Edward D. Day Jr., John D. Warlick, Gary W. Beecham v. Correction	93 OSP 0567*13	Morrison	12/14/93	8:19 NCR 1922
Hubert L. Holmes v. Transportation	93 OSP 0572	Reilly	08/17/93	
Vernell Ellis Turner v. NC A & T Police Dept., NC Agricultural Tech U	93 OSP 0577	Becton	11/03/93	
Barry W. Corbett v. Environment, Health, & Natural Resources	93 OSP 0584	Reilly	01/13/94	8:21 NCR 2110
Everette E. Newton v. University of NC at Chapel Hill	93 OSP 0589	Reilly	12/07/93	
Constance Smith-Rogers v. Human Resources	93 OSP 0593	Reilly	12/21/93	
Timothy E. Blevins v. UNC A/K/A Western Carolina University	93 OSP 0604	Morgan	09/29/93	
Xantippe Blackwell v. Human Resources, Murdoch Center	93 OSP 0632	Reilly	09/01/93	
Wayne Bradley Johnson v. State Computing Center	93 OSP 0694	Chess	10/11/93	
Harold Kovolenko v. Lynn C. Phillips, Director of Prisons	93 OSP 0697	Nesnow	09/08/93	
Daniel Thomas Wheeler, Kye Lee Wheeler v. Caldwell County Department of Social Services	93 OSP 0752	Nesnow	09/16/93	
Terry Johnson v. Correction	93 OSP 0757	Gray	10/06/93	
David Henry v. Correction	93 OSP 0789	Gray	11/29/93	
Kathleen E. Couran v. New Bern Police Dept., City of New Bern; and City of New Bern Police Civil Service Board	93 OSP 0797	Morrison	09/21/93	
Berton Hamm Jr. v. Wake County Child & Family Services	93 OSP 0809	Becton	10/27/93	
John R. Woods Sr. v. Wake County Child & Family Services	93 OSP 0810	Becton	11/02/93	
Coleman F. Tyrance Jr. v. Wake County Child & Family Services	93 OSP 0811	Becton	11/02/93	
John Augusta Page v. Wake County Child & Family Services	93 OSP 0812	Becton	11/02/93	
Thomas James v. Wake County Child & Family Services	93 OSP 0813	Becton	11/02/93	
James E. Hargrove v. Wake County Child & Family Services	93 OSP 0814	Becton	11/02/93	
Ricky Harrell v. Wake County Child & Family Services	93 OSP 0815	Becton	11/02/93	
Bruce Creevy v. Wake County Child & Family Services	93 OSP 0816	Becton	11/02/93	
Dana Phillips v. Administrative Office of the Courts	93 OSP 0822	West	09/09/93	
William G. Beam v. Transportation	93 OSP 0828	West	12/29/93	
Mary U. Rote v. Carteret Community Action, Inc. & Carteret Cty.	93 OSP 0831	Morrison	12/29/93	
Terry P. Chappell v. Correction	93 OSP 0834	Nesnow	10/11/93	
Marie C. Ricucci v. Forsyth County Public Health Dept.	93 OSP 0882	West	01/27/94	
Willie David Moore v. Correction (Piedmont Correctional Inst.)	93 OSP 1043	Nesnow	12/03/93	

STATE TREASURER

Juanita M. Braxton v. Bd. of Trustees/Teachers' & St Emp Ret Sys	91 DST 0017	West	09/07/93	
James Hines on behalf of Luther Hines (Deceased) v. Board of Trustees Teachers' and State Employees' Retirement System	91 DST 0130	Morgan	01/21/94	
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	
Frances Billingsley v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 0996	West	09/20/93	
Dennis Willoughby v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1439	West	09/20/93	8:14 NCR 1356
Mary Alyce Carmichael v. Bd./Trustees/Teachers' & St Emp Ret Sys	92 DST 1506	Chess	04/08/93	
Shirley M. Smith v. Bd./Trustees/Teachers' & St. Emp. Ret. Sys.	92 DST 1776	Reilly	11/18/93	8:18 NCR 1829
W. Rex Perry v. Bd./Trustees/Teachers' & St Emp Ret Sys	93 DST 0133	West	08/12/93	8:11 NCR 992
Rory Dale Swiggert v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. Sys.	93 DST 0198	West	09/28/93	8:14 NCR 1360
Catherine D. Whitley v. Bd./Trustees/Teachers & St. Emp. Ret. Sys.	93 DST 0727	Reilly	11/18/93	

