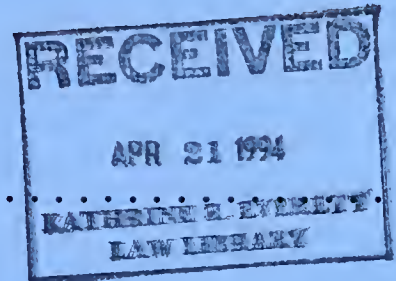


The **NORTH CAROLINA REGISTER**



IN THIS ISSUE

PROPOSED RULES

Environment, Health, and Natural Resources
Insurance
Labor
Landscape Architects, Board of
Plumbing, Heating and Fire Sprinkler Contractors
Practicing Psychologists, Board of
State Health Plan Purchasing Alliance Board
Transportation

RRC OBJECTIONS

CONTESTED CASE DECISIONS

ISSUE DATE: April 15, 1994

Volume 9 • Issue 2 • Pages 76 - 122



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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*This publication is printed on permanent,
acid-free paper in compliance with
G.S. 125-11.13.*

ISSUE CONTENTS

I. PROPOSED RULES

Environment, Health, and Natural Resources

DEM/Air Quality	80
Environmental Management	81
Wildlife Resources Commission	84

Independent Agencies

State Health Plan Purchasing Alliance Board	99
--	----

Insurance

Multiple Employer Welfare Arrangements	76
Special Services Division	76

Labor

OSHA	77
----------------	----

Licensing Boards

Landscape Architects, Board of	95
Plumbing, Heating & Fire Sprinkler Contractors, Board of	96
Practicing Psychologists, Board of	97

Transportation

Highways, Division of	85
Motor Vehicles, Division of	89

II. RRC OBJECTIONS 102

III. CONTESTED CASE DECISIONS

Index to ALJ Decisions	105
Text of Selected Decisions	
93 EDC 0234	108
93 CPS 0801	114

IV. CUMULATIVE INDEX 121

NORTH CAROLINA REGISTER

Publication Schedule

(April 1994 - January 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing 15 days from notice	* End of Required Comment Period 30 days from notice	Last Day to Submit to RRC	** Earliest Effective Date
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
9:5	06/01/94	05/10/94	05/17/94	06/16/94	07/01/94	07/20/94	09/01/94
9:6	06/15/94	05/24/94	06/01/94	06/30/94	07/15/94	07/20/94	09/01/94
9:7	07/01/94	06/10/94	06/17/94	07/18/94	08/01/94	08/22/94	10/01/94
9:8	07/15/94	06/23/94	06/30/94	08/01/94	08/15/94	08/22/94	10/01/94
9:9	08/01/94	07/11/94	07/18/94	08/16/94	08/31/94	09/20/94	11/01/94
9:10	08/15/94	07/25/94	08/01/94	08/30/94	09/14/94	09/20/94	11/01/94
9:11	09/01/94	08/11/94	08/18/94	09/16/94	10/03/94	10/20/94	12/01/94
9:12	09/15/94	08/24/94	08/31/94	09/30/94	10/17/94	10/20/94	12/01/94
9:13	10/03/94	09/12/94	09/19/94	10/18/94	11/02/94	11/21/94	01/01/95
9:14	10/14/94	09/23/94	09/30/94	10/31/94	11/14/94	11/21/94	01/01/95
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and 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.*

**TITLE 11 - DEPARTMENT OF
INSURANCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rule cited as 11 NCAC 13 .0518.

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

The public hearing will be conducted at 10:00 a.m. on May 5, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action: To set forth procedures for continuing education requirements for bail bondsmen.

Comment Procedures: Written comments may be sent to Fred Mohn at P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Fred Mohn at (919) 733-2200 or Ellen Sprenkel at (919) 733-4529.

**CHAPTER 13 - SPECIAL SERVICES
DIVISION**

**SECTION .0500 - BAIL BONDSMEN AND
RUNNERS**

.0518 CONTINUING EDUCATION

(a) Except as provided in Paragraphs (b) and (c) of this Rule, the license of any bail bondsman who fails to meet the minimum continuing education requirements of G.S. 58-71-71(b) is subject to suspension under G.S. 58-71-80.

(b) The Commissioner shall notify a bail bondsman who appears to have failed to meet the requirements of G.S. 58-71-71(b) that the bail bondsman's license will be suspended unless the bail bondsman shows that he has complied with the requirements within a 90-day period after receiving the notice. Notice shall be forwarded to the bail bondsman's address, as shown in the records of the Special Services Division, by certified mail. Ninety-three days after mailing such notice, if no affidavit is filed with the Department by the bail bondsman showing that the bail bondsman has complied with the requirements of G.S. 58-71-71(b), the bail bondsman's license shall be

suspended by order of the Commissioner.

(c) If the bail bondsman responds to the notice, the Department shall review all affidavits and other documents filed by the bail bondsman to determine whether the bail bondsman has complied with the requirements of G.S. 58-71-71(b) within the 90-day period. If the Commissioner determines that the bail bondsman is in compliance with G.S. 58-71-71(b), he shall enter an appropriate order. If the Commissioner determines that the bail bondsman has not shown compliance with G.S. 58-71-71(b) within the 90-day period, then the Commissioner shall enter an order suspending the bail bondsman's license.

Statutory Authority G.S. 58-2-40; 58-71-71(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to adopt rules cited as 11 NCAC 18 .0019 - .0021.

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

The public hearing will be conducted at 10:00 a.m. on May 5, 1994 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Action: Establishes further guidelines for annual certification of MEWAs.

Comment Procedures: Written comments may be sent to Walter James at P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Walter James at (919) 733-3284 or Ellen Sprenkel at (919) 733-4529.

**CHAPTER 18 - MULTIPLE EMPLOYER
WELFARE ARRANGEMENTS**

**.0019 "QUALIFIED ACTUARY";
MAXIMUM NET RETENTION
FILING**

(a) As used in this Rule and in 11 NCAC 18 .0020 and 11 NCAC 18 .0021, "qualified actuary" means an individual who is either an Associate or Fellow of the Society of Actuaries or a Member of

the American Academy of Actuaries and who has at least five years of actuarial experience with MEWAs.

(b) Every year each MEWA shall calculate its maximum net retention limit in accordance with 11 NCAC 18 .0018. This calculation must be performed before the anniversary date of the MEWA's stop-loss insurance contract and shall be filed, no later than 30 days before the anniversary date of the stop-loss insurance contract, with the Actuarial Services Division of the Department. This calculation shall include the numerical results of all steps in 11 NCAC 18 .0018 and shall be performed by a qualified actuary.

Statutory Authority G.S. 58-2-40; 58-49-40(c).

.0020 CERTIFICATION OF RESERVES FILING

Every year each MEWA shall file the following actuarial certifications executed by a qualified actuary in the following manner:

"I (Name of Qualified Actuary) am a qualified actuary as defined by 11 NCAC 18 .0019(a) and I have reviewed:"

- (1) 11 NCAC 18 .0015 titled, "Minimum Reserve Standards," and I certify that if the adequacy of the MEWA's reserves requires reserves in excess of the minimum standards described in 11 NCAC 18 .0016 and 11 NCAC 18 .0017, then such increased reserves will be held and considered the minimum reserves for (Name of MEWA).
- (2) 11 NCAC 18 .0016 titled, "Claim Reserves," and I certify that the MEWA's claim reserves are being calculated in an actuarially sound manner that produces reserves at least as great as those prescribed in 11 NCAC 18 .0016.
- (3) 11 NCAC 18 .0017 titled, "Premium Reserves," and I certify that the MEWA's premium reserves are being calculated in an actuarially sound manner that produces reserves at least as great as those prescribed in 11 NCAC 18 .0017.
- (4) 11 NCAC 18 .0018 titled, "Maximum Net Retention Standard," and I certify that the MEWA's maximum net retention limits are being calculated in an actuarially sound manner that produces maximum net retention limits no greater than those prescribed in 11 NCAC 18

.0018, unless the Commissioner of Insurance has approved such higher limits as described in 11 NCAC 18 .0018(d).

Statutory Authority G.S. 58-2-40; 58-49-40(c).

.0021 CERTIFICATION OF RATES FILING

Every year each MEWA shall file the following actuarial certification executed by a qualified actuary in the following manner:

"I (Name of Qualified Actuary) am a qualified actuary as defined in 11 NCAC 18 .0019(a) and I certify that the rates developed for (Name of MEWA) are calculated in an actuarially sound manner and that these rates are adequate, not excessive, and not unfairly discriminatory."

Statutory Authority G.S. 58-2-40; 58-49-40(c).

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 rule cited as 13 NCAC 07F .0101.

The proposed effective date of this action is July 31, 1994

The public hearing will be conducted at 10:00 a.m. on May 4, 1994 at the Seaboard Building Conference Room, 413 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: Federal law requires that the North Carolina Dept. of Labor, Division of Occupational Safety & Health adopt federal OSHA rules/standards, but in this case NCDOL/OSHA is adopting a more protective version of this Rule.

Comment Procedures: Persons wanting to present oral testimony at the hearing should provide a written summary of the proposed testimony to the Division three business days prior to the hearing date. Written comments will be accepted until May 18, 1994. Direct all correspondence to Jill

F. Cramer NCDOL/OSHA, 413 N. Salisbury St.,
Raleigh, NC 27603-5942.

CHAPTER 7 - OSHA

SUBCHAPTER 7F - STANDARDS

SECTION .0100 - GENERAL INDUSTRY STANDARDS

.0101 GENERAL INDUSTRY

(a) The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are incorporated by reference except ~~that~~ as follows:

- (1) ~~within~~ Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, 29 CFR 1910.120(q)(6) is amended by adding a new level of training:

"(vi) *First responder operations plus level.* First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks for purposes of stopping the release where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and in addition shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

- (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
- (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;

- (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
- (D) Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
- (E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."

(1A) Subpart R -- Special Industries -- incorporation by reference of final rule for 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution, including Appendices A through E, published in 59 FR (January 31, 1994) pages 4437 - 4475 and adopted by the North Carolina Department of Labor on July 31, 1994, except that 29 CFR 1910.269(g)(1) through 1910.269(g)(2)(v) is amended to read as follows:

"(g) *Personal protective equipment.* (1) *General.* Personal protective equipment shall meet the requirements of Subpart I of this Part.

(1a) *Definitions.* (i) 'Fall arrest equipment' means any equipment that halts the accidental fall of the user and shall consist of the following: an anchorage, fall arrester, lanyard, shock (energy) absorber, body harness, retractable lifeline, and a vertical or horizontal lifeline which is assembled for the purpose of arresting any accidental fall of its user.

(ii) 'Fall protection equipment' means any equipment that either prevents the user from moving into an area that presents the hazard of falling or arrests any fall.

(iii) 'Travel restricting

equipment' means any equipment that prevents the user from moving into an area that presents the hazard of falling and may consist of some or all of the following: an anchorage, lanyard, body belt, body harness, and a vertical or horizontal lifeline which is assembled for the purpose of preventing its user from moving into a fall hazard area.

(iv) 'Work positioning equipment' means any equipment that provides a primary means of support with relative comfort for its user at the workplace or workstation.

(2) Fall protection. (i) Personal fall arrest equipment shall meet the requirements of ANSI Z359.1 (1992).

(ii) Body belts and safety straps for work positioning shall meet the requirements of §1926.959 of this Chapter.

(iii) Body belts, safety straps, lanyards, lifelines, and body harnesses shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment shall not be used.

(iv) Lifelines shall be protected against being cut or abraded.

(v) Fall arrest equipment meeting the requirements of ANSI Z359.1 (1992) shall be in constant use with any work positioning or travel restricting equipment in use by employees working at elevated locations more than 4 feet (1.2 m) above the ground on metal, concrete and/or wood poles, lattice and non-lattice towers, substation structures, within the baskets of all extensible and articulating boomed aerial equipment, and in all generating stations. Anchorages and anchor points, and vertical and horizontal lifelines shall have a tensile strength capable of supporting a static load of five thousand

(5,000) pounds." 29 CFR 1910.269 as amended is effective on July 31, 1994, except for 29 CFR 1910.269(a)(2) Training which is effective on January 31, 1995.

Editor's Note: (2) *Proposed text was published in Volume 8, Issue 18 of the North Carolina Register.*

(b) The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:

(1) Subpart H -- Hazardous Materials -- technical corrections at 1910.109(g)(4)(v), Explosives and Blasting Agents, published in 58 FR (March 29, 1993) page 16496 and adopted by the North Carolina Department of Labor on December 31, 1993;

(2) Subpart H -- Hazardous Materials -- technical corrections at 1910.110(d)(11), Storage and Handling of Liquefied Liquefied Petroleum Gases, published in 58 FR (March 19, 1993) page 15089 and adopted by the North Carolina Department of Labor on December 31, 1993;

(3) Subpart I -- Personal Protective Equipment -- revisions to 1910.137, Electrical Protective Equipment, published in 59 FR (January 31, 1994) pages 4435 - 4437 and adopted by the North Carolina Department of Labor on July 31, 1994;

(4) ~~(3)~~ Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit-Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993);

(5) Subpart S -- Electrical -- amendment to citation authority for Subpart S of 1910, and amendments to Notes 2 and 3 for 1910.133(c)(1) and the Note for 1910.133(c)(3), published in 59 FR (January 31, 1994) pages 4475 - 4576

and adopted by the North Carolina Department of Labor on July 31, 1994;

(6) (4) Subpart Z -- Toxic and Hazardous Substances:

- (A) Revocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338 - 35351 and adopted by the North Carolina Department of Labor on September 24, 1993.
- (B) Correction to Table Z-3 Mineral Dust at 1910.1000, Air Contaminants, published in 58 FR (July 27, 1993) page 40191 and adopted by the North Carolina Department of Labor on December 31, 1993.
- (C) Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

(c) Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A .0302 for the costs involved and from whom copies may be obtained

Statutory Authority G.S. 95-131; 95-133; 150B-21.6.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR-DEM/Air Quality intends to amend rules cited as 15A NCAC 2D .1301, .1302 and .1304.