TRANSPORTATION

Yates Construction Co., Inc. v. Transportation	92 DOT 1800	Morgan	03/25/93	
American S&P Auto v. Commissioner, Div. of Motor Vehicles	93 DOT 1070	Morrison	12/02/93	
William G. Oglesby v. Division of Motor Vehicles	93 DOT 1375	Morrison	12/29/93	

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Constance V. Graham v. UNC Hospital	93 UNC 0269	Morgan	07/20/93	
Jacqueline Florence v. UNC Hospitals	93 UNC 0355	Becton	06/16/93	

EXHIBITS

For Petitioner:

Petitioner's Exhibit #1

For Respondent:

Respondent's Exhibit #1, #2, #3, #4 and #5

ISSUES

1. Did Respondent allow persons to display pubic hair on the licensed premises on or about June 27, 1993, at 12:30 a.m. in violation of ABC Commission Rule 4 NCAC 2S .0216(a)(3).

2. Did Respondent employee allow persons to display the genitals on the licensed premises on or about June 27, 1993, at 1:40 a.m. in violation of G.S. 18B-1005(a)(4) and ABC Commission Rule 4 NCAC 2S .0216(a)(3).

3. Was Respondent's business location no longer considered to be suitable to hold ABC permits on or about July 2, 1993, at 1:00 a.m. in violation of G.S. 18B-901(c)(8).

4. Did Respondent fail to properly supervise the licensed premises on or about June 19, 1993, at 1:00 a.m., June 26, 1993, at 11:30 p.m. and July 2, 1993 (as amended) at 11:00 p.m. in violation of G.S. 18B-1005(a)(1) and ABC Commission Rule 4 NCAC 2S .0233.

5. Did Respondent and his employee fail to determine the age of any person consuming or possessing alcoholic beverages on the licensed premises on or about June 18, 1993, at 1:50 a.m. (two counts), July 2, 1993, at 10:30 p.m. (three counts), and July 2, 1993, at 11:30 p.m. (two counts) in violation of ABC Commission Rule 4 NCAC 2S .0233(b).

6. Did Respondent's employee sell malt beverages to Bob Droke, a person less than 21 years of age, on the licensed premises on or about July 2, 1993, at 10:30 p.m., 10:50 p.m., 11:00 p.m. and 11:15 p.m. (four counts) in violation of G.S. 18B-302(a)(1).

7. Did Respondent's employee sell malt beverages to Amy Yvette Atkinson, a person less than 21 years of age, on the licensed premises on or about July 2, 1993, at 10:30 p.m. in violation of G.S. 18B-302(a)(1).

8. Did Respondent's employee sell malt beverages to Steven Brian Stowe, a person less than 21 years of age, on the licensed premises on or about June 26, 1993, at 12:30 a.m., 1:03 a.m., and 1:15 a.m., June 27, 1993, at 12:02 a.m. and 1:30 a.m. (five counts) in violation of G.S. 18B-302(a)(1).

9. Did Respondent's employee sell unfortified wine to Steven Brian Stowe on the licensed premises on or about June 27, 1993, at 12:50 a.m. in violation of G.S. 18B-302(a)(1).

10. Did Respondent consume alcoholic beverages on the licensed premises on or about July 2, 1993, at 11:30 p.m. in violation of ABC Commission Rule 4 NCAC 2S .0212(a).

11. Did Respondent's employee knowingly allow a person less than 21 years of age to possess and consume malt beverages on the licensed premises on or about July 2, 1993, at 10:30 p.m. in violation of G.S. 18B-302(b)(1) and G.S. 18B-1005(a)(1).

At the close of Petitioner's evidence, Petitioner, by and through its legal counsel, voluntarily dismissed all charges as alleged in Issue #1; that part of Issue #4 alleging that the Respondent failed to properly supervise the licensed premises on or about June 19, 1993, at 1:00 a.m.; and that part of Issue #5 which alleged that the Respondent and his employees failed to determine the age of any person consuming or possessing alcoholic beverages on the licensed premises on or about June 18, 1993, at 1:50 a.m. (two counts).