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

The public hearing will be conducted at 7:00 p.m. on May 16, 1994 at the Forsyth County Public Library Auditorium, 660 West 5th Street, Winston-Salem, NC.

Reason for Proposed Action: To correct a reference to remove Greensboro/Winston-Salem/High Point MSA from the oxygenated gasoline requirement to establish a triggering mechanism for maintenance areas.

Comment Procedures: All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until June 15, 1994, to receive additional written statements.

Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:

Mr. Thomas C. Allen
Division of Environmental Management
P.O. Box 29535
Raleigh, North Carolina 27626-0535
(919) 733-1489

Fiscal Note: These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on March 24, 1994, OSBM on March 24, 1994, N.C. League of Municipalities on March 4, 1994, and N.C. Association of County Commissioners on March 4, 1994.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1300 - OXYGENATED GASOLINE STANDARD

.1301 PURPOSE

This Section sets forth oxygenated gasoline standards in areas where an oxygenated gasoline program is implemented pursuant to State law for all gasoline sold wholesale for use or for all gasoline sold retail, offered for use, dispensed, or otherwise provided for use in any spark-ignition engine other than aircraft in the areas defined in Rule .1302(a) of this Section during the time periods defined in Rule .1302(c)(4) of this Section.

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

215.107(a)(3),(7).

.1302 APPLICABILITY

(a) This Section applies to gasoline identified in Rule .1301 of this Section during the time period described in Paragraph ~~(b)~~ (c) of this Rule in ~~the two areas identified as follows:~~

- (1) the Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties; and
- (2) ~~the Greensboro/Winston-Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties.~~

(b) This Section shall apply to gasoline identified in Rule .1301 of this Section during the time period described in Paragraph (c) of this Rule in any of the following areas, and in that area only, when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for carbon monoxide:

- (1) the Greensboro/Winston-Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties; or
- (2) the Charlotte/Gastonia/Rock Hill Metropolitan Statistical Area consisting of Cabarrus, Gaston, Mecklenburg, and Union Counties.

Violations of the ambient air quality standard for carbon monoxide shall be determined in accordance with 40 CFR 50.8.

~~(b)(c)~~ This Section applies to gasoline identified in Rule .1301 of this Section and in the counties identified in Paragraph (a) or (b) of this Rule for the four-month period beginning November 1 and running through the last day of February of the following year. The first such period begins November 1, 1992, for areas identified in Paragraph (a) of this Rule. For areas identified in Paragraph (b) of this Rule, the first such period shall begin on the first November 1 following the notice of violation in the North Carolina Register.

~~(e)(d)~~ Gasoline in storage:

- (1) within the counties identified in Paragraph (a) of this Rule prior to November 1; or
- (2) within the counties identified in Paragraph (b) of this Rule prior to November 1 of the year in which this Section goes into effect

at a dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempted from Rule .1304 of this Section, but any gasoline supplied to the facility during the period identified in Paragraph (b) or (c) of this Rule shall comply with Rule .1304 of this Section.

Statutory Authority G.S.143-215.3(a)(1); 143-215.107(a)(3),(7).

.1304 OXYGEN CONTENT STANDARD

(a) Gasoline With the exception in Paragraph (b) of this Rule, gasoline to which this Section applies shall have an oxygen content of not less than 2.7 percent by weight during the period defined in Paragraph ~~(b)~~(c) of Rule .1302 of this Section.

(b) After October 31, 1994, if the Director notices in the North Carolina Register that the Raleigh/Durham Metropolitan Statistical Area is in violation of the ambient air quality standard for carbon monoxide, gasoline to which this Section applies sold in the Raleigh/Durham Metropolitan Statistical Area shall have an oxygen content of not less than 3.1 percent by weight during the period defined in Paragraph (c) of Rule .1302 of this Section. The first such period shall begin on the first November 1 following the notice of violation in the North Carolina Register. Violations of the ambient air quality standard for carbon monoxide shall be determined in accordance with 40 CFR 50.8.

Statutory Authority G.S.143-215.3(a)(1); 143-215.107(a)(3),(7).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Division of Environmental Management intends to amend rule cited as 15A NCAC 2L .0202.

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

The public hearing will be conducted at 7:00 p.m. on May 12, 1994 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh NC 27604.

Reason for Proposed Action: Will provide

groundwater standards for eight (8) substances. These chemicals are Boron, Butylbenzyl phthalate, Di-n-Octyl phthalate, Diundecyl phthalate (Santicizer 711), Fluorene, Naphthalene, Phenanthrene, and Phenol. Action to consider adoption of standards for these eight substances as groundwater standards is necessary to satisfy requirements of 15A NCAC 2L .0202(c).

Comment Procedures: Interested persons may contact David Hance at (919) 733-3221 for more information. Oral comments may be made during the hearing. All written comments must be submitted by May 16, 1994. Written copies of oral statements exceeding three minutes are requested. Oral statements may be limited at the discretion of the hearing officer. Mail comments to: David Hance, DEHNR-DEM Groundwater Section, P.O. Box 29535, Raleigh, N. C. 27626-0535.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2L - GROUNDWATER CLASSIFICATION AND STANDARDS

SECTION .0200 - CLASSIFICATION AND GROUNDWATER QUALITY STANDARDS

.0202 GROUNDWATER QUALITY STANDARDS

(a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.

(b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule shall be as listed, except that:

- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit shall constitute a violation of the standard.
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of

Epidemiology and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c) and (g) of this Rule. In the absence of information to the contrary, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.

- (3) Where naturally occurring substances exceed the established standard, the standard will be the naturally occurring concentration as determined by the Director.

(c) Except for tracers used in concentrations which have been determined by the Division of Epidemiology to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in detectable concentrations in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for an unspecified substance, however, the burden of demonstrating those concentrations of the substance which correspond to the levels described in Paragraph (d) of this Rule rests with the petitioner. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with the procedure prescribed in Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.

(d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the lesser of:

- (1) Systemic threshold concentration calculated as follows: $[\text{Reference Dose (mg/kg/day)} \times 70 \text{ kg (adult body weight)} \times \text{Relative Source Contribution (.10 for inorganics; .20 for organics)}] / [2 \text{ liters/day (avg. water consumption)}]$;
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1×10^{-6} ;
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) Maximum contaminant level; or
- (6) National secondary drinking water

standard.

(e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.

- (1) Integrated Risk Information System (U.S. EPA).
- (2) Health Advisories (U.S. EPA Office of Drinking Water).
- (3) Other health risk assessment data published by U.S. EPA.
- (4) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(f) Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a biennial basis. Appropriate modifications to established standards will be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

(g) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in milligrams per liter of any constituent in a dissolved, colloidal or particulate form which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures.

- (1) acetone: 0.7
- (2) acrylamide (propenamide): 0.00001
- (3) arsenic: 0.05
- (4) barium: 2.0
- (5) benzene: 0.001
- (6) boron: 0.32
- (6) (7) bromoform (tribromomethane): 0.00019
- (8) butylbenzyl phthalate: 0.10
- (7) (9) cadmium: 0.005
- (8) (10) carbofuran: 0.036
- (9) (11) carbon tetrachloride: 0.0003
- (10) (12) chlordane: 2.7×10^{-5}
- (11) (13) chloride: 250.0
- (12) (14) chlorobenzene: 0.05
- (13) (15) chloroform (trichloromethane): 0.00019
- (14) (16) 2-chlorophenol: 0.0001
- (15) (17) chromium: 0.05
- (16) (18) cis-1,2-dichloroethene: 0.07
- (17) (19) coliform organisms (total): 1 per 100 milliliters

- (18) (20) color: 15 color units
- (19) (21) copper: 1.0
- (20) (22) cyanide: 0.154
- (21) (23) 2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07
- (22) (24) 1,2-dibromo-3-chloropropane: 2.5×10^{-5}
- (23) (25) dichlorodifluoromethane (Freon-12; Halon): 1.4
- (24) (26) 1,1 dichloroethane: 0.7
- (25) (27) 1,2-dichloroethane (ethylene dichloride): 0.00038
- (26) (28) 1,1-dichloroethylene (vinylidene chloride): 0.007
- (27) (29) 1,2-dichloropropane: 0.00056
- (28) (30) di-n-butyl (or dibutyl) phthalate (DBP): 0.7
- (29) (31) diethylphthalate (DEP): 5.0
- (30) (32) di(2-ethylhexyl) phthalate (DEHP): 0.003
- (33) di-n-octyl phthalate: 0.14
- (31) (34) p-dioxane (1,4-diethylene dioxide): 0.007
- (32) (35) dioxin: 2.2×10^{-10}
- (33) (36) dissolved solids (total): 500
- (37) diundecyl phthalate (Santicizer 711): 0.14
- (34) (38) endrin: 0.002
- (35) (39) epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354
- (36) (40) ethylbenzene: 0.029
- (37) (41) ethylene dibromide (EDB; 1,2-dibromoethane): 4.0×10^{-7}
- (38) (42) ethylene glycol: 7.0
- (43) fluorene: 0.28
- (39) (44) fluoride: 2.0
- (40) (45) foaming agents: 0.5
- (41) (46) gross alpha (adjusted)particle activity (excluding radium-226 and uranium): 15 pCi/l
- (42) (47) heptachlor: 8.0×10^{-6}
- (43) (48) heptachlor epoxide: 4.0×10^{-6}
- (44) (49) heptane: 2.1
- (45) (50) hexachlorobenzene (perchlorobenzene): 0.00002
- (46) (51) n-hexane: 0.42
- (47) (52) iron: 0.3
- (48) (53) lead: 0.015
- (49) (54) lindane: 2.0×10^{-4}
- (50) (55) manganese: 0.05
- (51) (56) mercury: 0.0011
- (52) (57) metadichlorobenzene (1,3-dichlorobenzene): 0.62
- (53) (58) methoxychlor: 0.035
- (54) (59) methylene chloride

- (dichloromethane): 0.005
- (55) (60) methyl ethyl ketone (MEK; 2-butanone): 0.17
- (56) (61) methyl tert-butyl ether (MTBE): 0.2
- (62) naphthalene: 0.021
- (57) (63) nickel: 0.1
- (58) (64) nitrate: (as N) 10.0
- (59) (65) nitrite: (as N) 1.0
- (60) (66) orthodichlorobenzene (1,2-dichlorobenzene): 0.62
- (61) (67) oxamyl: 0.175
- (62) (68) paradichlorobenzene (1,4-dichlorobenzene): 0.075
- (63) (69) pentachlorophenol: 0.0003
- (64) (70) Ph: 6.5 - 8.5
- (71) phenanthrene: 0.21
- (72) phenol: 0.30
- (65) (73) radium-226 and radium-228 (combined): 5 Pci/l
- (66) (74) selenium: 0.05
- (67) (75) silver: 0.018
- (68) (76) styrene (ethenylbenzene): 0.1
- (69) (77) sulfate: 250.0
- (70) (78) tetrachloroethylene (perchloroethylene; PCE): 0.0007
- (71) (79) toluene (methylbenzene): 1.0
- (72) (80) toxaphene: 3.1×10^{-5}
- (73) (81) 2, 4, 5,-TP (Silvex): 0.05
- (74) (82) trans-1,2-dichloroethene: 0.07
- (75) (83) 1,1,1-trichloroethane (methyl chloroform): 0.2
- (76) (84) trichloroethylene (TCE): 0.0028
- (77) (85) trichlorofluoromethane: 2.1
- (78) (86) vinyl chloride (chloroethylene): 1.5×10^{-5}
- (79) (87) xylenes (o-, m-, and p-): 0.53
- (80) (88) zinc: 2.1

(h) Class GSA Standards. The standards for this class shall be the same as those for Class GA except as follows:

- (1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration.
- (2) total dissolved solids: 1000 mg/l.

(i) Class GC Waters.

- (1) The concentrations of substances which, at the time of classification exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within

- (2) the boundary of the area classified GC. The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.
- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.

Statutory Authority G.S. 143-214.1; 143B-282(2).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10C .0302.

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

The public hearing will be conducted at 10:00 a.m. on May 9, 1994 at the Archdale Building, 3rd Floor Conference Room, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

Reason for Proposed Action: To prohibit the taking of spotted (speckled) sea trout with special fishing devices in inland waters.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from April 15, 1994 to May 16, 1994. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0300 - GAME FISH

.0302 MANNER OF TAKING
INLAND GAME FISHES

Except as provided below, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of licensed special devices for taking nongame fishes from inland fishing waters as authorized by 15A NCAC 10C .0407 shall be immediately returned to the water unharmed, ~~except that spotted sea trout may be retained without limit.~~

Statutory Authority G.S. 113-134; 113-273; 113-292; 113-302.

TITLE 19A - DEPARTMENT OF
TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rule cited as 19A NCAC 2B .0221.

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

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): A demand for a public hearing must be made in writing and mailed to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611. The demand must be received within 15 days of this Notice.

Reason for Proposed Action: Amendments increase the distances from an interchange that facilities may be located to qualify for erection of General Motorist Services signs.

Comment Procedures: Any interested person may submit written comments on the proposed rule by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611 within 30 days after the proposed rule is published or until the date of any public hearing

held on the proposed rule, whichever is longer.

CHAPTER 2 - DIVISION OF HIGHWAYS

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0200 - TRAFFIC ENGINEERING

.0221 GENERAL MOTORIST SERVICES
SIGNS

(a) General Motorist Services Signs mean signs that provide travelers with directional information for essential motorist services. The signs carry word legends GAS, DIESEL, LP (~~PROPANE~~) GAS, FOOD, LODGING, PHONE, HOSPITAL, and TOURIST INFORMATION CENTER with appropriate directional legend, and the exit number where applicable. The cost associated with General Motorist Services Signs is the responsibility of the Department of Transportation.

(b) Specific Services Signs mean signs erected under the Specific Information Signing Program as described in G.S. 136-140.7. These signs provide travelers with business identification and directional information for essential motorist services. The signs carry word legends GAS, FOOD, LODGING and CAMPING with appropriate directional legend, the exit number where applicable, and one or more business logos. The cost associated with Specific Services Signs is borne by the businesses whose logos are shown on the signs through initial and annual fees paid to the Department of Transportation.

(c) ~~State Rural Primary System.~~ Signing for general motorist services shall be installed only on rural fully controlled access highways and shall be in conformance with the "Manual on Uniform Traffic Control Devices." Requests for signing for general motorist services shall be directed to the highway division engineer having jurisdiction in the county in which the sign is proposed. If approved, services signing shall be installed and maintained by the Department of Transportation.

(d) General Requirements for All Services. The requirements in this Paragraph shall be applied in determining the placement of service signs on the ~~interstate or rural~~ fully controlled access highways. Service signs shall be erected only at grade separated interchanges. A fully controlled access highway shall have neither a minimum length requirement nor minimum number of interchanges requirement to qualify for erection of service signs. A facility shall meet the specific requirements for signs in Paragraph (e). It shall have an outside coin-operated telephone in the immediate

vicinity of the business (within the intersection area, at an adjacent business or across the road), which is accessible. A business phone at an adjacent business is not a public telephone for a particular applicant business. The maximum distance that a "Gas", "Diesel", "LP (PROPANE) Gas", "Food", or "Lodging" service can be located from the facility shall not exceed ~~one mile, with the maximum distances being three miles for "Food" and "Lodging", and five miles for "Camping",~~ three miles in either direction via an all-weather road. Where no qualifying services exist within three miles, the maximum distance may be increased to six miles, provided the total travel distance to the business and return to the interchange does not exceed 12 miles. When the nearest qualifying service is located more than three miles from the facility, the distance to the service shall be shown on the service sign at the ramp terminal. The maximum distance for "Camping" service shall not exceed 10 miles. Said distances shall be measured from the point on the interchange crossroad, coincident with the centerline of the facility route median, along the roadways to the respective motorist service. The point to be measured to for each business is a point on the roadway that is perpendicular to the corner of the nearest wall of the business to the interchange. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms, etc.) whether or not attached to the main building are not to be used for the purposes of measuring. If the office (main building) of a business is located more than 0.2 mile from a public road on a private road or drive, the distance to the office along the said drive/road shall be included in the overall distance measured to determine whether or not the business qualifies for business signing. The office shall be presumed to be at the place where the services are provided.

(e) Specific Requirements for Erection of General Motorist Services Signs:

- (1) Gas, Diesel, LP (PROPANE) Gas, and Associated Services. Criteria for erection of a Gas service sign, a Diesel service sign, or an LP (PROPANE) Gas Service sign shall include:
 - (A) appropriate licensing to operate as required by law;
 - (B) vehicle services for fuel, motor oil, tire repair (by an employee) and water;
 - (C) restroom facilities and drinking water suitable for public use;

- (D) an on-premise attendant to collect monies, make change, and make or arrange for tire repairs; and
 - (E) year-round operation at least 16 continuous hours per day, 7 days a week.
- (2) Food. Criteria for erection of a Food service sign shall include:
 - (A) appropriate licensing to operate as required by law, and a permit to operate by the health department;
 - (B) year-round operation at least 12 continuous hours per day to serve three meals a day (sandwich type entrees may be considered a meal) (breakfast, lunch, supper), 7 days a week;
 - (C) indoor seating for at least 20 persons; and
 - (D) public restroom facilities.
 - (3) Lodging. Criteria for erection of a Lodging service sign shall include:
 - (A) appropriate licensing to operate as required by law, and a permit to operate by the health department;
 - (B) sleeping accommodations consisting of a minimum of 10 units, each including bathroom and sleeping rooms;
 - (C) off-street vehicle parking for each lodging room for rent; and
 - (D) year-round operation.
 - (4) Camping. Criteria for erection of a Camping service sign shall include:
 - (A) appropriate licensing to operate as required by law;
 - (B) meeting all state and county health and sanitation codes, and having water and sewer systems which have been duly inspected and approved by the local health authority. The operator shall present evidence of such inspection and approval;
 - (C) at least 10 campsites with accommodations for all types of travel-trailers, tents and camping vehicles;
 - (D) parking accommodations to meet current demand;
 - (E) continuous operation, 7 days a week during business season.

A business sign shall be removed or masked by the Department during off seasons, if the campground is operated on a seasonal basis.

- (5) Phone. Signs may be posted for a phone location only in respect to outdoor telephone booths where service is available on a twenty-four hour basis.
 - (6) Hospital. Hospital signs shall consist of the word "Hospital" along the main roadway and the blue "H" at the end of the ramp. The blue "H" shall be used to trailblaze from the ramp terminal to the hospital where needed. The intent of providing "Hospital" signs along interstate or controlled access highways is to direct unfamiliar motorists to a hospital in case there is a need for emergency medical services. The blue "Hospital" sign shall be used on the interstate or controlled access highways. These hospital signs shall be used only for hospitals equipped to handle emergency cases with a physician on duty 24 hours each day and within a practical distance from the interchange. A blue sign showing the name of the hospital at the end of the ramp along with the proper directional arrow may be provided when a traffic engineering investigation has shown the need. Trailblazer signs where necessary shall mark the route to the hospital using the blue "H". Use of the name of the hospital on green directional signs along conventional (non-interstate or non-controlled access) type streets and roads when a traffic engineering investigation has shown they are needed may be permitted. These green directional signs apply only to those hospitals which do not provide the 24-hour emergency service.
 - (7) Service signs shall not be erected on non-controlled or partially controlled access facilities or at locations within or near municipalities where it is obvious to the motorist that services are available.
- (f) Tourist Information Center. Tourist information center service signing may be approved and installed by the Department of Transportation when the following conditions are met:
- (1) The motorist using the highway in a particular direction must be able to leave and return to the highway via the same interchange and continue in the same direction of travel.
 - (2) The service must be located in a rest area on the freeway or within one mile of the interchange off ramp and on a direct route from the freeway.
 - (3) The service must operate continuously for at least eight hours per day, seven days per week, and 360 days per year.
 - (4) At least one separate and trained attendant with knowledge of tourist facilities in the state shall be on duty to service visitors during all hours of operation.
 - (5) The facility must have available at no charge to visitors complete information on tourist facilities in the state; such as lodging, auto service, food, medical, recreational, historical and scenic sites; and it must also be readily available when attendant is off duty.
 - (6) The service must be housed in a separated area from other facilities in an appropriate building to provide an area, heated in winter and cooled in summer, of not less than 625 square feet of floor area for displays and lounge devoted for providing this service.
 - (7) The service must have at least one 50 pocket rack for noncommercial public service materials and displays.
 - (8) The service must have rest room facilities available at no cost to the visitor and designed for use by handicapped individuals.
 - (9) The service must have drinking water approved by appropriate local authority.
 - (10) The service must have a public telephone designed for use by handicapped individuals.
 - (11) The service must have off-street parking at no cost to the motorist and must have curb cuts and ramps for the handicapped.
 - (12) Any displays, literature, magazines, etc., that would be judged by the Department to be offensive to visitors with children must not be readily visible.
 - (13) The service must provide designated facilities for pets.
 - (14) The name of the operating agency, community, group or enterprise shall not appear in the legend of any sign.
- (g) Removal of General Motorist Services Signs.
- (1) If municipal limits are revised so that

between the previous interchange and 800 feet in advance of the exit direction sign for the interchange from which the services are available. There shall be at least 800 feet spacing between the panels and other signs. In the direction of traffic, the successive panels shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order. A combination type panel may be used in remote rural areas of the Interstate System, or other fully controlled access highway and when space does not permit all signs and only two of each type of service is available at the location. A maximum of three business signs may appear below each respective service on a combination type panel. If all four services are available, "GAS" and "FOOD" shall be combined on one sign, and "LODGING" and "CAMPING" shall be combined on one sign. When the number of business facilities at a rural interchange are increased to more than three for one or more services, existing combination service business signing must be removed and replaced with sign panels, dedicated to each service. If the spacing limitations prohibit the erection of Specific Information Panels for all of the types of services available, preference shall be given to "GAS", "FOOD", "LODGING" or "CAMPING" services in that order. No panels shall be erected where minimum spacing limitations cannot be met.

If a panel(s) cannot be erected due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected below existing sign(s). Not more than three services may be erected below an existing sign.

- (5) On each exit ramp, a ramp panel for the qualified type of motorist service may be erected.

If all of the qualified services are visible from the exit ramp terminal, ramp panels are not required.

- (6) The ramp panel shall be erected as detailed on the signing plans for the interchange. If conditions permit, the successive panels along the ramp in the direction of traffic shall be those for "CAMPING", "LODGING", "FOOD", and "GAS" in that order.
- (7) If there is insufficient space on the ramp or the mainline for all the panels, priority

shall be given to "GAS", "FOOD", "LODGING", then "CAMPING" services in that order. If panel(s) cannot be erected on a ramp due to spacing limitations, a supplemental service sign, which lists the additional services available, may be erected.

- (8) Panels shall not be erected at an interchange where the motorist cannot conveniently re-enter the freeway and continue in the same direction of travel. ~~Panels shall not be erected at any interchange with another controlled access facility.~~

Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Transportation, Division of Motor Vehicles, School Bus and Traffic Safety Section intends to amend rules cited as 19A NCAC 03G .0207; 03I .0202, .0307, .0501, .0503, .0601, .0602, .0701 and .0703.

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

The public hearing will be conducted at 1:00 p.m. - 3:00 p.m. on May 4, 1994 at the Division of Motor Vehicles Building, Annex Room 201 (Conference Room), 1100 New Bern Avenue, Raleigh, NC 27697.

Reason for Proposed Action:

19A NCAC 03G .0207 - The commercial driver license is to go to a five-year renewal cycle. These requirements for school bus driver certification are tied to the CDL cycle. The transition period will entail CDLs of a minimum of three years' and a maximum of seven years' validity. The proposed formulation posits per-year requirements which meet any eventuality.

19A NCAC 03I .0202 - This item adds one requirement for obtaining an original Commercial Driver Training School license. This should help the schools meet their obligations before they have an emergency.

19A NCAC 03I .0307 - This addition to (1)(b) requires that a person taking driver training in a

Commercial Driver Training School be covered by a permit while operating the driver training car. The addition to (2) makes more specific that a person with a learner's permit has the book knowledge necessary, needs only in-car physical driving practice, and cannot be required by a school to pay money unnecessarily.

19A NCAC 03I .0501 & .0503 - *These changes stiffen the requirements for certification as a private commercial driver training instructor, requiring a cleaner driving record for a longer period of time. They also would require a criminal check.*

19A NCAC 03I .0601 - .0602 - *Strictly speaking, these amendments represent no change at all. The wording of the proposal is the same; it is merely shifted from .0602 to .0601, as the more appropriate location for the statement. The component parts of .0602 are re-lettered/ re-numbered to reflect the removal of former (b).*

19A NCAC 03I .0701 & .0703 - *The change in .0701 doubles the face value of the bond covering a commercial driver training school against liability. Adding the city to the address advertized will aid the consumer in deciding his costs of travel before signing with the school.*

Comment Procedures: *Interested persons may pre-register to speak at the public hearing by contacting Mark Fountain, NC DMV, School Bus and Traffic Safety Section, 1100 New Bern Avenue, Raleigh, N. C. 27697 (919) 733-3046 no later than two days prior to the hearing. A 10-minute speaking time will be observed. Written comments will also be accepted and should be sent to Mr. Fountain at the above address no later than May 16, 1994.*

CHAPTER 3 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 3G - SCHOOL BUS AND TRAFFIC SAFETY SECTION

SECTION .0200 - SCHOOL BUS DRIVER TRAINING

.0207 RENEWAL OF CERTIFICATION

Every driver must be re-certified at the time of the expiration of his Commercial Driver License every four years upon passing the three written tests (general knowledge, passenger transport, and air brakes), a pre-trip test, a road test or route observation, the three road tests (pre trip inspec-

tion, basic skills, and road), and an eye test. A driver may be exempted from the written tests, provided he has accumulated no more than three points on his driving record ~~a driving record clear of any conviction for a moving violation~~ since his last certification and has had at least one hour four hours of in-service training for each year since his last certification. A driver whose certification expires may be re-certified within thirty days in the same manner as though his certification had not expired. Any driver whose certification expires for more than thirty days may be re-certified within the next year four years following the expiration upon passing the three written tests (general knowledge, passenger transport, and air brakes), the three skills road tests (pre-trip inspection, basic skills, and road), and an eye test. If more than one year has four years have elapsed since the expiration of the most recent certification, the applicant must complete the full training course required of a beginning driver.