The parties agreed upon the following Stipulations which were read into the record and were contained in the Order of Continuance, dated November 9, 1993:

STIPULATIONS

1. Bob Droke is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

2. Mary Jackson is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

3. Stephen Ragan, Jr. is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

4. Amy Atkinson is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

5. Danny Allen is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

6. Curtis Baggett is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

7. Erin Brandon is a person who was under 21 years of age on July 2, 1993 and is presumed to have been on Respondent's premises on that date.

8. Stephen Brian Stowe is a person who was under 21 years of age on June 26-27, 1993 and is presumed to have been on Respondent's premises on that date."

Based upon the foregoing Stipulations, the pleadings in the contested case file and by the greater weight of the admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. The Office of Administrative Hearings has jurisdiction over this contested case pursuant to Chapters 18B and 150B of the North Carolina General Statutes.

2. Petitioner issued to Respondent on premises malt beverage permit, 29958A and on premises unfortified wine permit 29958C.

3. Respondent corporation, trading as the "ACC Tavern", is the holder of these ABC permits.

4. John Wilson Hopkins is a resident of Wake County, North Carolina, and is the President, sole owner and operator of Utilities Control, Inc., trading as the "ACC Tavern."

5. The ACC Tavern is located at 2502 1/2 Hillsborough Street, Raleigh, Wake County, North Carolina and is directly across Hillsborough Street from the campus of North Carolina State University.

6. The Petitioner has previously found Respondent in violation of the ABC laws of the State of North Carolina and the implementing regulations as follows:

<u>Date of Offense</u>	<u>Offense Charged</u>	<u>Date of Action</u>	<u>Sanction Imposed</u>
4/4/92	Sell malt beverage to a person under	10/1/92	Official Warning

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	age 21		
4/28/91	Sell malt beverage to a person under age 21	3/13/92	Official Warning
8/23/90	Sell malt beverage to a person under age 21	7/12/91	15 days active suspension
11/19/88	Open to general public (2 counts)	5/19/89	\$500.00 fine and 7 days active suspension
12/17/88	Open to general public (2 counts)	5/19/89	\$500.00 fine and 7 days active suspension
12/12/88	Open to general public (2 counts) Sell malt beverage to underage person (2 counts)		\$1,000.00 fine and 15 days active suspension
10/9/87	Sell malt beverage to underage person		\$2,000.00 fine
3/5/87	Store spirituous liquor on premises without a mixed beverage tax stamp (Concurrent criminal charge)		Official warning
7/1/85	Sell malt beverage to a person under age 21		\$750.00 fine and 3 days active suspension

7. Mr. Hopkins hires and is directly involved in the training of his employees. Mr. Hopkins prepared an employee manual and all employees are required to be familiar with the ABC laws (Interim Note 7/23/86) and the policies of the Respondent.

8. At all times relevant to this hearing, Mr. Hopkins was present on Respondent's premises.

9. Mr. Brian McGuire, Respondent's employee, is the general manager of the Tavern during the evenings and is also the disc jockey. At all times relevant to this hearing, Mr. McGuire was present on Respondent's premises.

10. Mr. Kenneth Brendell, Respondent's employee, is in charge of floor security and admission to the premises. At all times relevant to this hearing, Mr. Brendell was present on Respondent's premises.

11. Under Respondent's "Door Procedures" Respondent's employees are warned of the consequences of serving alcohol to under age drinkers. "18. Remember, if anyone is caught by an ALE agent consuming we are out of business and you are liable for any fines the club incurs." (Respondent's Exhibit #1)

13. Steven Brian Stowe is a student at Wake Tech majoring in criminal justice. He was employed in an undercover capacity by the Raleigh Police Department and paid compensation of \$50.00. On June 26 and 27, 1993 Mr. Stowe was 20 years of age. His undercover assignment was to enter the ACC Tavern and attempt to make purchases of alcoholic beverages.

14. On June 25, 1993, prior to midnight, Mr. Stowe entered the ACC Tavern. He had on his person his valid North Carolina driver's license which indicated that he was 20 years of age at the time. A stamp was placed on the underside of his wrist by an employee of the Respondent. The wrist when stamped in this fashion indicated that Mr. Stowe was less than 21 years of age and was not permitted to purchase

alcoholic beverages.