Statutory Authority G.S. 20-39(b); 20-218.

SUBCHAPTER 3I - RULES AND REGULATIONS GOVERNING THE LICENSING OF COMMERCIAL DRIVER TRAINING SCHOOLS AND INSTRUCTIONS

SECTION .0200 - REQUIREMENTS AND APPLICATIONS FOR COMMERCIAL DRIVER TRAINING SCHOOLS

.0202 ORIGINAL APPLICATION

Each original application for a commercial driver training school license shall consist of the following:

- (1) Application for license;
- (2) Personal history statement (Form SBTS-601, available from the School Bus and Traffic Safety Section) of owner-operator or manager;
- (3) Proposed plan of operation;
- (4) Proof of liability insurance;
- (5) Sample copies of contracts;
- (6) A check or money order in the amount of forty dollars (\$40.00). This fee is due for both original and renewal applications for license;
- (7) Certificate of assumed name;
- (8) Surety Bond;
- (9) A report from the appropriate agency indicating that the location or locations meet fire safety standards;

- (10) A copy of the deed, lease, or other legal instruments authorizing the school to occupy such locations;
- (11) List of fees for all services offered by the school; ~~and~~;
- (12) A copy of lease agreement if leasing vehicles; and
- (13) A copy of the business insurance covering injury to a student.

Statutory Authority G.S. 20-322 through 20-324.

**SECTION .0300 - SCHOOL LOCATION:
PHYSICAL FACILITIES: AND
COURSES OF INSTRUCTION**

.0307 COURSES OF INSTRUCTION

Commercial driver training schools are authorized to teach the following courses:

- (1) For unlicensed persons 18 years of age or older, a course as follows:
 - (a) Classroom Instruction. A minimum of six hours, including (but not limited to) rules of the road and other laws affecting the operation of motor vehicles, safe driving practices, pedestrian safety, and the general responsibilities of the driver.
 - (b) Behind-the-Wheel Instruction. A minimum of six hours, including instruction and practice in all the basic physical skills necessary for proper control of a motor vehicle in all normal driving situations, such as starting, stopping, steering and turning, controlling the vehicle in traffic, backing, and parking. A valid learner's permit issued by the Driver License Section of the Division is required.
 - (c) A person holding a valid learner's permit issued by the Driver License Section of the Division shall not be required to take the six hours of classroom instruction set forth in (1)(a) of this Rule.
 - (d) A person holding a valid learner's permit or driver's license issued by the Driver License Section of the Division may contract for any portion of the six-hour behind-the-wheel instruction.
- (2) For licensed persons a course for purposes of driver improvement, such as improving their knowledge and skill in the operation of a motor vehicle. A person holding a valid learner's permit issued by

- the Driver License Section of the Division shall not be required to take the six hours of classroom instruction.
- (3) For unlicensed persons under the age of 18 years, a course which must be approved by the Commissioner and the State Superintendent of Public Instruction as follows:
 - (a) Classroom Instruction shall not include workbook assignments or other work out of the presence of an instructor. A minimum of 30 hours shall be taught, consisting of instruction in:
 - (i) highway transportation: its social and economic influence upon life in America;
 - (ii) drivers: their physical and mental characteristics and how their capabilities and limitations influence the traffic scene;
 - (iii) the automobile: its construction, maintenance, and safe operation;
 - (iv) traffic law and enforcement: laws of nature and man-made laws; and their relationship to traffic safety;
 - (v) pedestrians and bicycles: their influence upon the traffic scene;
 - (vi) engineering: its influence upon automobiles, highways, traffic controls, and people;
 - (vii) driving while impaired: six hours of instruction on the effects of drinking upon driving and upon accident and death rates; and
 - (viii) rights and privileges of handicapped persons; their rights to use flags, placards, cards, license plates, and parking places.
 - (b) Behind-the-Wheel Instruction. A minimum of six hours, actually under the wheel, including:
 - (i) familiarization with the automobile; the use of its controls; and the development of skills essential to safe operation in traffic; and
 - (ii) driving in traffic with the instructor in a dual control car to develop abilities needed to follow the soundest course of action in responding to complex situations.
 - (c) Restrictions:
 - (i) Behind-the-Wheel instruction shall be offered to a student only after he has successfully completed the classwork section. If a student has contracted for

both classwork and behind-the-wheel training, behind-the-wheel training may begin after classwork starts and before classwork has been completed. At no time shall a student be taken out of class to attend behind-the-wheel training.

- (ii) No student shall operate a motor vehicle upon any public street or highway unless such student shall have in his immediate possession a valid Restricted Instruction Permit issued by the Division.
- (iii) No more than three hours of behind-the-wheel training shall be given in any one day. A written record indicating the date and time of this training shall be kept on file for each student. The record must be signed by the student and shall not include any hours of observation of other students, i.e. mere presence in the car while someone else is driving.
- (d) Other requirements:
 - (i) Plans for the content of the curriculum, its organization, and presentation shall be submitted on Form SBTS-610 for the approval of the Commissioner and the State Superintendent of Public Instruction. In addition, lesson plans for each of the 30 hours must be submitted.
 - (ii) Textbooks for use in the classwork section shall be chosen from those approved by the State Superintendent of Public Instruction.
 - (iii) Instructors must be approved by both the Commissioner and the State Superintendent of Public Instruction.
 - (iv) All expenses incurred in offering and teaching these courses shall be paid by the persons enrolled therein or the school offering the course.
 - (v) A student may enroll for either the classroom work or behind-the-wheel instruction, or both. A school may accept certification of satisfactory completion of classroom instruction from any school authorized to offer such a course, provided the certificate (Form SBTS-611A) is signed by the principal of the public school, or the superintendent of the administrative unit of which it is a part, or the executive officer of a non-public

secondary school. All SBTS-611A forms shall be mailed or taken directly to the high school for completion by the commercial school owner or instructor. Under no circumstances shall the form be given to the student.

- (vi) Schools offering this course shall issue to their students upon satisfactory completion of either or both parts of the course a certificate furnished by the Division (Form SBTS-611). This certificate verifies only the training taught by the commercial school. The student's name on this certificate must be as it appears on his birth certificate. Schools shall be accountable to the Division for all certificates issued to them.
- (vii) The student, upon submitting certification of satisfactory completion of both parts of the driver education course, shall be eligible for licensing as provided by law. Such certification may be from either or both a public or non-public secondary school or a commercial driver training school.
- (viii) Schools shall submit reports to the Division, as may be required by the Division; and their books and records shall be open to inspection by Division representatives at all reasonable times.
- (e) A person satisfactorily completing the thirty and six hour course who desires additional training may contract for any portion of the six-hour behind-the-wheel instruction.
- (4) For licensed persons taking a course offered by a restricted commercial driver training school, the following courses are authorized:
 - (a) curriculum for evaluation and improvement for licensed adult drivers only, utilizing over-the-road observation in vehicles not owned by the school or equipment such as driving simulators;
 - (b) professional curricula, including one or more of the following:
 - (i) police pursuit driving,
 - (ii) auto-cross driving,
 - (iii) emergency-vehicle driving, or
 - (iv) road and track racing.

- (5) Instructor training program, the requirements for which are:
 - (a) the school must be licensed one full year prior to approval;
 - (b) all work must be with an instructor licensed as an Instructor Trainer;
 - (c) a proposed plan of operation must be submitted to the Division outlining the training schedule, including instruction in:
 - (i) using effective teaching methods,
 - (ii) writing lesson plans,
 - (iii) reviewing of Rules Governing the Licensing of Commercial Driver Training Schools and Instructors,
 - (iv) using audio visual equipment and teaching aids,
 - (v) filling out fully and properly all commercial school forms, and
 - (vi) listing names of Instructor Trainers to be employed for the training program.

Statutory Authority G.S. 20-322 through 20-324.

SECTION .0500 - REQUIREMENTS AND APPLICATIONS FOR DRIVER TRAINING INSTRUCTOR

.0501 REQUIREMENTS

- (a) Each instructor of a commercial driver training school or branch shall:
 - (1) be of good moral character;
 - (2) have at least four years of experience as a licensed operator of a motor vehicle;
 - (3) not have been convicted of a felony or convicted of a misdemeanor involving moral turpitude in the 10 years immediately preceding the date of application;
 - (4) not have had a revocation or suspension of his driver's license in the five ~~four~~ years immediately preceding the date of application, and not have had a revocation or suspension for DWI for a period of seven years;
 - (5) have graduated from high school or hold a high school equivalency certificate;
 - (6) not have had convictions for moving violations totaling five ~~seven~~ or more points in the three years preceding the date of application;
 - (7) have completed the 80-contact-hour, community-college course for driver education teachers; an equivalent course

- approved by the Commissioner, or an Instructor Trainer Program conducted by an approved Commercial Driver Training School within four years prior to application;
- (8) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest);
- (9) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest);
- (10) be given a three month probation period until evaluated and recommended by a Driver Education Specialist;
- (11) submit a criminal background check from the Clerk of Court for each county of residence for the past ten years.

(b) An applicant may apply for an instructor's learner's permit which would be valid for three months. To be eligible for an instructor's learner's permit, the applicant shall meet requirements Subparagraph (a) (1) through (6); and shall:

- (1) submit an Instructor Application with an eight dollar (\$8.00) application fee, copy of high school diploma or high school equivalency certificate, and physical examination form;
- (2) successfully complete 40 hours of classwork as a student at an approved commercial driver training school to consist of:
 - (A) 30 hours in the basic driver education classwork;
 - (B) an additional 10 hours in practice teaching, writing lesson plans, reviewing the rules of this Subchapter, use of audio visual equipment and teaching aids and familiarization of commercial school forms;
- (3) successfully complete six hours of behind-the-wheel training as a student at an approved commercial driver training school;
- (4) successfully complete six hours of observation of behind-the-wheel instruction of a new driver by a licensed instructor trainer;
- (5) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest);
- (6) successfully complete the Miller Road Test given by a Driver Education

- Specialist; (Allowed only one retest);
- (7) after completing Subparagraphs (b) (1) through (6) practice teach in the presence of an instructor trainer;
 - (8) successfully complete two hours of classroom instruction while being observed by a Driver Education Specialist;
 - (9) successfully complete two hours of behind-the-wheel instruction while being observed by a Driver Education Specialist;
 - (10) be recommended by a Driver Education Specialist to receive an instructor's license.
- (c) An instructor at an approved commercial driver training school may apply for an Instructor Trainer license. The Instructor Trainer shall:
- (1) have five consecutive years as an active licensed instructor;
 - (2) submit an application for Instructor Trainer License with a fee of eight dollars (\$8.00);
 - (3) complete two hours of classroom observation by a Driver Education Specialist while training instructors, not driver education student;
 - (4) complete two hours of behind-the-wheel observation by a Driver Education Specialist while training instructors, not driver education students;
 - (5) successfully complete the written test administered by a Driver Education Specialist; (Allowed only one retest);
 - (6) successfully complete the Miller Road Test given by a Driver Education Specialist; (Allowed only one retest);
 - (7) be recommended by a Driver Education Specialist;
 - (8) requalify each school year.

Statutory Authority G.S. 20-322 through 20-324.

.0503 RENEWAL APPLICATION

(a) Renewal application shall be made by an instructor annually between May 1 and June 10 of each year. All licenses expire on June 30 of each year, and no instructor is permitted to operate with an expired license. However, applications for renewal may be accepted for up to 30 days from the date of expiration. Any license expired for more than 30 days shall be deemed permanently lapsed; and renewal of such license must be by the same process as required for an entirely new license, with all forms and certifications being

required.

(b) At least once every four years, an instructor must take the two-semester-hour college credit course required for the original license; provided, however, that an equivalent number of hours ~~(64)~~ (40) can be substituted for this course in the following manner:

- (1) 16 ~~12~~ hours (four ~~three~~ for each full year of the four years) for active and continuing teaching of driver education;
- (2) 48 ~~28~~ or more hours for attendance at teacher training workshops and short courses, professional driver training meetings and conferences in the field of driver education which have been approved in advance by the School Bus and Traffic Safety Section. Approval is to be given in the following manner:
 - (A) Pre-Course (submit for approval):
 - (i) name and address of agency sponsoring the workshop, course or conference;
 - (ii) title, dates, and location of the workshop, course, or conference;
 - (iii) brief description of the workshop, course, or conference, including the number of hours;
 - (B) Post-Course (submit for approval and credit):
 - (i) proof of attendance, number of contact hours actually attended, and passing grade (if applicable);
 - (ii) brief evaluation of the workshop, course, or conference.