15. At approximately 12:30 a.m. on June 26, 1993, Mr. Stowe approached the bar and ordered one bottle of Budweiser Beer. Ms. Joanna Sawyer, an employee of the Respondent, sold the malt beverage to Mr. Stowe. Mr. Stowe proceeded to the restroom on the premises and met there with Detective Murphy of the Raleigh Police Department. The malt beverage was turned over to Detective Murphy who determined that it was an alcoholic malt beverage. Detective Murphy disposed of the malt beverage. Mr. Stowe made a second purchase of an alcoholic malt beverage at 1:03 a.m. Mr. Stowe purchased a Budweiser beer from Joanna Sawyer, the Respondent's employee. He received change and proceeded to the restroom where Detective Murphy identified the malt beverage and disposed of the same. At 1:15 a.m. on June 26, 1993, Mr. Stowe purchased an alcoholic malt beverage, a Zima Beer, from Donna Mitchell, an employee of Respondent. Mr. Stowe proceeded to the restroom where Detective Murphy identified the malt beverage and disposed of the malt beverage.

16. On the evening and early morning of June 26 and 27, 1993, Mr. Hopkins was present and seated at the bar.

17. On June 27, 1993, Mr. Stowe again made purchases of malt beverages on the Respondent's premises. At 12:02 a.m. Joanna Sawyer sold to Mr. Stowe a malt beverage, Budweiser beer. Mr. Stowe proceeded to the restroom and Detective Murphy identified the alcoholic beverage and disposed of the same. At 12:50 a.m. Mr. Stowe purchased a wine based cocktail known as "Sex on the Beach" from Donna Mitchell, Respondent's employee. He proceeded to the restroom on the premises and delivered it to Detective Murphy. At 1:30 a.m. on June 27, 1993, Mr. Stowe purchased from Joanna Sawyer, Respondent's employee, another alcoholic beverage. Mr. Stowe proceeded to the restroom and Detective Murphy identified the alcoholic beverage and disposed of the same.

18. On June 26 and 27, 1993, Mr. Stowe, in his undercover capacity, made six consecutive purchases of alcoholic beverages at a time when he was less than 21 years of age. At all times Mr. Stowe's hands were stamped in a manner indicating that he was underage to purchase malt beverages, and his hands were in plain view, not concealed.

19. At no time on June 26 or 27, 1993 did any employee of the Respondent who sold alcoholic beverages to Mr. Stowe attempt to determine or verify his age.

20. On June 26 and 27, 1993, Mr. Hopkins occasionally consumed alcoholic malt beverages while on the premises. He believed that his activity encouraged others to purchase malt beverages.

21. On July 2, 1993 Bob D. Droke entered the Respondent's premises. He had in his possession a false identification (I.D.). The photograph on the military I.D. did not resemble Mr. Droke. The I.D. did represent that Mr. Droke was over the age of 21. On July 2, 1993, Mr. Droke was 20 years old. Mr. Droke was admitted to Respondent's premises as being over 21 years of age and stamped accordingly.

22. There were approximately 25 patrons on the premises on July 2, 1993, during the times in question.

23. At 10:30 p.m., July 2, 1993, Mr. Droke purchased a malt beverage, a Rolling Rock Beer, from Donna Mitchell, Respondent's employee. At 10:50 p.m., Mr. Droke purchased a second malt beverage, a Corona beer, from Joanna Sawyer, Respondent's employee. At 11:00 p.m., Mr. Droke purchased a third malt beverage, a Corona beer, from Donna Mitchell, Respondent's employee. At 11:15 p.m., Mr. Droke purchased a fourth malt beverage, a Corona beer, from Respondent's employee.

24. Mr. Hopkins was seated in the bar area during the occasions when Mr. Droke purchased the malt beverages. Mr. Hopkins was handed a clipboard with business papers on it by the bartender. He reviewed the papers and handed them back to the bartender.

25. Mr. Droke was charged with purchasing alcoholic beverages under the age of 21 and having a fictitious I.D. card in his possession. Mr. Droke pled guilty to these criminal charges.

26. At approximately 11:00 p.m. on July 2, 1993, Stephen Ragan had in his possession a malt beverage and was consuming therefrom. He had a very youthful appearance and was 18 years old. Mr. Ragan was criminally charged with possession of a malt beverage, being less than 21 years old. He was placed in a deferred prosecution program.