(c) An accredited driver education teacher with a current certificate based on the requirements of the Department of Public Instruction is exempted from the requirements of Paragraph (b) of this Rule.

Statutory Authority G.S. 20-322 through 20-324.

SECTION .0600 - CONTRACTS

.0601 REQUIREMENTS

Commercial driver training school contracts with students shall contain (but are not limited to) the following information:

- (1) the agreed total contract charges and full terms of payment thereof;
- (2) the number, nature, time and extent of lessons contracted for, including:
 - (a) classroom instruction:
 - (i) rate per hour;
 - (ii) date and time of first lesson and each

- subsequent lesson, the length of each lesson, and the total number of hours;
- (iii) type of instruction;
 - (b) behind-the-wheel instruction:
 - (i) rate per hour;
 - (ii) date and time of first lesson and each subsequent lesson, the length of each lesson, and the total number of hours;
 - (iii) nature of lessons, whether private or group (no group may consist of more than the instructor and two students);
 - (iv) rate for use of school vehicle for a driver's license road test, if an extra charge is made;
 - (3) a statement which reads substantially as follows: "This agreement constitutes the entire contract between the school and the student, and any verbal assurances or promises not contained herein shall bind neither the school nor the student."; and
 - (4) a statement which reads as follows: "This school is licensed by the State of North Carolina, Division of Motor Vehicles."

If either the school or the instructor fails to comply with the provisions of any contract or agreement between the school and the student, the school shall refund, on a pro rata basis, all monies collected from the student as consideration for the performance of the contract or the agreement.

Statutory Authority G.S. 20-322 through 20-324.

.0602 PROHIBITED CONTRACT PROVISIONS

(a) Commercial driver training school contracts shall not contain the following:

- (1) the statement "no refund" or its equivalent; The contract may, however, contain a statement that "The school will not refund any tuition monies or any part thereof when actual services have been rendered";
- (2) any statement to the effect that a driver's license is guaranteed or otherwise promised as a result of the driver's license training course.

~~(b) If either the school or the instructor fails to comply with the provisions of any contract or agreement between the school and the student, the school shall refund, on a pro rata basis, all monies collected from the student as consideration for the performance of the contract or the agreement.~~

Statutory Authority G.S. 20-322 through 20-324.

SECTION .0700 - BONDING AND ADVERTISING

.0701 BONDS

Prior to license approval, a school shall file with the Division a continuous "cash" or "surety" bond written by a company licensed to do business in North Carolina in the amount of five thousand dollars (\$5,000) ~~two thousand five hundred dollars (\$2,500)~~ to indemnify any student against loss or damage arising out of the school's breach of contract between the school and the student (Form SBTS-606).

Statutory Authority G.S. 20-322 through 20-324.

.0703 ADVERTISING

A commercial driver training school may advertise by whatever method it sees fit with the following exceptions:

- (1) The address of a telephone-answering service, when it is not the same as the principal place of business of the school, shall not be shown in any medium of advertising or telephone directory. Nor shall any telephone directory listing or yellow page advertisement show a telephone number for a school unless it also shows a valid address, including the city, for the principal place of business of the school.
- (2) No advertisement shall indicate in any way that a school can or will issue or guarantee the issuance of a driver's license, or imply that preferential or advantageous treatment from the Division can be obtained.
- (3) A school may state in an advertisement that it has been approved and licensed by the Division.

Statutory Authority G.S. 20-322 through 20-324.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Landscape Architects intends to amend rule cited as 21 NCAC 26 .0105.

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

The public hearing will be conducted at 10:00 a.m. on May 2, 1994 at the N.C. Board of Landscape Architects, 3733 Benson Drive, Raleigh, NC 27609.

Reason for Proposed Action: Raise fees to cover costs.

Comment Procedures: Written comment must be submitted up to and including May 16, 1994 to the N.C. Board of Landscape Architects, 3733 Benson Drive, Raleigh, NC 27609.

SECTION .0100 -STATUTORY AND ADMINISTRATIVE PROVISIONS

.0105 FEES

- (a) Application fees shall be as follows:
 - (1) For registration as a Landscape Architect - one hundred dollars (\$100.00).
 - (2) For corporate certificate of registration - one hundred dollars (\$100.00).
- (b) The Certificate of Permit for a temporary permit shall be one hundred fifty dollars (\$150.00).
- (c) Examination fees shall be ~~three hundred ninety five dollars (\$395.00)~~ four hundred fifty dollars (\$450.00) for a complete examination, and shall be paid prior to the examination.
- (d) Fees for portions of examinations will be based on the actual charges to the board for procuring, administering and grading the portion of the exam. The fees shall be paid prior to the examination.
- (e) The fee for license by reciprocity shall be one hundred fifty dollars (\$150.00).
- (f) The fee for a corporate certificate of registration shall be two hundred dollars (\$200.00).
- (g) The fee for the annual renewal of any certificate of registration shall be ~~seventy five dollars (\$75.00)~~ one hundred dollars (\$100.00).
- (h) Annual renewal fees received after July 1 of each year shall be subject to the assessment of a late payment penalty according to the following schedule:
 - (1) After July 1 - ten dollars (\$10.00);
 - (2) After September 1 - fifteen dollars (\$15.00);
 - (3) After October 1 - twenty dollars

- (\$20.00);
- (4) After November 1 - twenty five dollars (\$25.00);
- (5) After December 1 - thirty dollars (\$30.00);
- (6) After January 1 - thirty five dollars (\$35.00);
- (7) After February 1 - forty dollars (\$40.00);
- (8) After March 1 - forty five dollars (\$45.00);
- (9) After April 1 - fifty dollars (\$50.00).
- (i) The fee for re-issue of a lost or damaged certificate or permit is ten dollars (\$10.00).

Statutory Authority G.S. 89A-3(c); 89A-6.

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to amend rule cited as 21 NCAC 50 .0306; and adopt rule cited as 21 NCAC 50 .1104.

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

The public hearing will be conducted at 8:30 a.m. on June 8, 1994 at the State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 801 Hillsborough St., Suite 403, Raleigh, NC 27603.

Reason for Proposed Action:

21 NCAC 50 .0306 - To clarify type and extent of practical experience required of applicant for examination.

21 NCAC 50 .1104 - To recover cost of providing documents and returned checks.

Comment Procedures: Persons wishing to present oral data, views or argument on a proposed rule or rule change may file a notice with the Board at least 10 days prior to the public hearing at which the person wishes to speak. Comments should be limited to 10 minutes. The address of the Board is 801 Hillsborough St., Suite 403, Raleigh, N.C.

Written comments or arguments may be presented at any time before June 8, 1994.

SECTION .0300 - EXAMINATIONS

.0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for regular examinations shall file an application in the office of the executive secretary on or before the date set out on the examination application form, which date shall be no more than 60 days prior to the examination.

(b) Applicants for the ~~October 1990~~ each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish ~~six months~~ two years on-site full-time experience in the installation, maintenance, service or repair of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. ~~One year of experience will be required of applicant for the April 1991 examinations, 18 months experience for the October 1991 examination, and two years of experience for the April 1992 examination and examinations conducted thereafter.~~ After review, the Board may request additional evidence. Up to one-half the experience may be in academic or technical training directly related to the field of endeavor for which examination is requested. The Board will pro rate part-time work of less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours. Practical experience should directly involve plumbing or heating systems and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board, work as a field representative of this Board or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may utilize such work as evidence of practical experience; provided that Board members and employees may not sit for examination during their tenure with the Board.

(c) Applicants who obtain a license will receive a certificate issued by the Board, bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors will meet experi-

ence requirements in accordance with Nicet examination criteria.

Statutory Authority G.S. 87-18; 87-21(b).

SECTION .1100 - FEES

.1104 FEES FOR COPIES OF RECORDS AND RETURNED CHECKS

The Board charges the following fees:

- (1) copy of the Register of Licensees - \$ 4.00 each
- (2) copies of license - 15.00
- (3) abstract of license record - 15.00
- (4) processing fee for returned checks - 20.00

Statutory Authority G.S. 25-3-512; 87-18; 150B-19.

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to adopt rules cited as 21 NCAC 54 .2701 - .2703.

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

The public hearing will be conducted at 11:00 a.m. on May 2, 1994 at the Lucy D. Inman Conference Room, 1004 Dresser Court, Ste. 105, Raleigh, N. C.

Reason for Proposed Action:

21 NCAC 54 .2701 - To define health services.

21 NCAC 54 .2702 - To set requirements for making application as a health service provider prior to June 30, 1994.

21 NCAC 54 .2703 - To require display of certificate.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or in writing prior to May 17, 1994 to Martha Storie, Executive Director, N.C. Psychology Board, University Hall, Appalachian State University, Boone, NC 28608.

Editor's Note: Rule .2701 was filed as a temporary rule effective April 20, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner. Rule .2702 was filed as a temporary rule effective April 20, 1994 for a period of 70 days.

SECTION .2700 - HEALTH SERVICES PROVIDER CERTIFICATION

.2701 ACTIVITIES INCLUDED

(a) Health services in psychology include the diagnosis, evaluation, treatment, remediation, and prevention of: mental, emotional, and behavioral disorder, disability, and illness; substance abuse; habit and conduct disorder; and psychological aspects of physical illness, accident, injury, and disability. Included are counseling, psycho-educational, and neuropsychological services related to the above. Health services include collateral contacts by a psychologist with families, caretakers, and other professionals for the purpose of benefiting a patient or client of that psychologist, as well as, direct services by a psychologist to individuals and groups.

(b) Health services in psychology do not include vocational and educational guidance, the teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultations to organizations or institutions.

Statutory Authority G.S. 90-270.2(4)(8); 90-270.9.

.2702 REQUIREMENTS BEFORE JUNE 30, 1994

(a) To be certified as a health services provider psychologist (HSP-P), licensed psychologists holding permanent North Carolina licensure must provide documentation that verifies one of the following conditions:

- (1) The applicant is currently listed in the National Register of Health Services Providers in Psychology.
- (2) The applicant is a diplomate in good standing of the American Board of Professional Psychology, except for diplomates in industrial-organizational psychology.
- (3) The applicant has the equivalent of two years of full-time experience, as follows:
 - (A) Two years of experience are defined as 3000 hours of practice of which more than 50% was comprised of

activities meeting the definition in Rule .2701(a) in this Section, with the remainder comprised of other forms of psychological practice (such as teaching and research), or other activities associated with a psychology position (such as administration).

- (B) One year of predoctoral internship may be counted, but other predoctoral experience (such as practica) will not be counted.
- (C) At least one of these years must be postdoctoral.
- (D) Experience which will not be counted includes, but is not limited to, experience which was associated with termination from a position or major disciplinary action against the applicant due to negligence, lack of competence, or unethical conduct.

(b) To be certified as a health services provider psychological associate (HSP-PA), licensed psychological associates holding North Carolina licensure must provide documentation which verifies that the applicant has the equivalent of two years of full-time experience, supervised when required, as follows:

- (1) Two years of experience are defined as 3000 hours of practice of which more than 50% was comprised of activities meeting the definition in Rule .2701(a) in this Section, with the remainder comprised of other forms of psychological practice (such as teaching and research), or other activities associated with a psychology position (such as administration).
- (2) One year of graduate level internship may be counted, but other graduate level experience (such as practica) will not be counted.
- (3) At least one of these years must be at a post-graduate degree level.
- (4) Experience which will not be counted includes, but is not limited to, experience which was associated with termination from a position or major disciplinary action against the applicant due to negligence, lack of competence, or unethical conduct.

(c) The following documentation must be completed and received in the Board's office prior to June 30, 1994:

- (1) for all applicants, a completed, notarized application form provided by the

Board and payment of the fifty dollars (\$50.00) fee;

- (2) for applicants applying under Subparagraph (a)(1) of this Rule, a letter from the National Register of Health Services Providers in Psychology which verifies the applicant's current listing in the Register;
- (3) for applicants applying under Subparagraph (a)(2) of this Rule, a letter from the American Board of Professional Psychology which verifies good standing diplomate status;
- (4) for applicants applying under Subparagraph (a)(3) or Paragraph (b) of this Rule, a listing of experience on the application form which satisfies the requirement.

Statutory Authority G.S. 90-270.9; 90-270.20(e)(f).

.2703 DISPLAY OF CERTIFICATE

A health services provider certificate shall be displayed in close proximity to a licensee's license certificate in his/her principal place of employment and in a place that is visible to the licensee's served clientele.

Statutory Authority G.S. 90-270.9; 90-270.20.

TITLE 24 - INDEPENDENT AGENCIES

CHAPTER 5 - STATE HEALTH PLAN PURCHASING ALLIANCE BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Health Plan Purchasing Alliance Board intends to adopt rules cited as 24 NCAC 5 .0101 - .0102, .0200 RESERVED and .0301 - .0303.

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

The public hearing will be conducted at 10:00 a.m. on Tuesday, May 17, 1994 at the Department of Insurance Annex, Hearing Room, 112 Cox Avenue, Raleigh, NC 27605.

Reason for Proposed Action: Recently passed legislation (House Bill 729 as ratified) which is

Article 66 of Chapter 143 and which requires certain rules to be in place by July 1, 1994.

Comment Procedures: *Written comments may be submitted to the Board either orally at the hearing or by writing to the Board and received no later than May 17, 1994. Written comments should be directed to: Robert F. Joyce, Executive Director, 112 E. Hargett Street, Suite 101, Raleigh, NC 27601.*

Editor's Note: *These Rules were filed as temporary adoptions effective April 22, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

SECTION .0100 - COMMUNITY SPONSORS

.0101 PURPOSE

These Rules implement the provisions of Article 66 of Chapter 143 of the General Statutes of North Carolina, Health Care Purchasing Alliance Act, as they relate to community sponsors.

Statutory Authority G.S. 143-626; 143-629; H.B. 729, Article 66, ch. 143.

.0102 SELECTION

(a) Board Solicitation of Proposals for Community Sponsors. The Board may begin to solicit proposals on April 22, 1994, from any eligible organization interested in serving as a community sponsor of a health alliance (hereafter "alliance").

(b) Organizations Eligible. Non-profit organizations operating for the purpose of furthering economic opportunities for small businesses shall be eligible to submit community sponsorship proposals.

(c) Public Notice. The Board shall solicit proposals through newspapers, other public media, and by any other sufficient means it deems appropriate.

(d) Time Period for Proposal. The Board shall allow 120 days for submission of initial proposals after April 22, 1994.

(e) Information in Proposals. Each organization submitting a proposal shall include the following information:

- (1) a brief history of the sponsoring organization and a narrative describing the strengths in its ability to establish an alliance;

- (2) an explanation of any proposed coalition with other organizations, and if a proposed community sponsorship is to be held jointly by two or more organizations, the proposal shall specify the physical location for the alliance and the division of responsibilities among organizations;
 - (3) demonstration of an understanding of the function served by an alliance under Article 66 of Chapter 143 of the General Statutes of North Carolina;
 - (4) a plan for solicitation and development of membership for an alliance and proper communication with member small employers;
 - (5) letters of support from small businesses and other groups supporting the organization's bid to be the community sponsor of an alliance;
 - (6) a proposed market area to be served by the alliance and appropriate rationale for the counties within that market area, such rationale to include the factors listed in G.S. 143-626(1);
 - (7) a timetable for accomplishment of the following tasks regarding the proposed alliance:
 - (A) formation of the alliance as a private, non-profit corporation, appointment of its Board members, adoption of its by-laws and rules of procedure;
 - (B) appointment of an executive director/administrator, employment of staff and/or contractual arrangement with third parties for administrative and professional services;
 - (C) receipt of state grant funds for start-up costs, purchase of office equipment and supplies;
 - (D) development of procedures for enrollment, for collecting/remitting premium payments, and for communication with member small employers;
 - (E) negotiation and development of contracts with Accountable Health Carriers;
 - (F) enrollment goals and dates; and
 - (G) initial enrollment in an alliance's qualified health care plans;
 - (8) an annual budget and table of organization for the proposed alliance.
- (f) Board Approval:
- (1) The Board shall either approve,

disapprove or seek further information on proposals within 60 days after the deadline for submitting proposals. The Board may re-advertise for new and additional proposals. Timelines for submission of new proposals and Board action on these proposals shall be the same as those established for initial requests under this Section; and

- (2) After review of the information provided under Paragraph (e) and Subparagraph (f)(1) of this Rule, the Board shall evaluate the proposal based on an eligible organization's demonstrated understanding of the function and operation of the alliance, the ability to provide an alliance structure which will encourage small business employers to become members, and the appropriateness of the proposed market area.

Statutory Authority G.S. 143-626; 143-629; H.B. 729, Article 66, ch. 143.

SECTION .0200 - ALLIANCES (RESERVED FOR FUTURE CODIFICATION)

SECTION .0300 - ACCOUNTABLE HEALTH CARRIERS

.0301 PURPOSE

These Rules implement the provisions Article 66 of Chapter 143 of the General Statutes of North Carolina, Health Care Purchasing Alliance Act, as they relate to Accountable Health Carriers.

Statutory Authority G.S. 143-626; 143-629; H.B. 729, Article 66, ch. 143.

.0302 DESIGNATION PROCESS

(a) Board Review. The Board may begin to review information on April 22, 1994, from any eligible carrier interested in being designated as an Accountable Health Carrier.

(b) Carrier Seeking Designation. A carrier seeking designation as an Accountable Health Carrier for the purpose of offering qualified health care plans through any alliance established pursuant to Article 66 of Chapter 143 of the General Statutes of North Carolina must fulfill the requirements outlined in G.S. 143-629.

(c) Designation and Accreditation Requirements. A carrier submitting an application (hereinafter "a

carrier") to the Board for designation as an Accountable Health Carrier for any type of qualified health care plan must meet the following requirements:

- (1) presentation of a copy of its current license or certificate of authority issued by the NC Department of Insurance (hereinafter "the Department") and appearance on the Department's current list of carriers with such license or certificate of authority;
- (2) submit a current financial statement regarding its financial solvency verified by the Department of Insurance; and
- (3) fulfill the requirements in G.S. 143-629(b)(2)-(10). To fulfill these requirements, a carrier may:
 - (A) complete forms, developed by the Board upon recommendation of the Designation Review Technical Advisory Committee (hereinafter "the Committee"), which specify the relevant information pertaining to any or all of the criteria in G.S. 143-629(b)(2)-(10). After review of such information, the Board shall make a determination regarding the carrier's fulfillment of the criteria at issue, or the Board shall require a hearing before the Committee. After such hearing, the Committee shall provide a formal written recommendation to the Board regarding approval or disapproval of a carrier's fulfillment of the criteria at issue;
 - (B) submit for the requirements in G.S. 143-629(b)(2)-(8) appropriate accreditation certification from the National Committee on Quality Assurance and/or the Joint Commission on Accreditation of Health Care Organization, and/or qualification by the United States Department of Health and Human Services and/or accreditation certification from any other accreditation organization approved by the Department pursuant to G.S. 143-629;
 - (C) submit for the requirement in G.S. 143-629(b)(5) accreditation certification from the Utilization Review Accreditation Commission; and
 - (D) submit for the requirements in G.S.

143-629(b)(9)-(10) the required data elements in a format identical or substantially similar to the Health Plan Employer Data and Information Set ("HEDIS").

(d) Board Evaluation. The Board shall either approve, disapprove or seek further information on a designation request within 60 days of the receipt of information under Paragraph c or within 60 days after the Committee holds a hearing under Subpart c3(A) of this Rule.

(e) Annual Report. Every Accountable Health Carrier shall, on or before the first day of April of each year, file with the Board a sworn statement by an authorized officer showing its current status regarding the criteria required for designation as described in this Section. In the event any Accountable Health Carrier shall fail to file any such annual statement or such annual statement shows a lack of substantial compliance with the designation criteria, the Board may suspend the carrier's designation as an Accountable Health Carrier until such statement shall be properly filed.

Statutory Authority G.S. 143-626; 143-629; H.B. 729, Article 66, ch. 143.

.0303 DESIGNATION REVIEW TECHNICAL ADVISORY COMMITTEE

(a) Composition. The Committee will consist of the Executive Director of the Board or designee, serving as Chairman; two representatives from the North Carolina Department of Insurance; and two individuals, appointed by the Chairman of the Board, who are knowledgeable about the accreditation process for health insurance carriers.

(b) Meetings. Within 30 days after receipt of a request for a hearing, the Chairman of the Committee shall set a time and date for the hearing. With reasonable notice, the Committee may request additional relevant information from an applicant to be submitted before, at the time of, or after the hearing.

Statutory Authority G.S. 143-626; 143-629; H.B. 729, Article 66, ch. 143.

.0304 DESIGNATION FORMS FOR ACCOUNTABLE HEALTH CARRIERS (RESERVED FOR FUTURE CODIFICATION)

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

COMMERCE

Banking Commission

<i>4 NCAC 3F .0202 - Permissible Investments</i>	<i>RRC Objection</i>	<i>12/16/93</i>
<i>Agency Responded</i>	<i>Obj. Cont'd</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>

Credit Union

<i>4 NCAC 6C .1401 - Signature Guarantee</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Marine Fisheries

<i>15A NCAC 3I .0010 - Military Prohibited and Restricted Areas</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 3J .0107 - Pound Nets</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 3K .0301 - Size and Harvest Limit</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 3O .0102 - Procedure and Requirements to Purchase License</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 3O .0204 - Marking Shellfish Leases and Franchises</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 3O .0205 - Lease Renewal</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>

Soil and Water Conservation Commission

<i>15A NCAC 6F .0001 - Purpose</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 6F .0003 - Requirements for Certification of Waste Mgmt Plans</i>	<i>RRC Objection</i>	<i>02/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 6F .0004 - Approved Best Management Practices (BMPs)</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>
<i>15A NCAC 6F .0005 - Technical Specialist Designation Procedure</i>	<i>RRC Objection</i>	<i>01/20/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>02/17/94</i>

Wildlife Resources and Water Safety

<i>15A NCAC 10D .0002 - General Regulations Regarding Use</i>	
<i>Agency Withdrew Rule</i>	<i>03/17/94</i>

HUMAN RESOURCES**Aging**

10 NCAC 22T .0101 - <i>Scope of Health Screening Services</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	02/17/94
10 NCAC 22T .0201 - <i>Provision of Health Screening Services</i>	RRC Objection	01/20/94
	Obj. Removed	02/17/94
10 NCAC 22U .0101 - <i>Scope of Senior Companion</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	02/17/94
10 NCAC 22W .0101 - <i>Scope of Home Care Services</i>	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	03/17/94

Medical Assistance

10 NCAC 26I .0304 - <i>Hearing Procedures</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

INSURANCE**Financial Evaluation Division**

11 NCAC 11C .0308 - <i>Foreign HMO: Successful Operation</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
11 NCAC 11F .0207 - <i>Specific Standards for Morbidity, Interest and Mortality</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
11 NCAC 11F .0208 - <i>Reserves for Waiver of Premium</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

LICENSING BOARDS AND COMMISSIONS**Certified Public Accountant Examiners**

21 NCAC 8A .0105 - <i>Purposes and Responsibilities</i>	RRC Objection	03/17/94
Agency Repealed Rule	Obj. Removed	03/17/94
21 NCAC 8F .0103 - <i>Filing of Examination Applications and Fees</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8F .0112 - <i>Candidate's Request to Sit in Another Jurisdiction</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8G .0409 - <i>Computation of CPE Credits</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8J .0008 - <i>Firm Registration</i>	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 8N .0103 - <i>CPAs Outside North Carolina</i>		
Agency Withdrew Rule		03/17/94

Landscape Architects

21 NCAC 26 .0209 - <i>Unprofessional Conduct</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	02/17/94
21 NCAC 26 .0210 - <i>Dishonest Practice</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	02/17/94
21 NCAC 26 .0211 - <i>Incompetence</i>	RRC Objection	01/20/94
Agency Revised Rule	Obj. Removed	02/17/94

Medical Examiners

21 NCAC 32B .0402 - Fee	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 32B .0706 - Fee	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 32M .0006 - Prescribing Privileges	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	02/17/94

REAL ESTATE APPRAISAL BOARD

21 NCAC 57A .0210 - Temporary Practice	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57B .0207 - Administration	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57B .0306 - Instructor Requirements	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57B .0603 - Criteria For Course Approval	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
21 NCAC 57C .0104 - Petition to Reopen Proceeding	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

REVENUE**Individual Income Tax Division**

17 NCAC 6B .0612 - Tax Credit for Qualified Business Investments	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

STATE PERSONNEL**Office of State Personnel**

25 NCAC 1D .0211 - Salary Rate	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	02/17/94
25 NCAC 1D .0512 - Policy Making/Confidential Exempt Priority Consideration	RRC Objection	02/17/94
Agency Revised Rule	Obj. Removed	03/17/94

STATE TREASURER**Collateralization of Deposits**

20 NCAC 7 .0202 - Amount of Collateral Required to be Pledged	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94
20 NCAC 7 .0603 - Acceleration of Maturities	RRC Objection	03/17/94
Agency Revised Rule	Obj. Removed	03/17/94