27. On July 2, 1993, Erin Brandon was on the Respondent's premises. On July 2, 1993, Ms. Brandon was 18 years old. She had in her possession on this occasion an alcoholic beverage in a cup which she received from a companion and was drinking from the alcoholic beverage. Upon entering the club on this date, Ms. Brandon was stamped on the underside of her wrist indicating that she was less than the legal drinking age.

28. During the evening of July 2, 1993, Amy Yvette Atkinson purchased from the Respondent's employee, two malt beverages, a Corona Beer and a Zima Beer. After purchasing these malt beverages, Ms. Atkinson consumed both of those on the premises. Ms. Atkinson, on July 2, 1993, was 17 years old.

29. Ms. Atkinson gained entrance to the Respondent's establishment by way of a membership card issued by the Respondent which indicated that she was over the age of 21 years. Ms. Atkinson was permitted, on a prior occasion, to apply and fill out her own identification card. No valid identification was requested or provided by Ms. Atkinson before completing her own identification card.

30. On July 2, 1993, after presenting the identification card issued by Respondent, Ms. Atkinson was stamped on the top of her wrist, which indicated that she was above the age of 21 years old.

31. On the evening of July 2, 1993, Ms. Atkinson was engaged in a conversation with Mr. Hopkins at the bar at a time when she purchased and consumed a malt beverage. It was placed on the bar in front of her. She was approximately one to two feet away from Mr. Hopkins. Mr. Hopkins observed Ms. Atkinson purchase and consume the malt beverage.

32. On July 2, 1993, Mary Jackson, age 20, consumed a portion of a malt beverage, a Bud Dry, on Respondent's premises. On this occasion, Ms. Jackson had gained entrance to the Respondent's establishment and had not produced any identification. She represented to Respondent's employee at the door that she was over the age of 21. Her wrist was stamped on top which indicated that she was over the age of 21. The Bud Dry alcoholic beverage was purchased for her by a companion who was over the age of 21 years. On prior occasions, Ms. Jackson had consumed alcoholic beverages on Respondent's premises.

33. On June 26, 27 and July 2, 1993, Mr. Hopkins had in his possession a clipboard containing Respondent's business papers. He also had in his possession in front of him on the bar a walkie-talkie radio device for the purpose of transmitting and receiving information from Respondent's employee at the door and Respondent's employee acting as a disc jockey. The floor bouncers, Respondent's employees who patrol the premises, also have a device wherein they can listen to transmissions from the walkie-talkies.

34. On the evening of June 26, 1993, Mr. Hopkins had performed repairs to the ice machine on the premises. During the same evening, from time to time, Mr. Hopkins monitored the machine to determine if it was working properly.

35. Stephen Paquette was present on Respondent's premises on the evening of June 26, 1993 and the morning of June 27, 1993. On the dates in question, Mr. Paquette was 20 years old. Mr. Paquette was admitted to the premises and was stamped on the bottom of his hand indicating that he was less than 21 years old. Mr. Paquette purchased two malt beverages from an employee of Respondent and consumed these malt beverages on the premises.

36. Normally on Friday and Saturday evening approximately one third of all patrons are below

age 21.

37. Mr. Paquette had previously visited the Respondent's premises. He is a soldier at Fort Bragg, North Carolina, and is attached to the military police. He has previously purchased malt beverages in the Respondent's establishment at a time when he was less than 21 years of age.

38. On the early morning of June 27, 1993, Mr. Paquette participated in a contest at Respondent's establishment. Mr. Hopkins was present on the premises and seated at the bar. There were approximately 125 patrons on the premises on this occasion.

39. The contest involved removal of articles of clothing by both male and female contestants although the removal of clothing is discretionary with the contestants. The contestants were drawn from the patrons present on the premises who indicated a willingness to participate. No fixed age restrictions applied to the contestant participation or to the patrons admitted to the establishment. Instructions are given to the contestants verbally by Mr. McGuire. Contestants are instructed that they are not to expose themselves.

40. Mr. Paquette was one of four men who participated in the preliminary round. There were five females who participated as well. The contestants were required to dance while music was played. Male contestants stripped to their undershorts and female contestants to their undergarments. While Mr. Paquette participated in the preliminary round of the contest, an unidentified female who was not a contestant or participant, pulled down Mr. Paquette's shorts, exposing his genitals.