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>
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
<i>Crime Victims Compensation Commission</i>				
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
<i>Coastal Management</i>				
Gary E. Montalbine v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
<i>Environmental Health</i>				
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
<i>Environmental Management</i>				
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
<i>Solid Waste Management</i>				
Roger Sessoms v. EHNHR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
HUMAN RESOURCES				
<i>Division of Child Development</i>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
<i>Facility Services</i>				
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
<i>Division of Medical Assistance</i>				
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
<i>Division of Social Services</i>				
<i>Child Enforcement Section</i>				
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Bryan Jeffrey Cole v. Department of Human Resources	93 CSE 1091	Becton	03/30/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Antonio Townsend v. Department of Human Resources	93 CSE 1139	Becton	03/30/94	
Troy E. Pinkney v. Department of Human Resources	93 CSE 1148	Mann	03/29/94	
Walter Lee Corbett v. Department of Human Resources	93 CSE 1150	Reilly	03/30/94	
Nash Andrew Newsome v. Department of Human Resources	93 CSE 1170	Mann	03/17/94	
Samuel L. Dodd v. Department of Human Resources	93 CSE 1357	Gray	03/31/94	
JUSTICE				
<i>Alarm Systems Licensing Board</i>				
Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94	
<i>Private Protective Services Board</i>				
Larry C. Hopkins v. Private Protective Services Board	93 DOJ 1618	Morrison	03/07/94	
<i>Training and Standards Division</i>				
Curtiss Lance Poteat v. Criminal Justice Ed. & Training Sds. Comm.	93 DOJ 0231	Chess	03/28/94	
Glenn Travis Stout v. Criminal Justice Ed. & Training Sds. Comm.	93 DOJ 1409	Gray	03/03/94	
Gregory Blake Manning v. Criminal Justice Ed. & Training Sds. Comm.	94 DOJ 0048	Gray	03/29/94	
PUBLIC EDUCATION				
Nancy Watson v. Board of Education	93 EDC 0234	Chess	02/28/94	9:2 NCR 108
Janet L. Wilcox v. Carteret County Board of Education	93 EDC 0451	Mann	02/21/94	
STATE HEALTH BENEFITS OFFICE				
Timothy L. Coggins v. Teachers' & St Emp Comp Major Med Plan	93 INS 0929	Morrison	03/04/94	
STATE PERSONNEL				
<i>Agricultural and Technical State University</i>				
Linda D. Williams v. Agricultural and Technical State University	93 OSP 0089	Chess	03/23/94	
Juanita D. Murphy v. Agricultural and Technical State University	93 OSP 0708	Morrison	03/16/94	
Thomas M. Simpson v. Agricultural and Technical State University	93 OSP 1393	Gray	03/24/94	
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 63
<i>Department of Correction</i>				
Leland K. Williams v. Department of Correction	91 OSP 1287	Chess	02/22/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Department of Crime Control and Public Safety</i>				
Fred L. Kearney v. Department of Crime Control & Public Safety	91 OSP 0401	West	03/18/94	
Sylvia Nance v. Department of Crime Control & Public Safety	92 OSP 1463	Reilly	03/21/94	
<i>Department of Human Resources</i>				
Inez Latta v. Department of Human Resources	93 OSP 0830	Becton	03/28/94	
Charla S. Davis v. Department of Human Resources	93 OSP 1762	Gray	03/03/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Department of Transportation</i>				
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0297 ^{ad}	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y Dept of Transportation	93 OSP 0500 ^{ad}	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
STATE TREASURER				
<i>Retirement Systems Division</i>				
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Employees' Retirement System	93 DST 1474	Nesnow	03/28/94	

* Consolidated cases.

STATE OF NORTH CAROLINA

COUNTY OF CALDWELL

NANCY WATSON,
Petitioner,

v.

STATE BOARD OF EDUCATION; and
DEPARTMENT OF PUBLIC INSTRUCTION,
Respondent.

RULING ON MOTIONS

Respondents' Motion for Summary Judgment was denied.

Based on a preponderance of the evidence admitted into the record of this case, including the testimony of witnesses and the review of exhibits, and based on the arguments of counsel, both at this hearing and at an earlier motion for summary judgment, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Caldwell County School System hired Petitioner in August 1976 to teach Art at three elementary schools within the Granite Falls Township in Caldwell County.

2. The Caldwell County Schools paid Petitioner out of funds from the sales' proceeds of the Granite Falls Alcohol Beverage Control store that were specially designated for use in the public school in the Granite Falls Township.

3. For many years Petitioner was the only elementary art teacher in the Caldwell County Schools.

4. At the time she was hired to teach art, Petitioner did not have formal training as an educator. She had received private training from various artists and was well known locally for her art, including the portrait of a retired principal at Granite Falls Elementary School.

5. Petitioner's impact on the children and the Caldwell County School System was of a profoundly positive nature.

6. Since 1976, Petitioner has taught art to more than 20,000 students. Her other involvements included designing the curriculum, planning and teaching the lessons, and providing appropriate feedback.

7. Petitioner began coursework towards a Bachelor's Degree and certification after a 1988 report on Granite Falls Elementary by the Southern Association of Colleges and Schools (SACS), noted her lack of certification as a program deficiency. SACS had studied Granite Falls several times since 1976, and had approved of the art program in those prior reports.

8. Petitioner graduated magna cum laude from Lenoir Rhyne College in 1991 and applied for and obtained a teaching certificate from the Respondents.

9. When applying for her teaching certificate, Petitioner asked for certificate credit for her teaching experience since 1976. Every certified teacher receives an experience rating as part of her certificate. That rating establishes the number of years of relevant work experience and determines the teachers' position on the state salary schedule. Teachers receive a higher salary for each year of experience.

10. The Respondent denied Petitioner's request for experience credit, finding no record that she was a "teacher" during the period of time of which she sought credit. Petitioner appealed that decision.

11. Numerous witnesses testified to the fact that Petitioner has been considered a teacher by administrators, faculty and parents of students of the Caldwell County Schools during the entire time that she has taught Art. These witnesses included the superintendent, two assistant superintendents, three principals and two assistant principals who had supervised her, fellow teachers, and parents of her students. All of these witnesses testified that Petitioner was considered a teacher and had carried out the duties of a teacher since 1976 in a most exemplary manner.

12. The Respondents offered no evidence in opposition to this testimony about Petitioner's duties and performance. By all of the evidence, Petitioner's classroom performance since 1976 had been superlative.

13. The evidence showed that Petitioner is a naturally gifted teacher who put considerable effort and creativity into the development of her techniques for teaching art. She has a unique ability to relate her lessons to the individual abilities of the students. She quickly developed a teaching method in which she integrated the student's regular academic curriculum into their art lessons.

14. At the hearing, several examples of this integrated technique were described by Petitioner and other witnesses. One student did a geometry project in high school based on an idea she had learned years before in Petitioner's art class.

15. Petitioner was observed and her teaching performance critiqued under the standards and guidelines devised by Respondents, pursuant to N.C.G.S. Section 115C-326, to measure teaching performance. She received an annual evaluation on the appraisal instrument used for certified teachers and consistently measured well on those evaluations.

16. In addition to these evaluations, three principals, two assistant principals and a supervising teacher testified that Petitioner's performance was outstanding. Each of these witnesses had observed Petitioner's performance. Each had been trained and qualified by the Respondents in the methods used for evaluating teacher performance and had observed and evaluated other certified teachers as part of their job responsibilities. Each testified that Petitioner's work as a teacher exceeded the performance standards they had been trained to recognize.

17. Petitioner is now considered a superior teacher and the evidence shows that her abilities come from her teaching experience between 1976 and 1991.

18. Even the physical location of her personnel file shows that she was considered a teacher by her administrators. Her personnel file, containing her performance evaluations as well as other information, has always been maintained in a "teacher" file drawer at her school. Other non-teaching employees' files, including those of teacher assistants, are kept in a separate location.

19. Petitioner was considered a teacher by the Caldwell County School in other ways as well.

20. Her success with her integrated method of teaching art was recognized by the Caldwell County Schools. She was invited to present her methods to other teachers at continuing education seminars, for which those teachers attending received certificate renewal credits. Petitioner also presented her methods of teaching art to a seminar of principals and other administrators of the Caldwell County system.

21. Petitioner attended seminars organized by the Caldwell County School for teachers to obtain renewal credits. She attended these continuing education seminars like any other teacher and was listed by the administration as a participant eligible for renewal credit.

22. Petitioner was considered a teacher by the faculty at the schools where she worked. She performed teacher duties, both instructional and non-instructional, served on faculty committees and was selected as her school's faculty representative to system-wide committees.

23. Respondents produced no testimony to contradict this convincing evidence that Petitioner was considered a teacher by the Caldwell County School and that her performance exceeded the standards expected of certified teachers. Indeed, two witnesses presented by the Respondent, Mr. Beane and Mr. Greene, confirmed that they, too, considered Petitioner to be a teacher. Mr. Greene's children had taken art from Petitioner and he was very pleased with Petitioner's work with his children.

24. During the period in question, 1976 - 1991, Petitioner was paid less than the salary paid to teachers on the State's teacher salary scale.

25. Petitioner's initial salary was negotiated without reference to any salary scale in the Caldwell County Schools as it came from an independent source of funds -- the Granite Falls ABC proceeds. Petitioner

was paid less than other teachers but more than teacher assistants, except for the years immediately preceding her certification. In those years, the funding for her position no longer came from Granite Falls ABC funds, which had diminished when other ABC stores opened around Caldwell County; she was paid instead on the teacher assistant scale out of funds in the regular school budget.

26. At least three vocational teachers in the Caldwell County Schools are certified and paid by the state as teachers, even though they do not have college degrees. These three teachers have vocational certificates on the basis of having four years experience in the building trades.

27. In addition to having a certificate based on work experience, these three teachers have each received 10 to 12 years of certificate experience credit from Respondents based on employment in the building trades as masons.

28. Respondents have other certification programs in which individuals with less than a four year degree are certified to teach in certain subject areas and receive experience credit for work performed without a college degree. JROTC instructors, for example, are certified regardless of level of education and receive experience credit for any classroom teaching experience in the military, without regard to certification.

29. The Respondents also awarded a lateral entry teaching certificate in Art to a Caldwell County teacher with a college degree in Psychology. That teacher was certified to teach Art without an academic background in Art.

30. Respondents also award experience credit for work as a Teacher's Aide performed after being certified as a teacher.

31. Petitioner's duties and responsibilities were those of a teacher, and exceeded the duties and responsibilities of a Teacher's Aide.

After observing the witnesses as they testified and listening to the evidence presented, the undersigned administrative law judge makes the following additional findings of fact:

1. Petitioner exhibited extraordinary teaching qualities and abilities during the period 1976-1991.
2. Petitioner was held in the highest esteem as a teacher among parents, teachers and administrators.
3. Petitioner is an unusually gifted teacher and is a credit to teachers everywhere.

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

CONCLUSIONS OF LAW

1. This case is properly before the Office of Administrative Hearings, as Petitioner has presented a legitimate contested case issue of whether Respondents have acted improperly in denying her application for experience credit.

2. Petitioner has met all of the procedural requirements for the Office of Administrative Hearings to review her contested case.

3. The fact that Petitioner was not certified to teach or paid on the teacher salary scale between 1976 and 1991 is not dispositive for the question of whether she should receive credit now for that experience.

4. It is clear that Petitioner succeeded as a teacher by the Respondents' own standards for measuring the performance of certified personnel. The evidence of the quality of her work as a teacher since 1976 is overwhelming and uncontradicted.

5. From that convincing evidence, this undersigned administrative law judge concludes as a matter of law that Petitioner was employed as a teacher from 1976 - 1991. Respondents' arguments about Petitioner's salary, the absence of a college degree or certification do not persuade this Court that Petitioner was not a teacher during the period in question. It is accepted that Petitioner was not certified and thus was not paid as a certified employee; but she was, indisputably, an effective, accomplished teacher.

6. We then turn to the question of whether Petitioner should receive certificate credit for her work as a teacher from 1976 - 1991.

7. Respondents have the discretionary authority to award Petitioner certificate experience credit. No law expressly prohibits awarding Petitioner experience credit for her work as an art teacher.

8. The issue is whether Respondents' denial of experience credit is reasonable related to the purposes which experience credit serves, Guthrie v. Taylor, 279 N.C. 703, 185 S.E.2d 193 (1971).

9. Petitioner's teacher experience does not fit within any of Respondents' existing categories for experience credit that might apply to vocational teachers, JROTC instructors or lateral entry teachers. But the Court is convinced that awarding Petitioner experience credit would serve the same purpose as that served by awarding credit under these other programs.

10. The primary purpose of experience credit is to pay more experienced personnel a higher salary than less experienced personnel. This salary differential reflects the fact that experienced personnel are more valuable to a school system.

11. Petitioner is a valuable, experienced educator. It would be reasonable for her salary to reflect that experience.

12. Experience credit is available to certain teachers for work experience other than certified teaching. This policy reflects the fact that this prior non-certified experience prepared the employee for his/her present role in the classroom and increased that person's ability and value as an educator.

13. Petitioner's experience in the classroom from 1976 - 1991 prepared her for her present role as much as, if not more than, any form of work experience creditable under these other plans.

14. The policies served by awarding credit in these other categories is also served by awarding Petitioner credit. This conclusion is supported by the fact the Petitioner's experience has been closely monitored and evaluated by personnel, trained by Respondents to measure teacher performance. There is no question about the quality or nature of the experience for which she seeks credit.

15. Given Petitioner's proven record of accomplishment in the classroom, the Court finds that awarding Petitioner experience credit would serve the interests of the citizens of North Carolina in promoting quality in public education; and would serve those interests as strongly as any of the policy reasons that support awarding certificate credit under these other programs.

16. Respondents argument that awarding Petitioner experience credit would condone her "unlawful" employment as a non-certified teacher is not persuasive.

17. If her employment was unlawful because she was not certified, her employer is responsible for that action, not Petitioner. Denying her credit has no effect on the employer. As a remedial justification, denial of credit is illogical and counter-productive.

18. By good fortune, the Caldwell County Schools found a gifted and talented teacher. Petitioner has proven herself as an exemplary educator. The Respondents should recognize what she has accomplished for the students of Caldwell County and support her efforts.

19. Petitioner has performed under the watchful eye of persons trained and certified by Respondents to supervise teachers and to use objective standards in measuring performance. The Respondents should recognize that Petitioner has demonstrated her considerable skills and that she has come by them through her experience. Instead, Respondents censure her for exhibiting those skills prior to being certified.

20. The Administrative Law Judge finds Respondents denial of Petitioner's application for experience credit to be an oppressive and manifest abuse of its discretionary authority, Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960), that is not reasonable related to the purposes of experience credit.

21. It is beyond cavil that Petitioner is a better teacher now because of her teaching experience between 1976 and 1991; it is irrational that her certificate does not reflect that established, irrefutable fact.

Based on the foregoing Findings of Facts, Conclusions of Law, and a preponderance of the substantial evidence in the record, the Administrative Law Judge makes the following:

RECOMMENDED DECISION

It is recommended that Petitioner receive the following relief from Respondents:

- a. that comparable to the credit that others teaching without a college degree have received from Respondents, that Petitioner receive 11 years of experience credit for her 15 years of teaching from 1976 - 1991;
- b. that her salary be adjusted to reflect that experience increment, retroactive to May 1991, when she applied for the experience credit; and
- c. that she be awarded the cost of this action, including a reasonable attorneys fee.

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 State Board of Education.

This the 23rd day of February, 1994.

Sammie Chess, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
93 CPS 0801**

V.

**N.C. VICTIMS COMPENSATION
COMMISSION,
Respondent.**

RECOMMENDED DECISION

On December 23, 1993, Petitioner wrote the Administrative Law Judge calling attention to the Application he had filed with the Crime Victims Compensation Commission. The parties had stipulated that the Application was genuine and, if relevant and material, could be received into evidence. The Application was not tendered into evidence by either party.

The Administrative Law Judge, on his own motion, re-opened the record on January 25, 1994 and ordered the parties to respond to questions set forth in the order re-opening the record. The parties responded and the record closed on February 10, 1994. As a result of the parties' representations in the letters, the Application filed by Petitioner with the Commission was added to the record.

Petitioner appeared pro se.

Respondent was represented by Associate Attorney General Robert T. Hargett.

1. Did the Commission err by failing to compensate Petitioner for the following:

- Future Economic Loss;
- Replacement Services;
- Physical Therapy?

The burden is on Petitioner to prove by the greater weight of the substantial evidence that the Commission erred by failing to compensate Petitioner for claims within the three categories set forth hereinabove.

The following testified for Petitioner:

James Hugh Baynes - Petitioner

The following testified for Respondent:

Nancy Miller - Investigator, North Carolina Crime Victims Compensation Commission

EXHIBITS

The following exhibits were received into evidence:

- P1 - Physician's notes from Guilford Orthopaedic and Sports Medicine Center.
- P2 - Physician's notes from Guilford Orthopaedic and Sports Medicine Center.
- P3 - Letter from Dr. Gerald Plovsky of the Internal Medicine Training Program at Moses H. Cone Memorial Hospital, Greensboro.

Application Form promulgated by the North Carolina Department of Crime Control and Public Safety, Crime Victims Compensation Commission - filed by Petitioner on December 31, 1991.

STIPULATIONS

1. It is stipulated that all parties are properly before the Office of Administrative Hearings and that the Office of Administrative Hearings has jurisdiction of the parties and subject matter.
2. It is stipulated that all parties have been correctly designated. It is further stipulated that there is no question as to misjoinder or nonjoinder of parties.
3. The Petitioner filed a timely Application for Compensation with the North Carolina Crime Victims Compensation Commission on December 31, 1991.
4. The Petitioner's claim was subsequently paid by the Respondent.

Based upon the substantial evidence admitted, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner James Hugh Baynes (hereafter "Baynes") was the victim of a criminal assault on December 8, 1991.
2. As a result of the assault, Baynes suffered a severely comminuted displaced segmental fracture of the shaft of the tibia and an oblique fracture of the proximal fibula. On the same day as the assault, Baynes was placed under spinal anesthesia and an orthopaedic surgeon, David Dye, inserted a rod into Bayne's right tibia. The rod was locked into place with screws.
3. On September 16, 1993, Dr. Dye wrote that the comminuted fracture of the right tibia was healed and that Baynes suffered a fifteen percent (15%) permanent, partial disability to the right tibia.
4. On October 4, 1991, two months prior to his assault, Baynes had left his job due to pre-existing medical conditions. Baynes has not been employed since October 4, 1991.
5. Baynes filed an Application with the Respondent (hereafter "Commission") on December 31, 1991 seeking compensation for injuries suffered during the criminal assault.
6. As a result of the application, the Commission has paid Twelve Thousand Two Hundred Twenty-one

and One Hundredth Dollars (\$12,221.01) to medical care providers on Baynes' behalf to defray expenses Baynes incurred as a result of the criminal assault. No amounts were paid for physical therapy.

7. Baynes was living with his parents at the time he was assaulted on December 8, 1991 and has been living with them since that time. Prior to his assault, Baynes helped by keeping the house up, doing yard work and general house maintenance. Since Baynes' assault, much of that work is not being done or is being done by friends or Baynes' brother-in-law.

8. Baynes' claim for Replacement Services is based upon his inability to perform the services for his parents detailed in Finding of Fact #7.

9. "Replacement services loss" is defined by G.S. 15B-2(12) to be:
 "expenses reasonably incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured."

10. The kinds of services Baynes had been performing for his parents are compensable under G.S. 15B-2(12).

11. There is no evidence that the friends or brother-in-law are charging anything to perform the services.

12. Baynes states in the Application he filed on December 31, 1991, that he is "UNEMPLOYED".

13. "Future economic loss" is not defined by the Victims Compensation Act. Baynes is claiming, however, that he has suffered "Economic loss" as that term is defined by G.S. 15B-2(10).

"Economic loss" means, "... economic detriment consisting only of allowable expense, work loss, and replacement services loss."

14. "Work loss" is defined by G.S. 15B-2(14) to mean,

"... loss of income from work that the injured person would have performed if he had not been injured...."

15. Baynes has not lost income from work he was performing when he was criminally assaulted and injured.

16. The Application filed by Baynes on December 31, 1991 states, in the part relevant to this contested case:

IV. MEDICAL EXPENSES INFORMATION

A. Brief description of injuries: "Suffered Fractures of Different Types in 6 Separate Locations of the Lower Right Leg (Between The Knee and the Ankle)"

C. Will victim be needing additional treatment?
 "YES"

If yes, describe: "Possible Physical Therapy, Orthopaedic Surgeon Will Be Removing a Steel Rod and Screws, Pins Etc. (1 Yr. Aprox.)"

17. The Commission took the position in the hearing of this contested case that amounts could not be paid for physical therapy because physical therapy was not prescribed during the first year after Baynes' criminal assault. The Commission took the position that if the physical therapy had been prescribed during the year

following Baynes' injury, the expenses would have been compensable. No administrative rule or statute was cited for the position.

18. G.S. 15B-11 (a)(2) provides that:

"An award of compensation will be denied if:
The economic loss is incurred after one year from the date of the criminally
injurious conduct that caused the injury or death for which the victim seeks
the award;"

19. No prescription was written for physical therapy. Baynes testified that his orthopaedic surgeon recommended physical therapy but did not prescribe it because Baynes had no medical insurance.

20. In the letter re-opening the record in this case on January 25, 1994, the Administrative Law Judge ordered the Commission to state whether its position regarding compensation for physical therapy and surgical expenses had changed since the hearing in light of Baynes' having written in his application that he would be needing additional surgery for the removal of the steel rod in his leg and possible physical therapy.

21. The Commission responded in a letter filed February 4, 1994 that it did not amend its position regarding compensation for physical therapy because it had not been contracted for nor prescribed by Baynes' doctor within the one year period. The Commission further stated that it believed it had paid for the surgical expenses related to the removal of the rod from Baynes' leg, but that if those expenses had not been paid, the Commission would make the payments since it had been placed on notice of the expenses within the one year period. The Commission further stated that it would be necessary for Baynes to submit any medical bills before payment could be evaluated.

22. On February 4, 1994, Baynes filed a letter in response to the Administrative Law Judge's letter. Baynes wrote in the letter that he had incurred a cost of Eight Hundred Sixty-seven Dollars (\$867.00) from Guilford Orthopaedic and Sports Medicine Center on July 14, 1993 to remove the rod. Baynes also wrote that he had out of pocket expenses of One Hundred Twenty-six and Twenty Hundredth Dollars (\$126.20) for prescriptions written by his surgeon.

23. Baynes stated further in his letter that,

"Because a decision on my claim was not made until after one year from the date of the crime, I was denied physical therapy which I am entitled to under G.S. 15B-2(1). Due to the severity of the injury, it was very important that I received the rehabilitation directly after each surgical procedure."
(Emphasis added).

24. Baynes filed his application for compensation on December 20, 1991. The Commission initially approved compensation to Baynes in the amount of Seven Thousand Nine Hundred Fifty-eight and Fifty-nine Hundred Dollars (\$7,958.59) on December 15, 1992. The Commission supplemented the compensation on May 27, 1993 in the amount of Four Thousand Two Hundred Sixty-two and Forty-two Hundred Dollars (\$4,262.42).

ORDER

Pursuant to G.S. 150B-33(b), and in my discretion, it is hereby ORDERED that the letter from the Administrative Law Judge dated January 25, 1994 and the letters in response from the parties filed February 4, 1994, be placed into the record of this contested case.

IT IS SO ORDERED.

Based on the foregoing, the undersigned makes the following:

CONCLUSIONS OF LAW

1. From the date Baynes applied for Victims Compensation, the Commission has been on notice that Baynes anticipated incurring expenses for surgery and physical therapy that, but for the fact the expenses would be incurred more than one year after the criminal attack that caused the injury to Baynes, would qualify as "economic loss" compensable pursuant to the North Carolina Crime Victims Compensation Act.
2. Pursuant to G.S. 150B-11(a)(2), an award of compensation will be denied if the economic loss is incurred after one year from the date of the criminally injurious conduct that caused the injury for which a victim seeks compensation from the Commission.
3. Baynes did not incur an economic loss for physical therapy within one year of the date of the criminally injurious conduct that caused his injury.
4. The Commission has taken the position in this case that, because it was on notice from the date that Baynes applied for Victims Compensation that surgery may be required beyond the one year period, it will pay for such surgery if it receives bills in order to properly evaluate the claim.

The Commission has also been on notice from the date that Baynes applied for Victims Compensation that physical therapy may be necessary after the rod and pins were removed which would be after one year from the date of the criminally injurious conduct. It is arbitrary and capricious for the Commission to pay for the surgery because it was on notice it may occur more than one year after the criminally injurious conduct and fail to pay for the physical therapy that may be prescribed to follow that surgery.

Based on the foregoing, the undersigned makes the following:

RECOMMENDED DECISION

The Commission should act pursuant to 14A NCAC 11 .0502(d) to reopen the investigation of Baynes' claim. The Commission should set a reasonable period for the receipt of evidence of "allowable expenses" related to the surgery to remove the rod and pins from Baynes' leg and for the receipt of a prescription for physical therapy. The Commission should require evidence satisfactory to itself that the prescription is written because it is medically necessary and was contemplated as a possibility from the date of the application in this case.

If a prescription is presented, it may be for more therapy than would have been required if Baynes had been prescribed physical therapy contemporaneously with the surgery installing the rod and pins. If so, the Commission should require the prescription to delineate how many hours of physical therapy relates to the second surgery and provide compensation for only that amount.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the N. C. Crime Victims Compensation Commission.

This the 28th day of March, 1994.

Thomas R. West
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE DEPARTMENT LICENSING BOARDS CHAPTER

1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Practicing Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX
(April 1994 - March 1995)

Pages	Issue
1 - 75	1 - April
76 - 122	2 - April

Unless otherwise identified, page references in this Index are to proposed rules.

COMMERCE

Energy Division, 4

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

DEM/Air Quality, 80
Environmental Management, 81
NPDES Permit, 3
Wildlife Resources Commission, 38, 42, 84

FINAL DECISION LETTERS

Voting Rights Act, 2

GOVERNOR/LT. GOVERNOR

Executive Orders, 1

HUMAN RESOURCES

Child Day Care Commission, 10
Facility Services, 4
Mental Health, Developmental Disabilities and Substance Abuse Services, 13, 24, 36

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board, 99

INSURANCE

Multiple Employer Welfare Arrangements, 76
Special Services Division, 76

LABOR

OSHA, 77

LICENSING BOARDS

Acupuncture Licensing Board, 44
Landscape Architects, Board of, 95
Nursing, Board of, 45
Plumbing, Heating and Fire Sprinkler Contractors, Board of, 96
Practicing Psychologists, Board of, 97
Professional Counselors, Board of Licensed, 50

LIST OF RULES CODIFIED

List of Rules Codified, 53

TRANSPORTATION

Highways, Division of, 85

Motor Vehicles, Division of, 89

NORTH CAROLINA ADMINISTRATIVE CODE

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19	10	10	Human Resources	30.00		
20	10	11 - 14	Human Resources	60.00		
21	10	15 - 17	Human Resources	45.00		
22	10	18	Human Resources	75.00		
23	10	19 - 30	Human Resources	90.00		
24	10	31 - 33	Human Resources	30.00		
25	10	34 - 41	Human Resources	60.00		
26	10	42	Human Resources	45.00		
27	10	43 - 51	Human Resources	90.00		
28	11	1 - 19	Insurance	90.00		
29	12	1 - 12	Justice	90.00		
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