41. Both Mr. Brendell and Mr. McGuire, employees of Respondent, observed this conduct. Mr. McGuire communicated this activity to Mr. Hopkins by saying: "I alerted John who was standing there watching me. I said, did you see that girl?" Mr. Hopkins monitored the contest with Mr. McGuire from the D.J. booth. Mr. Hopkins denies seeing the incident.

42. There were no obstructions between Mr. Paquette and the patrons who were present on the premises. Mr. Paquette was dancing on a slender platform approximately three feet above the floor, which is referred to as a "wall." The contest is known as the "Wall Dance" and is sanctioned and promoted by Respondent for the entertainment of the patrons.

43. During the final round of the contest, Mr. Paquette exposed his genitals on two separate occasions. Each time he exposed himself, there was a general elevation in the applause and noise that was made by the patrons observing the contest. There was sufficient lighting in the establishment directed at the contestants to illuminate the contestants so that they could be clearly seen. During the final round of the contest, Mr. Paquette pulled his shorts to the side voluntarily and no patron or other person assisted him.

44. Mr. Paquette was declared the winner among the male contestants. Mr. Paquette approached Mr. Hopkins after the contest and Mr. Hopkins provided Mr. Paquette with the cash prize of \$25.00.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 18B and 150B of the North Carolina General Statutes.

2. The Petitioner has the authority to revoke or suspend the permits of a permittee, fine a permittee, or both for violations of Chapter 18B of the North Carolina General Statutes or any regulation of the Commission by G.S. 18B-104 and G.S. 18B-203(12).

3. G.S. 18B-302(a)(1) states: "It shall be unlawful for any person to: (1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old;"

4. G.S. 18B-302(b)(1) states: "It shall be unlawful for: (1) a person less than 21 years old to purchase, to attempt to purchase or to possess malt beverages or unfortified wine;"

5. G.S. 18B-1005(a)(4) prohibits: "Any conduct or entertainment by any person whose private parts are exposed..."

6. 4 NCAC 2S .0216(a)(3) prohibits any person from displaying their genitals on the permittee's premises. The regulation is quoted in part as follows: "No permittee or his employee shall allow any person to...display...genitals."

7. G.S. 18B-901(c) establishes the factors that Petitioner may use to determine the suitability of a location for the sale of alcoholic beverages.

8. G.S. 18B-1005(a)(1) prohibits the permittee or his employee from knowingly allowing any activity which is otherwise prohibited by Chapter 18B of the North Carolina General Statutes.

9. 4 NCAC 2S .0233 prohibits the consumption of alcohol by underage persons on the premises and is quoted in part as follows: "(a) No permittee or his employees shall knowingly allow a person under the age of 21 to possess or consume any alcoholic beverages on the licensed premises. (b) It shall be the duty of the permittee and his employees to determine the age of any person consuming or possessing alcoholic beverages on the licensed premises."

10. 4 NCAC 2S .0212 prohibits the permittee from consuming alcoholic beverages on the licensed premises and further restricts the permittee from performing services of any nature while or after consuming alcoholic beverages.

11. 4 NCAC 2S .0201(a) requires that the permittee comply with all ABC statutes and Commission rules as an ongoing requirement for the privilege of maintaining ABC permits.

12. 4 NCAC 2S .0201(b) is quoted in part as follows: "The permittee shall ensure that the Commission's rules governing the sale, possession,...and consumption of alcoholic beverages on the licensed premises are adhered to by employees and patrons. Further, a permittee shall ensure that all Commission rules on the operation of the business with ABC permits are adhered to by employees and patrons. Failure to comply with the statutes or the rules of the Commission by permittees, employees and patrons may result in the suspension or revocation of all ABC permits held by a permittee." (emphasis added)

13. G.S. 18B-302(d)(1) establishes a defense to the sale of malt beverages and unfortified wine to anyone less than 21 years of age if such person produces a designated identification card "showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser;"

14. On the evenings of June 25 and June 26, 1993, Respondent sold malt beverages and unfortified wine to Steven Brian Stowe who at the time of the sale and consumption of these alcoholic beverages was a person less than 21 years of age, in violation of G.S. 18B-302(a)(1) and G.S. 18B-1005(a)(1).

15. At all times Steven Brian Stowe had a valid North Carolina driver's license to identify his age. He had been identified as a person of less than 21 years of age and yet, on six different occasions, Mr. Stowe made consecutive purchases from Respondent's employees, Ms. Joanna Sawyer and Ms. Donna Mitchell. The Respondent President, Mr. John Hopkins, was present on the premises and seated at the bar on the occasions of these purchases. Under these factual findings, the Respondent has violated 4 NCAC 2S .0233 by permitting Mr. Stowe to possess and consume alcoholic beverages on the licensed premises although Respondent's employee had determined that Mr. Stowe was less than 21 years of age. The knowledge of the Respondent's employee who determined that Mr. Stowe was less than 21 years of age must be, by law, imputed to the permittee.

16. Mr. Droke purchased, possessed and consumed four malt beverages on the evening of July 2, 1993 at a time when he was less than 21 years old. Purchases were made from Respondent's employees. The Respondent's President, Mr. John Hopkins, was present on the premises and seated at the bar on the occasions of these purchases. Under these factual findings, the Respondent has violated G.S. 18B-302(a)(1), G.S. 18B-302(b)(1), G.S. 18B-1005(a)(1) and 4 NCAC 2S .0233 by permitting Mr. Droke to purchase, possess and consume alcoholic beverages on the licensed premises because it is Respondent's duty to determine the correct legal age of the persons to whom the permittee serves alcoholic beverages. No evidence was offered by the Respondent as to whether or not Mr. Droke gained admission to the premises by the use of the false identification nor did Respondent dispute that the false identification did not resemble Mr. Droke.

17. On July 2, 1993, Steven Ragan possessed and consumed a malt beverage on Respondent's premises. He had a very youthful appearance and was 18 years old. Under these factual findings, the Respondent has violated G.S. 18B-302(b)(1), G.S. 18B-1005(a)(1) and 4 NCAC 2S .0233 by permitting Mr. Ragan to possess and consume alcoholic beverages on the licensed premises. Respondent's employees had the legal responsibility for determining Mr. Ragan's age and to prevent the underage consumption of malt beverages by this individual.

18. On July 2, 1993, Erin Brandon, age 18, was on Respondent's premises and had in her possession an alcoholic beverage. Ms. Brandon was stamped on the underside of her wrist indicating she was less than the legal drinking age. Under these factual findings, the Respondent has violated G.S. 18B-302(a)(1), G.S. 18B-1005(a)(1) and 4 NCAC 2S .0233 by permitting Ms. Brandon to possess an alcoholic beverage on the licensed premises. Respondent's employee had determined that Ms. Brandon was less than 21 years of age. The knowledge of the Respondent's employee who determined that Ms. Brandon was less than 21 years of age must be, by law, imputed to the permittee and Respondent's other employees.

19. During the evening of July 2, 1993, Amy Yvette Atkinson purchased from Respondent's employees two malt beverages; she possessed and consumed these malt beverages. She gained entrance to the Respondent's premises through a false identification card issued by Respondent but with no scrutiny or supervision in the means by which she obtained this identification. She was engaged in conversation with Mr. Hopkins at the bar at the time that she purchased and consumed a malt beverage. Under these factual findings, the Respondent has violated G.S. 18B-302(a)(1), G.S. 18B-302(b)(1), G.S. 18B-1005(a)(1) and 4 NCAC 2S .0233 by permitting Ms. Atkinson to purchase, possess and consume alcoholic beverages on the licensed premises under the lawful drinking age. It was Respondent's affirmative duty to ascertain Ms. Atkinson's correct age before selling and permitting her to consume alcoholic malt beverages.

20. On July 2, 1993, Mary Jackson, age 20, consumed a portion of a malt beverage on Respondent's premises. Ms. Atkinson had gained entrance to the premises by falsely representing that she was over the age of 21. Under these factual findings, the Respondent has violated G.S. 18B-302(b)(1), G.S. 18B-1005(a)(1) and 4 NCAC 2S .0233 by permitting Ms. Jackson to possess alcoholic beverages on the licensed premises at a time when she was less than 21 years of age.

21. On the morning of June 27, 1993, Mr. Paquette, while participating in the "Wall Dance" contest had his genitals exposed by an unidentified female patron who pulled down his shorts. Respondent and his employees who witnessed this activity are responsible under G.S. 18B-1005(a)(4) to prevent and prohibit any conduct and/or entertainment by persons whose private parts are exposed. 4 NCAC 2S .216(a)(3) prohibits any person from displaying genitals. Under 4 NCAC 2S .0201 the permittee is under a burden to be responsible for all patrons. By sponsoring and sanctioning such entertainment on Respondent's premises, Respondent must be held accountable for the incident. Respondent expressly warns contestants not to expose themselves but when the exposure happens, the permittee cannot ignore the conduct. Once the exposure occurs during a contests that the permittee sanctions, the Respondent becomes liable for the patron's conduct. The patron, in effect, becomes the agent of the Respondent.

22. On the evening of June 27, 1993, Mr. Paquette voluntarily exposed himself a second and third time in the presence of Respondent's employees and Respondent's President. Mr. McGuire and Mr. Brendell had actual knowledge of the first exposure and communicated this to Mr. Hopkins. At this point, they were

put on notice of the potential for this activity to be repeated although they may not have foreseen the exact manner in which it could have been repeated. The knowledge of the employees will be imputed to the Respondent. (See Fay v. Board of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 698 (1976), Dove v. North Carolina Board of Alcoholic Control, 37 N.C. App. 605, 608, 246 S.E.2d, 584 (1978). As a consequence, Respondent has violated G.S. 18B-1005(a)(4) and 4 NCAC 2S .0216(a)(3) by allowing and permitting Mr. Paquette to display his genitals on the permittee's premises.

23. On July 2, 1993, at approximately 11:30 p.m., Respondent's President, Mr. Hopkins, did consume alcoholic beverages on the licensed premises in violation of 4 NCAC 2S .0212(a)(3). This regulation prohibits the permittee from consuming alcoholic beverages. If the permittee consumes, he shall not perform any service of any nature while or after consuming alcoholic beverages. (emphasis added) Mr. Hopkins, on July 2, 1993, was talking to and communicating with his staff through radio transmitters and reviewing business papers on a clipboard. Mr. Hopkins, by consuming alcoholic beverages while performing services, is found in violation of 4 NCAC 2S .0212(a)(3).

24. Respondent's establishment is placed in an awkward position of having to admit minors into an establishment that primarily serves alcoholic beverages to those who are 21 years of age and slightly older. Although Respondent has attempted to inform its employees as to the ABC laws and to devise an identification system by stamping a patron's wrist, the methods employed did not satisfactorily prohibit the underage purchase and consumption of alcoholic beverages on this licensed premises.

25. Respondent has a policy to routinely admit young minors to his premises, some as young as 16 years old. Respondent cannot refuse to accept responsibility and accountability for Mr. Paquette's unlawful genital exposure. By conducting such a contest, particularly where young minors are present and then to later try to distance himself from the patron's and contestant's unlawful actions, by asserting Respondent lacks sufficient knowledge of the incident, is to abrogate responsibility for an event the Respondent created. The patron's indecent exposure was not an isolated event but was made with the knowledge of Respondent's employees and in furtherance of Respondent's business purpose.

26. Due to the inordinate number of underage drinking violations in this establishment on June 26, 27 and July 2, 1993, and due to Respondent's past violations and due to the indecent exposure incident that occurred in a contest promoted by Respondent and in the presence of young minors, the undersigned finds that a penalty of \$1,000.00 with a three year revocation of ABC permits with one year suspension after the completion of two years of active revocation (or a more severe sanction) is justified under the Findings of Fact and Conclusions of Law.

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

RECOMMENDED DECISION

The Chief Administrative Law Judge recommends to the Petitioner, ABC Commission, that all of Respondent's ABC permits, 29958A, On Premises Malt Beverage, and 29958C, Unfortified Wine, be revoked for a period of three years but that the last one year of the three year revocation be stayed upon the condition that Respondent not violate any of the ABC statutes or rules and that the Respondent pay a fine of \$1,000.00.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an

opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 24th day of January, 1994.

Julian Mann, III
Chief Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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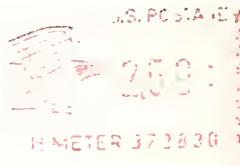
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